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GOVERNOR

State of Michigan
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BARTON G. PICKELMAN, DIRECTOR

SUSAN CORBIN
ACTING DIRECTOR

MIOSHA GENERAL INDUSTRY AND CONSTRUCTION SAFETY AND HEALTH
STANDARD
PART 505 CORONAVIRUS DISEASE 2019 (COVID-19)
ADVISORY COMMITTEE MEETING

March 25, 2021 – 8:30 a.m.
Virtual – Teams Meeting

MEETING MINUTES

ADVISORY COMMITTEE MEMBERS PRESENT:

Andrew SmithMichigan Nurses Association
Kelly Indish.....AFSCME Local 875
Nathan PhillipsWest Michigan Plumbers, Fitters and Service Trades Local 174
Steven ClaywellMichigan Building and Construction Trades Council
Neil Parish.....National Electrical Contractors Association
Paul WrzesinskiAssociated General Contractors of Michigan
Wendy BlockMichigan Chamber of Commerce
Renee SmiddyMichigan Health & Hospital Association
Cindy OstrowskiCAO Consulting LLC
Don Staley.....The Christman Co.
Scott EllisMichigan Licensed Beverage Association
Sean Egan.....State of Michigan – Labor and Economic Opportunity (LEO)
Amelia DrummMichigan Retailers Association
David WorthamsMichigan Manufacturer’s Association
Nicole ManlyBlue Cross Blue Shield of Michigan

MIOSHA STAFF PRESENT:

Bart PickelmanMIOSHA Director
Ron RayMIOSHA Technical Services Division Director
Shannon MatsumotoMIOSHA Standards and FOIA Section Manager
Daniela Garza.....MIOSHA Standards and FOIA Section Analyst
Toscha KloppMIOSHA Standards and FOIA Section Secretary
Kristin Osterkamp.....MIOSHA CET Senior Industrial Hygienist
Eric AllenMIOSHA CSHD Health and Safety Manager
Matthew MacomberMIOSHA GISHD Industrial Hygiene Specialist 13
Mark Scott.....MIOSHA GISHD Industrial Hygienist Specialist
Lauren MillerMIOSHA Appeals Division Health Appeals Specialist

GUEST:

Brian TechlinMSU Federal Credit Union

Lawrence Hidalgo.....MIOSHA CSHD Director
Craig Anderson.....Michigan Farm Bureau
John Cakmakci.....United Food & Commercial Workers Local 951
Todd Regis.....United Food & Commercial Workers Local 951
Bill Davis.....United Food & Commercial Workers Local 951
Phu Nguyen.....Effective Safety Pro
Mike Johnson.....MMA
John VanFossen.....Meijer, Inc.
Connie Lee.....
Valerie Knol.....
Scott Barrie.....
Darius Silvin.....

Call to Order - Introductions

The March 25, 2021, General Industry and Construction Safety and Health Standard Part 505 Coronavirus Disease 2019 (COVID-19) advisory committee meeting was called to order by Mr. Worthams at 8:31 a.m.

Roll call was taken. A quorum of advisory committee members was present.

Approval of March 23, 2021 Minutes

Mr. Phillips made a motion to accept the minutes as presented. Mr. Smith seconded the motion. Without objection, the motion passed.

Committee member discussion

Mr. Worthams requested that Ms. Matsumoto provide an overview of the promulgation process, including the estimated timeframe.

Discussion was held on the process.

The committee continued with review of the draft rules at Rule 9.

Rule 9(3)

Mr. Egan mentioned he received notification from the UFCW 951 that they are supportive of the rules as written and would like to add two comments:

1. Public Address announcements - these should be added as a form of communication to customers. Many retailers currently run PA announcements reminding customers to wear masks.
2. The rules are great, but they must be enforced by the retailers at the point of entrance so that the employees such as the elderly greeter is not the person trying to enforce the mask wearing or confronting to the non-wearers for the safety of all.

Ms. Block and Ms. Smiddy asked the committee to hold further discussion on Ms. Drumm's recommendation from the last meeting.

Ms. Drumm would like to add her proposed language and strike 3(a).

A motion was made by Ms. Block to amend Rule 9(3) to state:

“Retail, libraries, and museums. Retail stores that are open for in-store sales, as well as libraries and museums, must do the following, if determined necessary per the latest CDC guidance or MDHHS epidemic order.”

Ms. Smiddy seconded the motion. Discussion was held. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

A motion was made by Mr. Block to strike Rule 9(3)(a). Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Ms. Block and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, Mr. Claywell, and Mr. Wrzesinski. Motion failed due to lack of support.

A motion was made by Ms. Smiddy to amend Rule 9(3)(e) to state:

“Design spaces and store activities in a manner that encourages employees and customers to maintain 6 feet of distance from one another or per the latest CDC guidelines.”

Ms. Block seconded the motion. Discussion was held. Those in favor of the motion are Mr. Parish, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, Mr. Claywell, and Mr. Wrzesinski. Motion failed due to lack of support.

Mr. Claywell requested that moving forward all members of the committee be allowed equal time to provide input.

A motion was made by Ms. Block to revisit Rule 1 for further discussion. Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

A motion was made by Ms. Block to revisit Rule 7 for further discussion. Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

A motion was made by Ms. Block to amend Rule 9 to state:

“Industry-specific requirements. An employer of a business, operation, or facility in the industry sectors named below shall comply with the following requirements specific for

its business, operation or facility to the extent that an employer actually complies with a recommendation contained in THE LATEST CDC guidelines to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the LATEST CDC recommendation, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in LATEST CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.”

Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

A motion was made by Ms. Block to amend Rule 9 to state:

“Industry-specific requirements. An employer of a business, operation, or facility in the industry sectors named below shall comply with the following requirements specific for its business, operation, or facility, as it relates to R 408.1, R 408.2, R 408.3, R 408.5, R 408.6, R 408.7, R. 408.8, R 408.9, R 408.10, and R 408.11, to the extent that an employer actually complies with a recommendation contained in CDC guidelines to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this rule set.”

Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

A motion was made by Mr. Phillips to amend Rule 9(3)(a) to state.

“Create communications material for customers (e.g signs, public address system or pamphlets) to inform them of changes to store practices and to explain the precautions the store is taking to prevent infection.”

Mr. Smith seconded the motion. Discussion was held. Those in favor of the motion are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Those opposed are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Motion failed due to lack of support.

A motion was made by Mr. Wrzesinski to amend Rule 9(3)(e)

“Configure spaces and store activities in a manner that encourages employees and customers to maintain 6 feet of distance from one another.”

Mr. Parish seconded the motion. Without objection, the motion passed.

A motion was made by Mr. Smith to approve all of Rule 9(3). Mr. Claywell seconded the motion. Discussion was held. Those in favor of the motion are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Those opposed are Ms. Block, Mr. Parish, Mr. Wrzesinski, and Ms. Smiddy. Motion failed due to lack of support.

Ms. Drumm wants it noted that the Michigan Retailers Association objects to Rule 9(3) as written. Mr. Ellis wants it noted the MLBA opposes as well. Mr. Worthams wants it noted that it is problematic that those that do not work in the specific industry are voting on the input without further consideration.

Mr. Ellis proposed some language for Rule 9(4)(a)(b)(c) and (f) which would add “rescind 14 days after MDHHS removes requirements” and asked for support from a voting member.

A motion was made by Ms. Block to amend rule 9(4)(a) to state:

“Require 6 feet of separation between parties or groups at different tables or bar tops (e.g., spread tables out, use every other table, remove or put up chairs or barstools that are not in use). This provision shall be rescinded 14 days after Michigan Department of Health and Human Services (MDHHS) removes this requirement.”

Ms. Smiddy seconded the motion. Discussion was held. Those in favor of the motion are Ms. Indish, Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Mr. Phillips, and Mr. Claywell. Motion passes.

Mr. Staley inquired on if Technical Advisors are permitted to make a motion. The committee held discussion on this, and the consensus was that the Technical Advisors will make recommendations and the voting committee members will make a motion. This will allow the committee to continue with the process we have been utilizing thus far in the meeting.

A motion was made by Ms. Block to amend Rule 9(4)(b) to state:

“Require patrons to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering). This provision shall be rescinded 14 days after MDHHS removes this requirement.”

Mr. Parish seconded the motion. Discussion was held. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block and Ms. Smiddy. Those opposed Mr. Smith, Mr. Phillips, and Mr. Claywell. Ms. Indish passed on the vote. Motion failed due to lack of support.

Mr. Ellis wants it noted this requirement is a dangerous burden upon an employee. Ms. Drumm wants it notes that she agrees with Mr. Ellis’ comments.

Mr. Phillips recommended we amend the language to “Employers create a plan to encourage patrons to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering). Mr. Ellis agrees to this recommendation.

Mr. Ellis feels if MDHHS does not require mask requirements based on science and data, why would we keep this requirement within our rules, and would like to see the mention of rescinding after 14 days.

A motion was made by Ms. Block to amend Rule 9(4)(b) to state:

“Remind patrons of their duty under MDHHS epidemic orders to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering).”

Mr. Wrzesinski seconded the motion. Discussion was held. Those in favor of the motion are Mr. Parish, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, Mr. Claywell, and Mr. Wrzesinski. Motion failed due to lack of support.

Ms. Manly inquired if it is required in prior rules, could we rescind this particular subrule. Mr. Ellis also feels it is duplicative of the rules above, especially with the requirement of signage.

A motion was made by Ms. Block to amend Rule 9(4)(b) to state:

“Encourage patrons to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering). “

Ms. Smiddy seconded the motion. Those in favor of the motion are Mr. Parish, Mr. Wrzesinski, Ms. Block, and Ms. Smiddy. Those opposed are Mr. Smith, Ms. Indish, Mr. Phillips, and Mr. Claywell. Motion failed due to lack of support.

Mr. Worthams pointed out the time and wants to move on to public comment. With that said he would like it noted that we will start Tuesday with continued review of Rule 9(4).

Mr. Wrzesinski inquired on if MIOSHA staff have had a chance to come up with any “Sunset” language for the committee to review. Mr. Pickelman advised it was still being worked on.

Mr. Worthams would like to ensure the agenda for our next meeting has the “Sunset language” listed for discussion.

Old Business – R408.2(1)(a) “Close Contact”

Added to next meeting agenda.

Old Business – R408.5(8) Working Remotely

Added to next meeting agenda.

Old Business – R408.12 Sunset

Added to next meeting agenda.

Public Comment

Mr. Worthams opened the floor to public comment at 11:42 a.m.

Mr. John Van Fossen would like to see the rules have flexibility including CDC guidance.

Mr. Darius Silvin feels rules should not be revised when CDC revises them.

Mr. Craig Anderson would like it recognized there are a lot of smaller businesses and they are not necessarily covered in these rules.

Next Meeting

Tuesday, March 30, 2021 at 8:30 a.m.

Adjournment

Meeting adjourned at 11:47 a.m.