



## ALERTS

### COVID-19 Impact: Michigan's Stay Home, Stay Safe Order

March 25, 2020

On March 23, Michigan Gov. Gretchen Whitmer signed the “[Stay Home, Stay Safe](#)” [Executive Order 2020-21](#) (EO 2020-21) that requires all Michigan individuals to stay at home in order to stem the spread of COVID-19 and temporarily suspends in-person operations for non-critical infrastructure businesses.

The order remains in effect from 12:01 a.m. on March 24 through April 13, 2020. It contains certain exceptions to the stay at home requirement, identifying certain critical infrastructure businesses and business activities that are allowed to continue minimum basic operations.

### Permissible Activities for Individuals

Individuals are required to remain at home or in their place of residence except for certain limited activities – to work as critical infrastructure or minimum basic operations workers if they have been designated as such, to engage in outdoor activity, to leave to seek necessary health and safety services (including medical and dental services), to obtain necessary services and supplies (including groceries and gasoline), to care for other family members (including minors and elderly people), to attend essential or emergency legal proceedings as ordered by a court, to work or volunteer at businesses that provide for disadvantaged or otherwise needy individuals.

When engaging in any of the outlined permissible activities, individuals must exercise social distancing practices, including remaining at least six feet from people from outside the individual's home.

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## Critical Infrastructure Workers

The Michigan stay safe, stay home order requires all businesses to cease all in-person operations unless the business employs critical infrastructure workers or needs to conduct minimum basic operations.

Critical infrastructure workers are defined as workers who are necessary to sustain or protect life and includes those in following industries:

- Healthcare and public health
- Law enforcement, public safety, and first responders
- Food and agriculture
- Energy
- Water and wastewater
- Transportation and logistics
- Public works
- Communications and information technology, including news media
- Other community-based government operations and essential functions
- Critical manufacturing
- Hazardous materials
- Financial services
- Chemical supply chains and safety
- Defense industrial base

The executive order does not provide a list or examples of specific businesses within each critical infrastructure industry; however it does incorporate the March 19 [U.S. Cybersecurity and Infrastructure Agency's Guidance on the Essential Critical Infrastructure Workforce](#) (CISA Guidance), which provides a more narrowly tailored definition for each industry identified in the order.

- Additionally, the following workers have also been deemed critical infrastructure workers in Michigan:
- Child care workers serving children and dependents of critical infrastructure workers
- Workers at designated suppliers and distribution centers. A designated supplier or distribution center is one that has been designated by a critical infrastructure business as a supplier or distributor necessary to support or facilitate the work of the critical infrastructure business and its critical infrastructure workers.

## RELATED PRACTICE AREAS

Corporate  
COVID-19 Resources

- Insurance industry workers unable to work remotely or via telephone
- Workers and volunteers for businesses that provide food, shelter and other life necessities for economically disadvantaged and other needy individuals
- Workers performing critical labor union functions

## **Permissible Activities for Businesses Employing Critical Infrastructure Workers**

Businesses that employ critical infrastructure workers are permitted to continue in-person operations subject to additional requirements. Such employers must designate in writing – via letter, email, public website or other appropriate means – to all employees they deem critical in supporting the noted critical infrastructure industries.

Employers must also restrict the number of critical infrastructure workers to no more than those strictly necessary for the business to perform its critical infrastructure functions. Employees designated as critical infrastructure workers must observe social distancing while at work, including keeping at least six feet from other employees or patrons to the maximum extent possible.

Employers must, according to the executive order, encourage remote work to the fullest extent possible, increase disinfecting and sanitation standards, and implement protocols to clean and disinfect in the event a critical infrastructure worker tests positive for COVID-19. They must also adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have recently come into contact with someone who is known or suspected to have COVID-19 or the coronavirus. Maintaining logs of the date, time and frequency of cleaning will also be useful if an employer is questioned about compliance.

## **Permissible Activities for Non-Critical Infrastructure Businesses**

Businesses that do not employ critical infrastructure workers are permitted to continue in-person operations, the governor's order says, but only to the extent that doing so is necessary to conduct minimum basic operations. Such businesses shall only allow in-person workers to the extent those workers are strictly necessary to allow the business to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses must designate in writing those workers that are necessary to conduct minimum basic operations. Employees designated as necessary to conduct minimum basic operations must observe social distancing to the fullest extent possible, including keeping six feet away from other employees.

## **Next Steps for Critical Infrastructure Businesses and Suppliers**

Despite the CISA Guidance, it is still unclear in some cases as to which

companies qualify as a critical infrastructure business. If your company believes it falls into one of the designated critical infrastructure industries, you should prepare a written summary assessment of your operations and the critical infrastructure nature of your businesses. Although not determinative, [NAICS industry codes](#) and [CISA's guidance on critical infrastructure sectors](#) may also be useful in supporting your analysis.

Additionally, if your company believes it is a supplier or manufacturer to a critical infrastructure business, it is important to receive written designation from your customers to further support your analysis. You should consider asking your customers to confirm that it is engaged in a critical infrastructure function and the basis for that belief as part of its designation.

If your company is not a critical infrastructure business or supplier, special attention should be paid to both existing and emerging requirements related to employees who are unable to continue working under these difficult circumstances, including paid leave and other requirements applicable to employers.

FAQ from the governor's office can be found [here](#).

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Robert Stead at 616-742-3995 or [robert.stead@btlaw.com](mailto:robert.stead@btlaw.com), Mary Comazzi at 947-215-1319 or [mary.comazzi@btlaw.com](mailto:mary.comazzi@btlaw.com), Keith Brodie at 616-742-3958 or [keith.brodie@btlaw.com](mailto:keith.brodie@btlaw.com), or Donald Lawless at 616-742-3994 or [donald.lawless@btlaw.com](mailto:donald.lawless@btlaw.com).

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