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Michigan Emergency Order Summary

Michigan's Governor, Gretchen Whitmer, has issued Executive Order No. 2020-21, entitled "Temporary requirement to suspend activities that are not necessary to sustain or protect life" (the "Order"). This alert summarizes the Order. The full text of the Order is available [here](#). Notably, the Order is to be construed "broadly to prohibit in-person work that is not necessary to sustain or protect life."

This alert is not legal advice. The Order's implications will depend on the facts of each situation. Please consult with a Howard & Howard attorney for advice related to your particular circumstance.

When is the Order Effective?

A: 12:01 am on March 24, 2020.

What does the Order generally require?

A: The Order generally requires every resident of Michigan to stay at home unless: 1) the person is a worker necessary "to conduct minimum basic operations" of a business; 2) the person is a worker "necessary to sustain or protect life;" or 3) the person needs to leave home to care for himself or herself or others, or is otherwise permitted to leave home under the Order.

How does the Order define a worker necessary "to conduct basic operations of a business"?

A: Workers necessary "to conduct basic operations of a business" may continue to go to their office. The Order defines workers necessary "to conduct minimum basic operations" of a business as those required to maintain the value of inventory and equipment, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Importantly, for a business to comply with the Order, the business must *designate* the persons who are necessary to conduct the basic operations of that business. Such designations may be



made orally until March 31, 2020. After that, the designations must be made in *writing* (which may include by electronic mail). The designations are to include no more than those strictly necessary to conduct basic operations.

Those who are at the workplace because they are critical to the basic operations of the business must utilize social distancing and other mitigation measures to protect themselves and patrons. These measures include maintaining a six-foot distance between people, establishing processes for disinfecting surfaces contacted by basic operations personnel, and adopting policies to prevent workers from entering the business if displaying respiratory symptoms or if otherwise suspected to have COVID-19.

How does the Order define “persons necessary to sustain or protect life?”

A: “Persons necessary to sustain or protect life” may also continue to go to their work site. The Order uses “persons necessary to sustain or protect life” interchangeably with “critical infrastructure workers.” Persons qualifying include healthcare workers and first responders. Also qualifying under this carve out are those working in food and agriculture, public utilities, transportation, communications and information technologies, “critical manufacturing,” hazardous materials, financial services, chemical supply chains, workers in the insurance industry (but only if the work cannot be conducted by phone), union workers if they are administering health and welfare funds or if monitoring other critical infrastructure workers (such monitoring to be conducted by phone to the extent possible), and the defense industrial base. Critical infrastructure workers also include childcare workers (if caring for the children of workers engaged in critical infrastructure work), and distribution centers or service centers who supply those designated as engaged in critical infrastructure. In other words, those next within the critical infrastructure supply chain may also be deemed to be “critical infrastructure workers,” but such persons must be designated as such by a “critical infrastructure” business (*i.e.*, one of those initially listed in this answer). Those mid-chain suppliers may further designate downstream suppliers who are critical. But such designations are to be made “only to the extent those workers are necessary to enable, support, or facilitate the work of the original operation’s or business’s critical infrastructure workers.” Designations may be made orally until 11:50 am on March 31, 2020; after that date designations must be made in writing.

Can people otherwise leave their homes?

A: People may leave their homes for a variety of reasons under the Order. Examples include to engage in outdoor activity (if maintaining a safe distance of 6 feet), to perform activities necessary for health and safety of a household or family member, to secure household supplies (although the Order encourages delivery services to the extent available), to care for other family members or vulnerable people, to attend legal proceedings if ordered by a court, to work for



volunteer organizations that provide food and shelter, or to return home or to travel between residences in the state.

When does the Order expire?

A: April 13, 2020 at 11:59 pm. The Governor will continue to monitor the situation and will take further action as believed required.

What is the penalty for violation?

A: A willful violation of the Order constitutes a misdemeanor. The violation carries a potential jail sentence of up to 90 days and/or a fine of \$500.



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