What Employers Need To Know About Michigan’s Approach To COVID-19

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With 53 presumptive-positive cases of the novel coronavirus (COVID-19) in Michigan as of March 15, Michigan is taking proactive steps to reduce transmission of the virus. Below is a brief synopsis of what employers need to know.

On March 10, 2020, Michigan’s Governor Gretchen Whitmer declared a state of emergency in Executive Order 2020-4. Two later, on March 13, 2020, Governor Whitmer issued Michigan Executive Order 2020-5, which prohibits all events and “single shared space” assemblies of more than 250 people. There are 3 exceptions to this: (1) industrial or manufacturing work, (2) mass transit, and (3) assembly for the purchase of groceries or consumer goods. A “single shared space” includes but is not limited to a “room, hall, cafeteria, auditorium, theater, or gallery,” and there is no express exception for private employers. We have contacted the governor’s office to confirm whether “single shared space” would include open-concept workspaces because it appears to. We will update this blog post on receipt of that additional information.

The order also closes all K-12 buildings, though residential and child care facilities at schools can remain open. This order is in effect until April 5, 2020, at 5 p.m. A
willful violation of the order constitutes a misdemeanor. According to Michigan's Attorney General, violations could lead to penalties, such as the loss of a business liquor license.

In light of Michigan’s approach to this ever-evolving issue:

- Periodically check the State of Michigan’s Coronavirus website here. For example, the governor has indicated that she may close all restaurants and bars beginning on March 16 at 3 p.m., with the exception of carry-out. An executive order related to this would likely be posted to this website.

- Remember that Michigan’s Paid Medical Leave Act allows employees to take paid medical leave related to the closure of the workplace by order of a public official due to a public health emergency, to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or if it has been determined by health authorities that the employee or the employee’s family member’s presence in the community would jeopardize the health of others (i.e., the current situation).

- Check the public health department websites for counties in which you have employees or facilities for local restrictions. For example, on March 16, Oakland County began requiring all bars, restaurants, entertainment facilities and physical fitness facilities to reduce capacity to 50%.

- Employers subject to EO 2020-5 should eliminate assemblages of at least 250 persons. Consider limiting travel to educational conferences, having some employees work from home (if they are not already), creating a more frequent shift rotation, or separating employees across several shared spaces/facilities to reduce the number of employees in one space.

- Employers must still maintain hours worked records for non-exempt employees, even if they are working from home. If you do not currently have a system for having hourly employees report their hours worked, create one, even if it is just in the form of a spreadsheet or emails from the employees reporting their hours worked.

- If your employees will be working from home for an extended time, consider updating telecommuting policies to make clear that employees are expected to maintain the safe conditions and confidentiality practices at home that they would on company premise, if not more so. The telecommuting policy should also state that the company assumes no responsibility for injuries to third parties who may be present at the employee’s home office. Also, determine what expenses the company will reimburse in this situation.

- Consider adding some flexibility to telecommuting policies and work hours, given that all K-12 schools are also closed through April 5. Children will be at home with their working parents, which may impact productivity during certain hours of the day.

- For foreign nationals working under temporary non-immigrant work visas, there may be restrictions on working remotely, changes in location, changes in pay,
and changes in hours and other conditions of employment, depending on the particular visa classification. Employers must ascertain whether they are required to notify the U.S. Citizen & Immigration Services of changes in the conditions of employment for employees that are working under such a non-immigrant work visa.

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