



NOW WHAT? WHAT LIBRARIES SHOULD KNOW FOR THE NEW NORMAL

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.

June 22, 2021

As of Tuesday, June 22, 2021, MDHHS and MiOSHA each rescinded most of the remaining pandemic restrictions applicable to the majority of Michigan residents and employers. This sheet provides information on the remaining requirements pertaining to Michigan Libraries, and tips on what library boards and directors should consider as they form policies and procedures for moving forward.

LM often encourages libraries to consult their attorneys in matters of policy. This has never been truer than now. Although the removal of restrictions may seem to inspire a simple “back to before” shift in policies and procedures, the reality of the “new normal” is more complex. The Michigan Occupational Safety and Health Act (MiOSHA), 1974 PA 154, [MCL 408.1001 et seq](#), statutorily requires employers to maintain a workplace “free from recognized hazards.” The removal of state requirements does not take away the library’s need to comply with this law. The requirements actually made it easier because employers were told what they had to do. Now, each employer must analyze the risk in the workplace (community infection rates, vaccination rates, presence of variants, etc.) and implement appropriate mitigation measures. A library’s attorney can help interpret these statutes and regulations and ensure that a library knows exactly what they must do with policies, reporting, and recordkeeping. Your attorney can also customize enforceable policies to reflect a library’s culture and staff.

Information to review in determining policy:

LAWS

The First Amendment of the U.S. Constitution - Libraries, as limited public forums, may impose rules/restrictions with regard to time, place, and manner of activity. However, those rules and restrictions must be narrowly tailored to accomplish their intended goal while also causing the least amount of interference between patrons and their access to information. In other words, library policies can be created to support the operations, safety, etc., of the library, but at the same time they must not impose unreasonable barriers to information for the patrons that must follow them.

The Covid-19 Employment Rights Act – MCL 419.401 et.seq.
<https://legislature.mi.gov/Laws/MCL?objectName=MCL-ACT-238-OF-2020>

Paid Medical Leave Act, 2018 PA 338, MCL408.961 et, seq.

<https://legislature.mi.gov/Laws/MCL?objectName=MCL-ACT-338-OF-2018> (Applicable to libraries with 50+ employees.)

Local Ordinances and requirements – Libraries as municipal entities must adhere to local restrictions and orders. Local health departments may issue directives or orders that must be considered when imposing or enforcing policies. School/Public libraries will have to consider school district decisions and policies in addition to the general municipal and county requirements that apply to stand alone public libraries.

GUIDANCE

CDC

When you've been fully vaccinated – Information on activities and mitigation that fully vaccinated people can engage in and be safe. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>

How to protect yourself and others – Information for unvaccinated people and how they can remain safe. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

Workplace and business – This page links to several guidance pertinent to the workplace (including return to work and workplace cleaning as well as FAQs for employers). <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/index.html>

OSHA (Occupational Safety and Health Administration)

OSHA is the federal agency that oversees workplace safety.

<https://www.osha.gov/coronavirus/safework>

State of Michigan

[Facemask Recommendation](#)

MiOSHA (Michigan Occupational Safety and Health Administration)

MiOSHA is Michigan's OSHA and is related to the federal agency. MiOSHA adopts many of OSHA's standards and requirements, including many relating to COVID-19. MiOSHA looks to the OSHA guidance.

COVID-19 Guidance and resources [Labor and Economic Opportunity - COVID-19 Workplace Safety \(michigan.gov\)](#) Also links to additional CDC guidance.

General MiOSHA website [Labor and Economic Opportunity - MI Occupational Safety & Health Administration \(michigan.gov\)](#)

EEOC (Equal Employment Opportunity Commission)

The EEOC is the federal agency that protects workers against discrimination. Their COVID-19 guidance addresses ADA, vaccination, and other sticky employment matters. <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Department of Labor (DoL)

The Department of Labor addresses concerns and questions regarding wages and hours, the Fair Labor

Standards Act (FLSA), The Family Medical Leave Act (FMLA) and also links to OSHA information. [Coronavirus Resources | U.S. Department of Labor \(dol.gov\)](#)

FLSA [Wages | U.S. Department of Labor \(dol.gov\)](#) COVID-19 specific-[COVID-19 and the Fair Labor Standards Act Questions and Answers | U.S. Department of Labor \(dol.gov\)](#)

FMLA- [Family and Medical Leave \(FMLA\) | U.S. Department of Labor \(dol.gov\)](#) COVID-19 specific [COVID-19 and the Family and Medical Leave Act Questions and Answers | U.S. Department of Labor \(dol.gov\)](#)

PATRON POLICIES

Libraries can implement policies regarding mask wearing, social distancing, etc., that are more stringent than required by the state or local government. However, in order to minimize the risk of discriminatory practices, or unduly restricting access to information, policies must *be reasonable in light of the circumstances*.

“Reasonable” is a squishy term in the law, and this is one of those things your lawyer should guide you on. Basically, it has to do with what an “average” person would consider reasonable. The problem is you don’t really know if you got it right until someone sues you and a court makes a decision.

So, what do you do?

- Do your homework – Review guidance, local practice (what are other governmental entities doing? Your municipality? The schools? Other libraries?), local vaccination and infection rates, variant spread, etc.
- Contact your local Health Department for advice on what might be necessary.
- Take a big picture look at possible policies. Consider the “should” as well as the “cans.” What effect will enforcement have on staff? Patrons? Restrictions have become very tied to political, cultural, and other feelings that can be very subjective and hard to predict. A policy can have the best intention and goal, but in the end be more contentious and taxing than it is worth. For example, a blanket masking requirement for children under 12 not only places staff in the position of having to guess ages (which can result in an uneven and unfair enforcement), but also pits the library staff against parents’ judgment. Libraries intentionally shy away from this in other areas (policing content a child reads, or monitoring unattended children), so why do it now? Consider discussing possible contentious policies with staff before implementation.
- Consult your attorney. Granted this can be a bit costly, but it will be money well spent if it prevents staff resignations, public contention, or a lawsuit.

STAFF POLICIES

As discussed above, employers have a duty under the workplace safety laws to maintain a safe workplace free from “recognized hazards.” COVID-19 is a recognized workplace hazard, so libraries, like every other employer, must assess the risk and implement appropriate policies and measure to protect employees.

- The [OSHA guidance](#) provides information on specific steps employers should take to mitigate risk of infection for staff that may be at risk (particularly unvaccinated staff). It is recommended that libraries review this guidance carefully when considering employee policies.

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- Libraries as employers can implement or maintain masking requirements for unvaccinated employees and require proof of vaccination as long as they follow appropriate ADA guidelines on the safeguarding of information, etc. (See EEOC Guidance, above). If an employee feels uncomfortable not being masked (regardless of vaccination status), OSHA guidance (see above) encourages employers to permit employees to mask even if they have no requirement.
 - Mandatory or incentivized vaccination policies should be reviewed with a library's attorney to ensure that all required accommodations and exemptions are in place.
 - Libraries should be cautious about encouraging a workplace where vaccination status is stigmatized.
 - Libraries must also pay attention to the COVID-19 Employment Rights Act, which protects employees from retaliation or discipline for taking time from work to recover, quarantine, or get tested for COVID-19. This act imposes quarantine and notification requirements on employers, so libraries still need to have policies in place to address sick leave (paid or unpaid), quarantine leave (possible remote work?), and how the library will know if an employee has been exposed to a diagnosed COVID-19 case.
 - MiOSHA also imposes reporting requirements for employee deaths and hospitalizations due to workplace illness or accidents. Consult your attorney for information on which of these requirements may apply to your library.
 - Contact your attorney. It cannot be said enough. In this instance, a good attorney is well worth the cost. If your library needs an attorney, contact membielac@michigan.gov for a list of practicing library law attorneys. You could also contact a colleague for the name of their lawyer.

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