



CORONAVIRUS WORKPLACE PROTECTIONS AND AVAILABLE OPTIONS FOR CONCERNED EMPLOYEES

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

Libraries should be sure to consult the State of Michigan Coronavirus website and their local municipal and Health Department directives for additional guidance.

December 4, 2020

As of 12/1/2020, Michigan is under a State Health Department Order and Temporary Michigan Occupational Safety and Health Act Regulations, each of which dictate certain policies, procedures, and safeguards that all employers (public and private) must implement.

This sheet is designed as a tool for library employees, directors and boards to assist them in determining if they are following appropriate requirements, and where to obtain assistance with questions about compliance, as well as options for situations where employees feel unsafe.

First, some basic background to assist in understanding the current requirements and the authority to enforce them.

Rules/Regulations – These two terms are used interchangeably when discussing requirements issued by a government agency. Government agencies that are part of the Executive Branch of government generally receive authority as part of their establishing legislation to issue rules/regulations that assist in the enforcement, compliance, or implementation of their legislative duties. For example: The Tax laws indicate that citizens must pay taxes. The Tax rules/regulations state exactly HOW taxes are calculated and paid.

Authority – State government agencies are permitted to act only in the manner and to the extent that the legislature or the Constitution permits them, In other words, a state agency may not act in a manner or implement policies that are outside the scope of the powers given to that agency by the legislature or the Constitution. In addition, the constitution (both State and Federal) limits the three branches of government from interfering with, or usurping the powers of the others. (ie: The Legislative Branch issues laws, the Executive branch implements & enforces those laws, the Judicial branch interprets the laws).

MDHHS Power and Authority to Issue Emergency Orders and Restrict activities:

- MDHHS – Michigan Department of Health & Human Services. MDHHS receives its authority as an executive agency from the Michigan Constitution, and its specific powers from the Public Health Code, 1978 PA 368, MCL 333.1101 et seq. (<http://legislature.mi.gov/doc.aspx?mcl-Act-368-of-1978>). The Director of the MDHHS is appointed by the Governor and confirmed by the state Senate.
- Among the powers the legislature provided the agency is the power to: *“Exercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.”* MCL 333.2226(d)
- Sections 2253, 2255, and 2262 (MCL 333.2253, MCL 333.2255, & MCL 333.2262 respectively) of the Public Health Code authorize the Agency, when faced with an epidemic, to *“prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.”*, to seek court orders to enforce orders and restrictions, and to enforce civil penalties. Section 2261 (MCL 333.2261) provides that violations of Public Health orders are a Misdemeanor charge under the Michigan Penal Code.
- Section 2251 (MCL 333.2251) authorizes the agency, upon a determination of a situation that involves imminent danger to the health and/or lives of people in the state, to issue orders that *“require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.”*

(NOTE: Although there are currently lawsuits challenging the authority of MDHHS to issue orders like the one issued on Nov. 18, so far courts have declined to strike it down. It appears that the issue will go before the Supreme Court, so the information listed here may change pending a Michigan Supreme Court ruling)

MiOSHA Power and Authority

- Michigan Occupational Safety and Health Administration (MiOSHA) is a subdivision of a large State Executive Agency, Labor & Economic Opportunity (LEO). MiOSHA receives its authority from The Michigan Occupational Safety and Health Act, 1974 PA 154, MCL 408.1001 et seq <http://legislature.mi.gov/doc.aspx?mcl-Act-154-of-1974>. In most states Occupational safety is a Federal Law issue. However, the Federal Occupational Safety and Health Act (OSHA) grants states the ability to manage their own system as long as the state submits a plan to the Federal agency and maintains certain standards. Michigan is one of about 23 states that has opted for this system. Under the Michigan act, the state agency that manages OSHA issues (MiOSHA), adopts Federal OSHA standards and many of the Federal requirements.

- MiOSHA has much authority to adopt rules and enforce its own rules through civil fines and criminal penalties. MiOSHA also has an established system of citations that can be issued for violations, as well as inspection procedures to ensure rules are being followed, and a system for hearing appeals.
- An established tenet of both the federal OSHA and MiOSHA is the “General Duty Standard.” This duty, represented in section 11 of the act, MCL 408.1011, requires that employers “Furnish to each employee, employment and a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” It is this standard that forms the basis of most OSHA and MIOSHA rules/regulations, including the present MiOSHA emergency COVID-19 rules.

So, the difference between MDHHS and MiOSHA is that **MDHHS is concerned with the public health of the population** as a whole. **MiOSHA pertains only to the workplace and employers/employees.** That means that when looking at workplace issues, there is some overlap (an MDHHS mask requirement can affect the safety of a worker employed in a business open to the general public, for example). However, when it comes to enforcement, MiOSHA generally has the larger impact.

- MDHHS Order of Nov 18, 2020
 - MDHHS FAQ

Applicable to: Everyone in the State of Michigan

- MiOSHA Emergency Rules
 - MiOSHA Rule FAQ

Applicable to: All employers and employees in the state of Michigan

FAQ

Q. How can I tell if my workplace is in compliance with all requirements for Libraries?

A. Under Rule 4 of the [MiOSHA Temporary Emergency Rules](#), all employers must develop and implement a Covid-19 response plan. That response plan must include the requirements listed in the MiOSHA rules, which cover from PPE to health screenings and industry specific measures. If your library doesn’t have such a plan, they are already in violation. If they do, review it to see if it includes the required elements. Then note if the library is practicing and enforcing the practice of these protocols. Note that some requirements may be implemented in different ways depending on the nature of the work being done, whether the library is closed or open or curbside, and the number of employees. If you are unsure if your workplace is in compliance with any of the requirements, you can contact MiOSHA at 855-SAFEC19 (855-723-3219). In addition, employers must adhere to the requirements in the [MDHHS Order](#) regarding gatherings, occupancy and masks. These requirements impact the ability to have in-person programming, meetings, and patron mask requirements. The order as it pertains to libraries is summarized in a document on the Library of Michigan coronavirus website:

[MDHHS EMERGENCY ORDER UNDER MLC 333.2253 – GATHERINGS & FACE MASK ORDER, NOVEMBER 18, 2020](#)

Q. My employer will not permit remote work even though I can complete many elements of my job from home. What can I do?

A. The best strategy is to start by meeting with your supervisor, as described in Q1, above. As part of that meeting, review your library's remote work policy (which is required as part of the MiOSHA rules), and discuss with your supervisor (and put in writing) how your work could be accomplished at home in compliance with the library's remote work policy, as well as the requirement that all work that can be "feasibly" be done remotely must be done remotely. Be prepared to show that remote work is "feasible" for your position. Part of this discussion should include suggestions for demonstrating when you are "at work," how you can be contacted, etc. MiOSHA provides some explanation of the employer's requirement to prove that work is not feasible: https://www.michigan.gov/leo/0,5863,7-336-100207_103271-545713-,00.html Under the rules, the responsibility is on the employer to prove the work is NOT feasible to be done remotely. In other words, the current requirement is that all work should be done remotely unless the employer can prove it cannot feasibly be done remotely. If this is not successful, and you believe that you should be working remotely, your best option is to contact MiOSHA for advice (see contact info below).

Q. My employer is not following or enforcing requirements and I feel unsafe. What can I do?

A. The answer to this question is complicated and much depends on the exact situation. There are several possible options, but, unfortunately, there is no magic fix. Depending on the severity of the situation, there is also no quick fix. Each of these options below will require patience and documentation of the problem(s).

First, schedule a meeting with your Supervisor/Director. Make an appointment or a specific meeting time so you have no interruptions and so you have plenty of time to calmly state your position. Be clear about your concerns and make suggestions for solving the problem. If you are not alone in this (if there are other staff who share your concerns, bring one of them with you and state that you are speaking for multiple staff members). Have a written copy of your concerns to provide to the director/supervisor. This is the method that would be the best case scenario to yield results. Remind the Director that the COVID-19 mitigation requirements are part of not only the MDHHS order, but the MiOSHA Emergency Rules (https://www.michigan.gov/documents/leo/Final_MIOSHA_Rules_705164_7.pdf) (See rule 5(8) in particular).

Explain that MiOSHA violations can mean thousands of dollars in fines – and it only takes a phone call from anyone to initiate an investigation from MiOSHA- a member of the public, a family member of a staff person, etc. By not adhering to the rules, the library is risking large fines, public embarrassment (the entity that tells patrons to put on masks is not following the rules themselves), and negative community opinion (and depending on when your next millage is due, that is not a good idea). Show the Director examples of MiOSHA violation reports (like this one issued to the city of Port Huron in September for Covid-19 violations https://www.michigan.gov/documents/leo/Draft_Citations_City_of_Port_Huron_703814_7.pdf)

Encourage your supervisor/director to consult with the library's attorney to determine if the library is in compliance.

The MDHHS orders may be unevenly enforced, but the MiOSHA rules are diligently and emphatically enforced. In fact, MiOSHA is currently prioritizing violations of the work from home rule.

<https://www.michigan.gov/leo/0,5863,7-336-76741-544922--,00.html>

If a meeting doesn't work, or you have already tried this, you have a couple of different options:

Contact MiOSHA and file a complaint https://www.michigan.gov/leo/0,5863,7-336-94422_11407_15333-93835--,00.html

- The law protects you from employer retaliation and MiOSHA will keep your identity confidential MiOSHA staff are helpful and knowledgeable. Also see <https://www.michigan.gov/coronavirus/0,9753,7-406-98810-526712--,00.html>

- **Contact MDHHS and file a report**

https://www.michigan.gov/coronavirus/0,9753,7-406-100467_100477_100487_100493_100531---,00.html (This link directs workplace safety issues to MiOSHA)

- **For violations of the MDHHS Order**, Call the MDHHS COVID-19 Helpline at 1-888-535-6136. You should also contact your local health department and submit a complaint https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5461_74040---,00.html This is a different process than with MiOSHA and your identity may not be as confidential.

- **ADA Accommodation**

If you are part of a vulnerable population, or if you have underlying health issues that make you more susceptible to COVID-19, or which are worsened because of working in your current workplace environment, you may be eligible for ADA accommodations to your work schedule, environment, etc. These accommodations could involve remote work.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (See section "D" and Qs "D1" & "D2").

- **Family Friendly Coronavirus Response Act**

There may also be some options available under the Family Friendly Coronavirus Response Act (FFCRA). This act is in effect until December 31, 2020 and requires covered employers to provide eligible employees with certain types and amounts of paid leave. HOWEVER, this act has certain eligibility and coverage requirements and not every library is required to follow it. See information below under "Resources" to help determine if FFCRA may be an option. The paid leave reasons are:

- Recovering from Covid-19
- Awaiting results of diagnostic testing
- Taking care of a family member with Covid-19

- Caring for a child home because their school or daycare is closed due to an emergency order

RESOURCES

Department of Labor (DOL) Free Timeclock App- A useful free option for keeping track of remote work time or any worked hours.

<https://www.dol.gov/agencies/whd/timesheet-app>

EEOC ADA Guidance for COVID-19

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Equip for Equality, “Covid-19 and People with Disabilities”

<https://www.equipforequality.org/wp-content/uploads/2020/05/COVID-19-Reasonable-Accommodations-at-Work-to-Stay-Safe.pdf>

Eligible Remote Work Policy – A MiOSHA explanation of what is required in a basic Remote Work Policy.

https://www.michigan.gov/leo/0,5863,7-336-100207_103271-545713--,00.html

FFCRA Eligibility Tool- An automated form that can assist users in determining if there is a possibility they may be eligible for FFCRA leave.

<https://www.dol.gov/agencies/whd/ffcra/benefits-eligibility-webtool>

Michigan Coronavirus Employee Protection Law

Covid Employment Rights Act, 2020- PA 238, MCL 419.401 et.seq. <http://legislature.mi.gov/doc.aspx?mcl-Act-238-of-2020> - Provides protections against retaliation and discipline for employees absent from work because they are symptomatic, positive, or exposed to Covid-19, as long as employee makes a good faith effort to schedule testing within 3 days after showing principal symptoms of Covid-19, IF their employer requires testing in order to return to work.

MiOSHA FAQ on rules – Provides clarity and explanations for common questions regarding implementation of the MIOSHA emergency rules.

https://www.michigan.gov/leo/0,5863,7-336-100207_103271---,00.html

MiOSHA Workplace Safety Guidance page -

<https://www.michigan.gov/leo/0,5863,7-336-100207---,00.html>

MiOSHA Contact and Reporting information:

Contact – MiOSHA Hotline = 855-SAFEC19 (855-723-3219)

Reporting information

https://www.michigan.gov/leo/0,5863,7-336-94422_11407_15333-93835--,00.html

GENERAL ARTICLES

Do you feel unsafe going to work because of COVID-19? Here are your options

General article with good suggestions.

<https://www.marketwatch.com/story/i-wish-there-were-more-and-better-protections-do-you-feel-unsafe-going-to-work-because-of-covid-19-here-are-your-options-11603184113>

Inc. Magazine, Need to Decide if Employees Should Work Remotely? Here's a Handy Guide.

<https://www.inc.com/craig-bloem/how-to-determine-which-jobs-at-your-company-can-be-done-remotely.html>

Clare Membiela

Library of Michigan

Library Law Consultant

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Staff, Directors and Boards. It is not intended as legal advice. Library Staff Boards and Directors should consult with their library and/or personal attorneys when determining a plan or policy. Local municipal and Health department directives should also be consulted for additional guidance.