

Executive Order 2020-60, New Requirements for Food-Selling Establishments and Pharmacies

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Michigan Governor Gretchen Whitmer issued [Executive Order 2020-60](#), establishing new guidelines for food-selling establishments and pharmacies. **Effective immediately and continuing through May 22, 2020**, the Governor's Executive Order requires food-selling establishments such as restaurants to implement additional procedures to protect customer and employee health, including requiring checkout employees to wear facial coverings and disinfect their hands between orders to prevent cross-contamination. While not strictly required, this Executive Order and Executive Order 2020-59 both direct consumers to wear face coverings, if medically tolerable. Importantly, this Executive Order also provides guidance on daily employee screenings, contains instruction for managing asymptomatic employees who have been exposed to COVID-19, and includes new notice requirements if an employee tests positive for COVID-19.

This Executive Order is likely a precursor to restrictions on any future opening of full-service dine-in restaurants, which we are monitoring closely. Specific requirements and guidance follow.

WHO IS IMPACTED BY EXECUTIVE ORDER 2020-60?

The Executive Order applies to pharmacies and food-selling establishments. A “food-selling establishment” means “grocery stores, convenience stores, restaurants that sell groceries or food available for takeout, and any other business that sells food.”

We note that the definition is broad enough to cover both delivery and traditional dine-in concepts selling food to-go.

WHAT ARE THE NEW REQUIREMENTS TO PROTECT CUSTOMER AND EMPLOYEE HEALTH?

Executive Order 2020-60 introduces requirements for food-selling establishments to limit customer and employee exposure to COVID-19, including:

- Implementing strategies identified in Sections 11 and 12 of [Executive Order 2020-59](#), such as developing a COVID-19 response plan, restricting workers to those who are strictly necessary, and adhering to social distancing practices recommended by the CDC, among others;

- Requiring checkout employees wear coverings over their noses and mouths;
- Closing self-serve prepared food stations such as salad bars;
- Eliminating free samples and tasting stations;
- Providing access to handwashing facilities;
- Allowing employees sufficient time to wash hands as needed;
- Ensuring employees and customers remain at least six feet apart to the maximum extent possible, including during breaks;
- Adopting procedures to meet environmental cleaning guidelines set by the [CDC](#), including cleaning and disinfecting touchpoints throughout the day;
- Encouraging cash transactions to be processed at self-checkout kiosks when possible;
- Prohibiting employees who are sick from reporting to work and sending employees home if they display symptoms of COVID-19;
- Accommodating employees who fall within a vulnerable population by providing lower-exposure work assignments or giving them the option to take an unpaid leave of absence with a return date coinciding with the end of the declared states of emergency and disaster, or May 21, 2020, whichever is later. While the Executive Order does not define “vulnerable population,” a vulnerable person could include a minor, the elderly, persons with disabilities, as well as an immunocompromised individual. See Section 7.a.10. of Executive Order 2020-59; and
- Closing to the public for sufficient time each night to allow stores to be properly sanitized.

In addition, Executive Order 2020-60 identifies the following areas where food-selling establishments must use their “best efforts” to curb the spread of COVID-19, including:

- Ensuring checkout employees disinfect their hands between orders to prevent cross-contamination;
- Providing employees and customers access to alcohol-based hand sanitizer that contains at least 60% alcohol, as recommended by the CDC; and
- Providing disinfecting wipes at cash registers and entrance points for customers to disinfect carts and baskets.

HOW SHOULD WE IMPLEMENT DAILY SCREENING REQUIREMENTS?

Executive Order 2020-60 requires all food-selling establishments to develop a daily screening program for employees. All employees must be screened just prior to or upon arriving at work.

While no specific form is required or provided, as a practical matter, the screening program should describe when an employer will conduct screening and who will ask employees the following mandatory questions. Remember, employee responses must be kept confidential.

- (1) Do you have a fever of 100.4 degrees or higher (measured by a touchless thermometer if available, but verbal confirmation of lack of fever is sufficient if a touchless thermometer is not available)?
- (2) Do you have a cough? (excluding chronic cough due to a known medical reason other than COVID-19)?
- (3) Do you have shortness of breath?
- (4) Do you have a sore throat?
- (5) Do you have diarrhea (excluding diarrhea due to a known medical reason other than COVID-19)?
- (6) Have you travelled internationally or outside Michigan in the last 14 days, excluding commuting from a home location outside of Michigan?
- (7) Have you had close contact in the last 14 days with someone with a diagnosis of COVID-19?

If an employee answers yes to any of questions 1-6 above, they cannot work for at least 7 days since the symptoms first appeared and must be fever free for at least 72 hours.

If an employee answers yes to question 7, but is asymptomatic, the employee can continue to work at the employer's discretion. In this scenario, the employer must take the following additional precautions:

- Measure the employee's temperature and assess symptoms each day before they start work;
- Require the employee to self-monitor under the supervision of the employer's occupational health program or other programs in place to protect employee health and safety, while the employee remains asymptomatic;
- If the employee begins to experience any symptoms during a shift, send the employee home immediately. If an employee is sent home, employers with fewer than 500 employees should be mindful of the paid sick leave requirements under the [Federal Families First Coronavirus Response Act](#);
- Require the employee to wear a face mask at all times while in the workplace for fourteen (14) days after the last exposure. The employer may issue the facemask or approve the employee's personally supplied cloth covering in the event of shortage; and

- Going beyond standard cleaning protocol, the employer must clean and disinfect all areas such as offices, bathrooms, common areas, and shared electronic equipment routinely known to be impacted by the exposed employee for 14 days after last exposure.

WHAT IF ONE OF MY EMPLOYEES TESTS POSITIVE FOR COVID-19?

If an employee tests positive for COVID-19, the food-selling establishment must notify food vendors and other employees of the positive test result as soon as possible (no later than 12 hours after receiving the test result), without revealing the personal health-related information of the employee.

CONCLUSION

As always, please do not hesitate to contact us if you have questions about how Executive Order 2020-60 impacts your business or workforce. Our dedicated team is continuing to monitor the situation as it develops.

This communication is not intended to constitute legal advice. Since the emergency regulations and guidelines are evolving rapidly and each of your circumstances are unique, we encourage you to reach out to us if you have questions about how this or other COVID-19 prompted government actions apply to your place of business. You may also view additional information we publish [here](#).



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