The public health departments of Oakland County, Wayne County, Washtenaw County, and Ingham County have issued public health emergency orders instituting limits and protections for individuals permitted to work in person pursuant to Michigan Executive Order (EO) 2020-21 – Stay Home, Stay Safe. At present, Macomb County has not issued a similar order. The order that corresponds to the physical location of the in-person work applies.

The Oakland County, Wayne County, Washtenaw County, and Ingham County orders were issued to protect employees and limit the risk of further community spread of the novel coronavirus due to permitted in-person work. Specifically, the orders compel employers to take the following actions:
1. Publish the orders at all facility entrances.

2. Implement a daily screening procedure for all staff reporting to work to include asking employees to self-disclose COVID-19 symptoms and risk factors.

3. Exclude employees from in-person work upon disclosure of one of the following:
   a. flu-like symptoms (fever, cough, shortness of breath, sore throat, or diarrhea);
   b. close contact in the past 14 days with a person diagnosed with COVID-19; or
   c. air travel either domestically or internationally in the past 14 days. (Oakland County issued an amended order to clarify that the travel risk factor does not apply to commuting to and from work. Further, upon inquiry, county officials stated that the restriction is not limited to air travel but is intended to apply to all air travel and some ground travel, depending on the circumstances.)

4. The orders prohibit in-person work for anyone answering “yes” to one of the above risk factors. The orders direct the following:
   a. If symptoms are reported, exclude the employee for at least seven days since symptoms first appeared. Before returning to work, the employee must also have had at least “three days without fevers and [with an] improvement in respiratory symptoms.”
   b. If an employee has had close contact with a COVID-19–diagnosed person, exclude the employee for 14 days after the contact.
   c. If the employee has engaged in air travel, exclude for 14 days since completion of the last trip.

5. Implement a social distancing plan so that “employees working in shared spaces” and customers stay at least 6 feet apart.

Additionally, the public health departments in Wayne County, Washtenaw County, and Kent County have issued public health emergency orders, and Oakland County has indicated that it is adopting the MDHHS Childcare Symptoms Monitoring Protocol, imposing limits and protections for individuals working at or visiting childcare centers remaining open under Michigan EO 2020-21.

Frequently Asked Questions (FAQs)

International and Domestic Travel

**Question 1. What if an employee drives back and forth between his home in Windsor, Ontario, and his job in Michigan every day for work?**

**Answer 1.** Under any of the orders, this is permissible. The employee does not need to be excluded from in-person work on this basis alone.
Q2. What if an employee drove to visit a relative in Toledo, Ohio, but the employee lives and works in Michigan?

A2. Under any of the orders, this is permissible. The employee does not need to be sent home or excluded from in-person work on this basis alone.

Q3. What if an employee drove to Florida for a spring break vacation on the beach with a large group of friends?

A3. This is permissible under the Wayne and Washtenaw orders but impermissible under the Oakland and Ingham orders. As presently interpreted only an Oakland or Ingham employee would need to be excluded for 14 days following the travel.

Q4. What if an employee flew to Chicago for a business trip?

A4. Under all of the orders, this would be impermissible. The employee would need to be sent home and excluded from work.

Impact on Wages and Employment

Q5. If an employee fails any portion of the screening test and must be sent home, may the employee still work remotely?

A5. If the employee works in a job that allows for work to be done remotely, and the employee is not too sick to work, the employee may continue working remotely from home and probably should have been working remotely all along as Michigan EO 2020-21 requires businesses to promote remote work to the fullest extent possible.

Q6. If an employee fails any portion of the screening test and must be sent home and is unable to work remotely, does the employer still need to pay the employee?

A6. Our article, “COVID-19: FAQs on Federal Labor and Employment Laws,” covers this and a variety of other topics U.S. employers may be facing in the wake of the COVID-19 pandemic.

It is also possible that starting April 1, 2020, certain benefits such as 80 hours of paid sick leave may be available to employees under the Families First Coronavirus Response Act if their employer has less than 500 employees.

Q7. In what circumstances might an employee who was sent home qualify for unemployment benefits?

A7. Employers may want to refrain from advising employees about qualification or disqualification for unemployment since the state makes the ultimate decision. It is worth noting that Michigan Governor Gretchen Whitmer recently issued an executive order, EO 2020-24, that addresses eligibility for unemployment benefits due to COVID-19. The order provides that “an individual on a leave of absence because of self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised, displaying the symptoms of COVID-19 or having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19 must be considered unemployed.”
Q8. What happens when a critical employee declines in-person work?

A8. A critical employee who does not fail any of the screening tests but decides to self-isolate may be ineligible to receive unemployment benefits. However, prior to taking any adverse employment action (e.g. termination) against such an employee, the employer may want to seek the advice of counsel.

Screening Process

Q9. Can an employer use a touchless/contactless thermometer to determine whether employees have a fever?

A9. While many of the orders do “strongly recommend” a temperature check if a touchless/contactless thermometer is available, an employer is not required to conduct a temperature check and may want to proceed with caution since there are many issues that arise with this approach. The childcare order in Kent and the childcare protocol adopted in Oakland, however, require temperature checks.

Q10. If one employee tests positive for COVID-19, are all other employees that worked at the same worksite considered to have had “close contact” with that individual?

A10. The Centers for Disease Control and Prevention defines “close contact” to mean within six feet. If the employer has been regularly implementing the recommended social distancing measures, then other employees, or at least not all other employees, should not have had “close contact” with the diagnosed employee.

Q11. Must the employer document compliance and maintain this record?

A11. The orders do not require documentation. Process instructions could be useful to ensure proper procedures are followed and establish compliance, if necessary. If a document of employee information is created, it must be maintained in a confidential and secure location (segregated away from personnel file) and retained for a period of time, such as for the duration of the order plus 60 days.

Q12. Must the screening involve individualized in-person questioning?

A12. The orders imply that each person is to be questioned individually. However, the orders appear to leave open the possibility of sending a daily electronic communication to in-person workers asking them to contact a designated member of management if any of the risk factors apply to them.

Individuals Working at or Visiting Childcare Centers

Q13. What is the screening criteria for individuals working at or visiting childcare centers?

A13. In Wayne and Washtenaw, the screening criteria is the same as it is for the screening of employees at other businesses in the county. However, not just employees need to be screened; all visitors, including parents and children, must be screened.
In Oakland and Kent, any individuals with symptoms of a respiratory infection, including a fever of 100.4 degrees Fahrenheit or greater, severe cough, and/or shortness of breath unrelated to a chronic condition will not be sent home. In Kent, such individuals may not return to a childcare facility until they have been fever-free for at least 72 hours and seven days have passed since the onset of severe coughing and/or breathing difficulties. Kent, similar to Wayne and Washtenaw, requires that not all staff, children, and visitors be screened, while Oakland only necessitates the screening of staff and children.

Q14. Who is allowed on the premises of childcare centers?

A14. Only staff, children, parents/guardians, and other essential visitors are allowed on the premises of childcare centers. “All non-essential visitors are restricted from entering.”
