

COVID-19 UPDATE

MICHIGAN'S GOVERNOR ISSUES STAY AT HOME ORDER

Governor Whitmer has issued her Stay at Home Order (No. 2020-21) [here](#), effective at midnight tonight until April 13th. The Order essentially splits the business community^[1] into three categories: (1) health and human services and essential governmental functions; (2) critical infrastructure business services; and (3) all others. As one would expect, the more “essential,” the fewer restrictions are imposed on operations.

What does this mean to your business?

If your business is not: (1) in public health services; (2) engaged in critical infrastructure; or (3) is designated as a supplier to a critical infrastructure business, you should be preparing to shut down and designate “skeleton” critical staff [in writing](#).

Each business must determine whether part or all of their operations fall within the definitions of “critical infrastructure” or seek to be designated as such by a critical infrastructure customer and document the same. At that point, you should be designating which of your employees are critical to your critical infrastructure mission – the rest should go home. There are substantial grey areas in the definition of “critical infrastructure,” and there are significant criminal and civil risks to just continuing business as usual.

We are here to help you determine how your business is treated, and your responsibilities, under the Governor’s Order. More detailed information is provided below.

Category summary and requirements.

If your business is in Category 3, only workers needed to [conduct minimum basic operations](#) - meaning those whose in-person presence is strictly needed to allow the business to maintain its operation including the processing of transactions (payroll and employee benefits) or to facilitate the ability of others to work remotely (IT support) - should be leaving their homes.

All such businesses should: maintain 6 foot social distancing, restrict the number of employees to no more than strictly necessary to perform the business’ critical infrastructure functions, increase cleaning and disinfection standards, adopt policies to prevent anyone from entering if they have symptoms or had contact with someone known, or suspected, to have COVID-19.

^[1] This memo does not discuss “personal” exceptions to the order, such as outdoor recreation, seeking medicine and food, also schools will be closed until at least April 13.

If your business is in Category 2 or 3 (not providing health care/public health services, critical government services, or are providing food, shelter or other necessities or disabilities), you must designate critical infrastructure employees in writing and inform those employees of their status.

Critical infrastructure (Category 2) workers are described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in a March 19, 2020 guidance on COVID-19 response (available [here](#)). This includes some workers in each of the following sectors:

1. Health care and public health
2. Law enforcement, public safety, and first responders
3. Food and agriculture
4. Energy
5. Water and wastewater
6. Transportation and logistics
7. Public works
8. Communications and information technology, including news media
9. Other community-based government operations and essential functions
10. Critical manufacturing
11. Hazardous materials
12. Financial services
13. Chemical supply chains and safety
14. Defense industrial base

Critical infrastructure workers also include:

- A. Child care workers to the extent necessary to serve the children or dependents of critical infrastructure workers as defined in the Order.
- B. Workers at suppliers and distribution centers that are designated by a business employing critical infrastructure workers – in other words, a critical infrastructure business may designate suppliers, distribution centers, or service providers whose operation is necessary to *their* critical infrastructure workers; and such suppliers may likewise designate their critical suppliers. BUT, such designations **only** apply to the extent those workers are necessary to enable, support, or facilitate the work of the original operations or business's critical infrastructure workers.

Businesses must make all designations in writing to the entities they are designating, whether by electronic message, public website, or other appropriate means. This may be done orally until March 31, 2020 at 11:59 pm. Businesses, operations, suppliers, distribution centers, and service providers that abuse their designation authority shall be subject to sanctions to the fullest extent of the law.

- C. Workers in the insurance industry, only to the extent that their work cannot be done by telephone or remotely.
- D. Workers and volunteers for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- E. Workers who perform critical labor union functions, including administering health and welfare funds and monitoring the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done remotely where possible.

Being a critical infrastructure business or being so designated is **not** permission to operate “business as usual” – only those employees needed for the core critical functions are to be away from home. The rest should follow the Governor’s Order and stay home until the Order expires or is lifted.

We hope you found this information helpful. Please contact us if you have any questions.



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