

COVID-19 Update

April 9, 2020

1. Extension of the Governor's "Stay Home, Stay Safe" Executive Order.

Governor Whitmer today extended her prior "Stay Home, Stay Safe" Executive Order through April 30, 2020. This Executive Order continues to require individuals to stay home and non-essential businesses to remain closed. The Governor confirmed that there will be no modifications to her prior Executive Order as to what constitutes businesses that are "necessary to sustain or protect life" or employees who "conduct minimum basic operations."

Businesses that remain open must continue to adhere to social distancing measures recommended by the Center for Disease Control and Prevention, including remaining at least six feet from others. Also, these businesses are now required to developing a written COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration, and have this plan available at the company's headquarters or the worksite.

A new section of the Executive Order imposes restrictions on stores in an effort to reduce crowds. Large stores must limit the number of people in the store at one time to no more than 4 customers for every 1,000 square feet of customer floor space; small stores must limit capacity to 25% of the total occupancy limits (including employees) under the fire codes. To regulate entry, stores must establish lines with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Large stores must also close areas of the store that are dedicated to carpeting, flooring, furniture, garden centers, plant nurseries, or paint.

We also note that consistent with our prior guidance, this Executive Order is likely a "quarantine or isolation order" for purposes of the federal Families First Coronavirus Response Act.

The full text of the Executive Order is available [here](#).

2. U.S. Department of Labor's Update to Families First Coronavirus Response Act Q&As Regarding Documentation.

In an update to its Q&As, the U.S. Department of Labor ("DOL") advises that regardless of whether the employer grants or denies a request for paid sick leave or expanded

family and medical leave under the Families First Coronavirus Response Act, the employer must document the following:

- The name of the employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.

If the employee requests leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to such an order, the DOL advises employers to additionally document the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, the DOL says employers should additionally document the name of the health care provider who gave the advice, but may not require the employee to provide a written note from the health care provider.

Additionally, if the employee requests leave to care for his or her child whose school or place of care is closed, or childcare is otherwise unavailable, the DOL says employers must also document:

- The name of the child for which the care is required;
- The name of the school, place of care, or childcare provider that has closed or become unavailable; and
- A statement from the employee that no other suitable person is available to care for the child.

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. Employers intending to claim such a tax credit under the FFCRA should retain appropriate documentation and consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. There is no requirement to provide leave if materials sufficient to support the applicable tax credit have not been provided. The IRS documentation requirements are substantially the same as those of the DOL.

3. Clarification to Temporary Restrictions on Entry into Health Care Facilities, Residential Care Facilities, Congregate Care Facilities, and Juvenile Justice Facilities.

Governor Whitmer issued Executive Order 2020-37 clarifying the restrictions on entry and extends their duration through May 3, 2020 at 11:59 p.m. This Executive Order rescinds the Executive Order 2020-7.

Similar to the prior Executive Order 2020-7, this Order requires that all health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities to perform a health evaluation of all individuals that are not under the care of the facility each time the individual seeks to enter the facility, and must deny entry to those individuals who do not meet the evaluation criteria. The evaluation criteria no longer includes symptoms of a sore throat, but rather: symptoms of a respiratory infection, such as fever, cough, or shortness of breath; and contact in the last 14 days with someone with a confirmed diagnosis of COVID-19.

The Executive Order also provides a definition of “residential care facilities” to include homes for the aged, nursing homes, adult foster care facilities, hospice facilities, substance abuse disorder residential facilities, independent living facilities, and assisted living facilities.

The full text of the Executive Order is available [here](#).

GMH's Coronavirus Task Force is here to answer your questions. While GMH is complying with Governor Whitmer's Order, we are working remotely and available to assist you. Please contact any of the below lawyers for more Coronavirus support.

THE LOCAL, STATE AND FEDERAL GOVERNMENT REQUIREMENTS RELATED TO COVID-19 MAY CHANGE, AND ADDITIONAL GUIDANCE, RULES, LAWS AND REGULATIONS MAY BE ISSUED OR AMENDED, AT ANY TIME. ACCORDINGLY, OUR GUIDANCE OR POSITION ON THESE TOPICS MAY ALSO CHANGE, WITH OR WITHOUT NOTICE, AND THE ABOVE INFORMATION IS FOR EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE INTERPRETED OR RELIED UPON AS LEGAL ADVICE. EACH SITUATION IS UNIQUE AND SHOULD BE REVIEWED WITH THE ASSISTANCE OF COMPETENT PROFESSIONALS.



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