

Resources

MIOSHA Issues Revised Emergency Rules Governing Return To Work

May 24, 2021

Although the State of Michigan announced several weeks ago that employers would be permitted to require employees to return to “in-person” work, the emergency rules issued by MIOSHA prohibiting in-person work remained in place. Those emergency rules were rescinded earlier today and replaced with a new set of emergency rules that will remain in effect until October 14, 2021.

As suspected, the new MIOSHA emergency rules keep in place several restrictions upon employers who have decided to reopen their offices for in-person work. While a careful reading of the new MIOSHA emergency rules is recommended for any employer prior to reopening their offices, there are several key takeaways that all employers should be aware of.

- Vaccinated employees are not required by MIOSHA to maintain social distancing or to wear face coverings at work (except in a health care setting or while using public transportation).
- To address the difference in treatment between vaccinated and unvaccinated employees, an employer may either require employees to tell whether they are vaccinated or not (and keep records of that disclosure), post signs in the work area reminding employees who are not fully vaccinated to wear face coverings and maintain appropriate distancing, allow or require remote work, or require face coverings and social distancing for all employees, regardless of their vaccination status.
- Employers must continue to have a COVID-19 preparedness and response plan that is consistent with MIOSHA, CDC, and OSHA requirements. Among other things, that plan must describe the measures that an employer will use to prevent employee exposure, including engineering controls, administrative controls, basic infection control measures, PPE usage, health surveillance measures, and training.
- Employers must continue to promote handwashing at work and provide hand sanitizer if soap and/or running water is not readily available. In addition, employees must be instructed that if they are experiencing COVID-19 symptoms, they are not to report to work or must work in an isolated location.
- The daily self-screening protocols that employers have used since the initial emergency work orders last year continue. Employees must at minimum check for symptoms and exposure to persons who may be infected with COVID-19 and must be directed to report any signs or symptoms of COVID that they experience before or during their work shift. Employees who are known or suspected to have COVID-19 must be sent away from the workplace and permitted to return only once they are no longer infectious according to the latest guidelines from the CDC.
- If an employer learns an employee, visitor, or customer is infected with COVID-19, they must, within 24 hours, notify any co-workers, contractors, or suppliers who may have come into contact with the infected person.
- Employees who are not fully vaccinated must continue to keep at least six feet of distance from one another while feasible on worksite premises. Unvaccinated employees who are unable to keep that distance must continue to wear face coverings (which the employer must make available at no expense to the employee).
- Employees also must receive training in COVID-19 infection control practices, workforce infection control, and how to report unsafe working conditions. Employers must keep records of that training, as well as their health screening protocols for all unvaccinated employees, records of required notifications for positive employees in the workplace and, if applicable, records of which employees are vaccinated and therefore not required to socially distance and wear masks.

In general, these rules will be familiar to any employer who already was complying with MIOSHA's old emergency rules, as they simply eliminate many of the more onerous restrictions employers with which employers had to comply. However, the new rules make clear that employers cannot simply return to their pre-pandemic activities without restriction.

MIOSHA Issues Revised Emergency Rules Governing Return To Work (Cont.)

If you have questions regarding the MIOSHA emergency rules or any other information in this alert, please contact Jim Hermon (313-568-6540 or jhermon@dykema.com), any member of Dykema's Labor & Employment practice group, or your Dykema relationship attorney.

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