

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

GENERAL RULES

EMERGENCY RULES

CORONAVIRUS DISEASE 2019 (COVID-19)

Filed with the secretary of state on

These rules take effect upon filing with the secretary of state and shall remain in effect for 6 months.

(By authority conferred on the director of the department of labor and economic opportunity by sections 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 330.3101, 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998)

FINDING OF EMERGENCY

These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity to establish requirements for healthcare employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of June 15, 2021, the State of Michigan had a total of 892,651 confirmed cases and 19,574 deaths.

Since March 2020, employers have reported 64 worker deaths from COVID-19 in Michigan and 173 in-patient hospitalizations for COVID-19 potentially linked to workplace exposure to SARS-CoV-2. MIOSHA has received over 15,000 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 584 referrals from local government, including local health departments, indicating that businesses were not taking all the necessary measures to protect their employees from SARS-CoV-2 infection.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” MCL

June 17, 2021

408.1011(a). Nonetheless, Michigan's experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. To mitigate and limit COVID-19's spread in healthcare workplaces, it is necessary to impose these rules and standards.

Pursuant to section 21(2) of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1021, I find that these emergency rules are necessary to protect employees during the ongoing COVID-19 pandemic.

If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules was followed, healthcare employees across Michigan may be unnecessarily exposed to SARS-CoV-2 during the rule promulgation process. Further, existing MIOSHA rules do not directly address COVID-19's spread in the healthcare workplace and healthcare employees are likely to experience an increased probability of infection at work until the protective measures in this rule are in place. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan's emergency response to COVID-19, and expose Michigan's healthcare workers to a higher risk of contracting the disease in their places of employment.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) is issuing an emergency temporary standard (ETS) to protect healthcare workers from occupational exposure to COVID-19 in settings where people with COVID-19 are expected to be present. During the period of the emergency standard, covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the healthcare workplace.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of emergency rules as provided in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Suspension of previous rules.

These emergency rules supersede the entirety of the emergency rules filed on May 24, 2021.

Rule 2. Scope, application, and adoption by reference.

(1) These rules apply to all healthcare employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, for SARS-CoV-2 coronavirus and COVID-19.

(2) The following federal Occupational Safety and Health Administration (OSHA) regulations are adopted by reference in these emergency rules:

- (a) 29 CFR 1910, Subpart U, "COVID-19 Emergency Temporary Standard."
- (b) 29 CFR 1910.502, "Healthcare," as amended June 10, 2021.

(c) 29 CFR 1910.504, "Mini Respiratory Protection Program," as amended June 10, 2021.

(d) 29 CFR 1910.505, "Severability," as amended June 10, 2021.

(e) 29 CFR 1910.509, "Incorporation by Reference," as amended June 10, 2021.

(3) The OSHA regulations adopted in these rules are available from the United States Department of Labor, Occupational Safety and Health Administration website, www.osha.gov, at no charge, as of the time of adoption of these rules.

(4) The regulations adopted in these rules are available for inspection at the Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(5) The regulations adopted in these rules may be obtained from the Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143. Up to 5 copies of these standards may be obtained at no charge. For quantities greater than 5, the cost is 4 cents per page, plus \$20.00 for shipping and handling.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

6/18/2021

Date



Susan Corbin
Acting Director

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

6/20/2021

Date



Honorable Gretchen Whitmer
Governor