

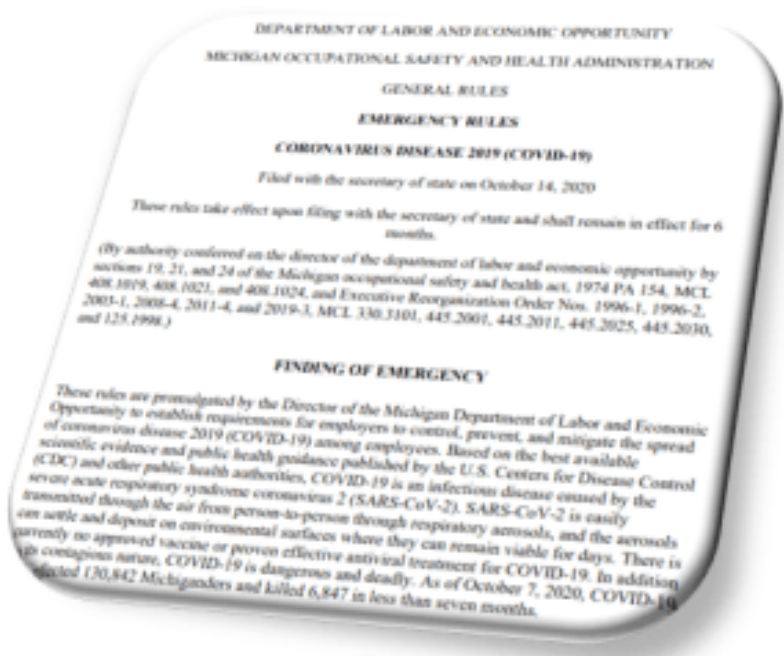
OCTOBER 19, 2020 | STATE OSH PLANS

MI OSHA is the 2nd State OSH Plan to Adopt a COVID-19 Emergency Rule: How to Comply in 5 (Not-So-Easy) Steps

By [Conn Maciel Carey's COVID-19 Task Force](#)

Reacting quickly to the [Michigan Supreme Court's decision striking down a series of Governor Gretchen Whitmer's COVID-19 Executive Orders](#), Michigan OSHA issued a series of [COVID-19 emergency rules](#) on October 14 to fill the void—many of which mirror the requirements imposed on employers by the Governor's prior Executive Orders. When Gov Whitmer signed the Emergency Rules Order, Michigan became only the second state in the country with a set of enforceable, COVID-19 specific regulation.

MIOSHA's new COVID-19 emergency rules, which became effective immediately and which will remain in effect for 6 months, require employers to:



- conduct workplace risk assessments for COVID-19 exposures;

- develop a written exposure control plan; and
- adopt a series of workplace protections.

“While most Michigan job providers are doing their part to slow the spread of COVID-19, these rules provide them with clarity regarding the necessary requirements to keep their workplaces safe and their employees healthy,” said Gov. Whitmer. “I will continue to work around the clock with my partners in labor and business to ensure protections for every Michigan worker.”

Because MIOSHA’s rule uses pretty vague language and is lean on detail, the agency has already begun to issue [FAQs](#) explaining what some of the provisions of the rule mean. Here is the first batch of FAQs:

- [Executive Rule 11\(1\) requires employers to maintain a record of the daily screening. What daily screening records must the employer maintain?](#)
- [Executive Rule 11\(1\) requires employers to maintain a record of the daily screening. What is an acceptable “record”?](#)
- [Executive Rule 5\(8\) says: The employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely. What type of policy is required?](#)
- [Executive Rule 7\(6\) requires face coverings in shared spaces, including during in-person meetings and in restrooms and hallways. When is a space considered a “shared space”?](#)
- [Is an office area containing employees in cubicle-styled configurations a “shared space”? Are employees required to wear face coverings while inside their cubicle?](#)
- [Who has to wear the non-medical grade face covering required by the Executive Rules and who has to provide them?](#)

While MIOSHA had already been aggressively citing employers under the General Duty Clause over the past few months, most of those citation directly referenced Gov. Whitmer’s now-invalidated COVID-19 Executive Orders. Michigan employers can now be cited for violating these specific regulations. At the same time, however, Republican legislators have sent a series of bills to Governor Whitmer that include liability protections for employers that comply with MI OSHA guidelines, making compliance with these rules all the more important.

Employers with operations in Michigan wishing to avoid citations should take the following 5 steps as soon as practically possible: (1) Assess; (2) Plan; (3) Protect; (4) train; and (5) document.

STEP 1: Conduct Workplace Assessment & Make Exposure Determinations (ASSESS)

Employers must evaluate routine and reasonably anticipated tasks in order to determine if employees performing those tasks may be exposed to COVID-19, or whether exposure can reasonably be anticipated given the nature

of the work they do on a daily basis. Once these tasks are evaluated, the employer must assign them to one of the four exposure risk categories identified by OSHA and the CDC; i.e., lower, medium, high or very high. Although the Rule does not explicitly mandate that employers document this assessment process, we recommend they do so. Contact a member of [Conn Maciel Carey's COVID-19 Task Force](#) for a copy of our COVID-19 hazard assessment template and/or for help conducting and complete the required risk assessments.



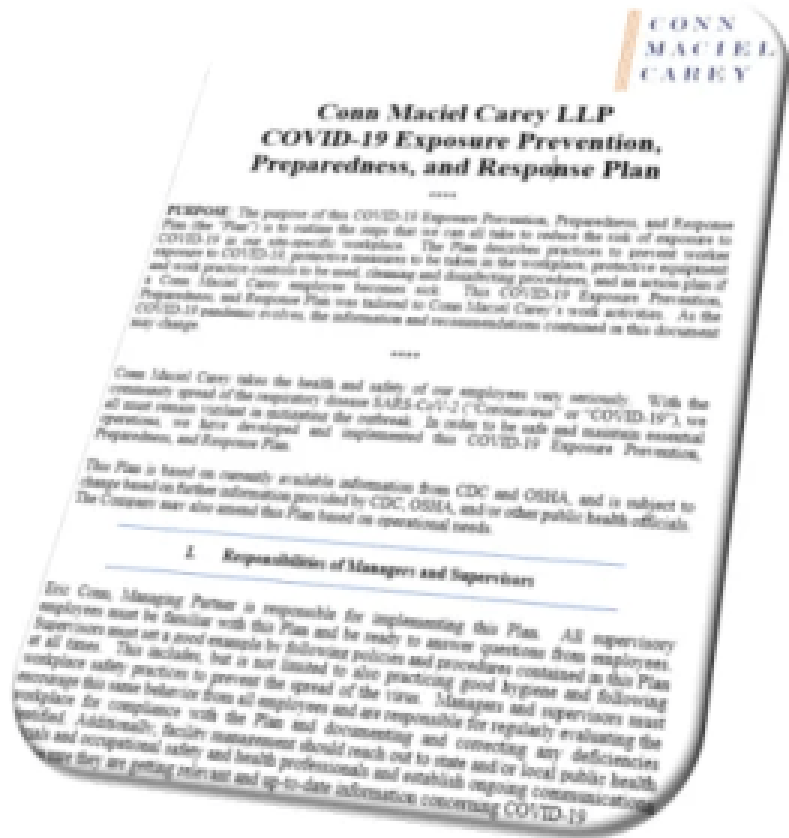
STEP 2: Develop & Implement a Written Exposure Preparedness and Response Plan (PLAN)

Once the workplace assessment has been completed, employers must [create a written preparedness and response plan](#) that includes the employee exposure determinations made as part of the workplace assessment and describes the protective measures being adopted by the employer to prevent and reduce the risk of exposure. These measures will necessarily include the various controls, safe work practices, and PPE or other protective equipment mandated by MIOSHA as part of this Rule and which are set forth below. Once created, the written plan must be shared with employees, whether by website, internal networks and/or in hard copy. Employers would be well-advised to post a copy at the worksite, but should also consider obtaining a signed acknowledgment from each employee if hard copies are distributed. Contact a member of [Conn Maciel Carey's COVID-19 Task Force](#) for help developing an effective and fully compliant COVID-19 Exposure Control and Response Plan.

STEP 3: Adopt Workplace Controls & Safe Work Practices (PROTECT)

MI OSHA's new rule sets forth a series of "basic infection prevention measures" as well as "workforce controls" for all employers in two separate sections of the Rule, but they are consolidated here as they are all required

elements of an employer's preparedness and response plan.
Michigan employers must:



- Designate one or more COVID-19 safety coordinators. There must be at least one coordinator onsite whenever workers are present, so ensure there are back-ups. The Rule allows for non-supervisory employees to be assigned the role.
- Put up posters in understandable languages about basic health practices such as hand washing, cough and sneeze etiquette, and what to do if sick.
- Evaluate and enforce social distancing protocols in the workplace to maintain at least six feet of distance between employees, whenever possible, using signage and barriers, as appropriate.
- Provide face covers to employees at no cost (ensuring an ample supply is available) and mandate their use when employees cannot consistently maintain at least six feet of distance from each other. Face covers must also be required in shared spaces such as hallways, restrooms and meetings.
- Consider mandating face shields as a supplement to face masks if employees cannot consistently maintain at least three feet of distance from each other.
- Encourage remote work for individuals who do not need to work at the facility.
- Promote frequent and thorough hand washing.
- Adopt a policy prohibiting sick employees from reporting to work.
- Prohibit/discourage sharing of tools, equipment, computers, etc., if feasible; and have measures in place to ensure cleaning of shared items before and after use.
- Increase frequency of daily facility cleaning using chemicals approved by EPA (List N); ensure that facility is

complying with applicable Hazard Communication requirements relating to Safety Data Sheets, PPE hazard assessments and employee training on new chemicals, if any, being used.

- Develop an SOP for enhanced cleaning in response to COVID-positive infection reported by employees, contractors or visitors to the facility. Note that using a third-party professional cleaning contractor is one option, but be sure to have a protocol in place so that site management knows when to utilize the contractor.
- Develop and implement an employee health surveillance program.
 - Use a questionnaire to confirm absence of CDC-listed symptoms before starting work, and direct workers to report symptoms if they arise while at work.
 - Screen for temperatures at or above 100.4 F, if possible.
 - Determine if screening will be done by a manager or whether employees will self-screen (a permissible option).
 - Have a plan in place for isolating those who fail screening or report symptoms while at work, so others are not exposed.
 - Upon receiving confirmation of a positive case, notify the Michigan Department of Health immediately, and notify employees, contractors and/or visitors who came into contact with the positive individual within 24 hours. The Rule does not clarify whether notification is required only for those who were in close contact (defined by the Rule as closer than 6 feet for more than 15 minutes beginning 2 days before positive diagnosis), or for all who had any contact with the positive employee.
 - Adopt return-to-work protocols consistent with CDC recommendations.
- Comply with PPE requirements, if any, for documented exposure levels. There are few, if any, types of PPE required for low risk tasks. The majority of the PPE that is required applies to high and very high-risk tasks in the healthcare and death-care industries. Be sure, however, to verify if PPE is required for your specific industry.
- Comply with industry specific guidelines, if any. For example, manufacturers (and, presumably, logistics employers) should, at a minimum:
 - Create dedicated entry points at which screening is conducted and ensure employees are not able to bypass said entry points.
 - Develop (written) protocols for minimizing personal contact upon delivery of materials to the facility.

STEP 4: Train Workers (TRAIN)

Training must be provided to every employee—in languages commonly understood by the workforce—on:

- infection control measures in the workplace;
- the proper use of PPE;
- steps individuals should take to notify the employer of symptoms and/or a positive or suspected case; and
- how to report unsafe working conditions.

Employers should also consider providing employees with an overview of the COVID-19 virus, symptoms, and means of transmission. Keep in mind that any training meetings should comply with social distancing protocols and face cover mandates.

STEP 5: Maintain Required Records (DOCUMENT)

The Rule identifies three types of records that employers must create and maintain for the period of one (1) year:

1. All employee training.
2. Screening performed for each employee, contractor or visitor entering the workplace. To avoid longer retention periods, employers should not record actual temperatures or specific symptoms. Instead, document the screening protocol and simply record the name of the individual screened and whether he/she passed or failed the screening on a simple roster, and retain same as proof of screening.
3. Every notification made as required by the health surveillance portion of the Rule, which includes those made to the Department of Health and those individuals who were in contact with a positive employee.

For additional information about MIOSHA's new COVID-19 emergency rule, join attorneys from Conn Maciel Carey's [national OSHA practice](#) on Thursday, October 29, 2020 at 11 AM Eastern / 10 AM Central, for a complimentary webinar: [Michigan OSHA's New COVID-19 Emergency Rule](#).



Participants in this webinar will learn about the requirements of MIOSHA's COVID-19 emergency rules and steps to take to avoid citations, including:

- Conducting COVID-19 hazard assessments
- Developing and implementing a written exposure preparedness and response plan
- Adopting workplace controls and safe work practices
- Training for employees
- Recordkeeping requirements

To [learn more about the webinar](#), click here. To register for the October 29th webinar [click here](#).

Also, as a boutique law firm focused on Workplace Safety and Labor & Employment Law, Conn Maciel Carey has been working with our clients since the beginning of this crises to develop customized COVID-19 Exposure Control Plans. In most cases, we hold a series of conference calls with leadership, HR, safety, and operations, after which we provide a customized Exposure Control Plan that will help protect employees and customers, and also provide a line of defense against the mounting potential exposure to regulatory and tort liability. If you would like help developing such a plan, please contact any of the [attorneys at Conn Maciel Carey](#).

For additional resources on issues related to COVID-19, please visit Conn Maciel Carey's [COVID-19 FAQ Page](#) for an [extensive index of frequently asked questions](#) with our answers about HR, employment law, and OSHA regulatory related developments and guidance. Likewise, subscribe to our [Employer Defense Report](#) blog and [OSHA Defense Report](#) blog for regular updates about the Labor and Employment Law or OSHA implications of COVID-19 in the workplace. Conn Maciel Carey's COVID-19 Task Force is monitoring federal, state, and local developments closely and is continuously updating these blogs and the FAQ page with the latest news and resources for employers.



COVID-19 FAQs for Employers