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Department of Labor and Economic Opportunity Issues Emergency Rules for Businesses

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EXECUTIVE SUMMARY

Since the beginning of the COVID-19 pandemic, Governor Gretchen Whitmer has issued numerous executive orders that dictated how businesses should respond to COVID-19 in the workplace. However, on October 2, 2020, the Michigan Supreme Court invalidated many of the Governor's COVID-19 related executive orders when it held that she (1) did not have the authority after April 30, 2020, to issue or renew any executive orders related to the COVID-19 pandemic under Michigan's Emergency Management Act of 1976, and (2) did not possess the authority to exercise emergency powers under the Emergency Powers of the Governors Act of 1945 because the act unlawfully delegates legislative power to the executive branch in violation of the Michigan Constitution.

In response to the Michigan Supreme Court's invalidation of these executive orders, the Department of Labor and Economic Opportunity issued Emergency Rules related to COVID-19, which Governor Whitmer signed on October 14, and which take effect upon filing with the secretary of state and remain in effect for six (6) months.

Under the Emergency Rules, Michigan employers must, among other things:

1. Evaluate routine and reasonably anticipated tasks and procedures to determine whether there is actual or reasonably anticipated employee exposure to SARS-CoV2, the virus which causes COVID-19.
2. Categorize jobs tasks and procedures into the risk categories of low, medium, high, or very high exposure to known or suspected sources of COVID-19. The Emergency Rule provides examples.
3. Develop and implement a written COVID-19 response plan that is consistent with CDC guidance, includes employee exposure determinations, details the measures the employer will take to prevent employee exposure, and is made readily available to employees via a website, internal network or hard copy.
4. Promote basic infection prevention measures for all employees, including promoting frequent handwashing, requiring sick employees not to report to work, prohibiting employees from using other

workers' phones, desks, tools, etc., and prohibiting in-person work for employees to the extent that their work can be feasibly completed remotely.

5. Conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including at a minimum a questionnaire together with a temperature screening, if possible. Direct employees to promptly report any signs or symptoms of COVID-19 before or during a work shift.
6. Physically isolate any employee known or suspected to have COVID-19 from the remainder of the workforce by not allowing known or suspected cases to report to work and sending known or suspected cases away from workplace.
7. Report known employee, visitor or customer COVID-19 cases to local public health department and within 24 hours of learning of known case, notify any co-workers, contractors or suppliers who may have come into contact with a person known to have COVID-19.
8. Allow employees with a known or suspected case of COVID-19 to return to the workplace only after they are no longer infectious according to the latest CDC guidance and they are released from any quarantine or isolation order by the local health department.
9. Designate one or more COVID-19 safety coordinators to implement, monitor and report on COVID-19 strategies under these Emergency Rules. Post posters in the languages common in the employee population encouraging safety, provide non-medical face coverings at no cost to employees, require face coverings be worn when employees cannot maintain six (6) feet of separation, and require face coverings in all shared spaces.
10. In addition, employers must follow industry specific requirements. For example, a manufacturing company must create dedicated entry point(s) at every facility for daily screening and ensure physical barriers are in place to prevent anyone from bypassing the screening and create protocols for minimizing personal contact upon delivery of materials to the facility.
11. Employers must provide training to employees on SARS-CoV-2 and COVID-19 and provide the training in the languages common to the employee population. The training must cover workplace infection control practices, the safe and proper use of personal protective equipment, the steps the employee must take to notify the company of any symptoms of COVID-19, and how to report unsafe working conditions.
12. Employer must maintain a record of all training and records of screening for each employee or visitor entering the workplace. Records must be maintained for one (1) year from the time of generation.

Although many Michigan employers have been performing many of the duties contained in the new Emergency Rules, we recommend a fresh review of the company's COVID-19 safety protocols and compliance posture. If you have any questions on the requirements of the new Emergency Rules, please contact Frank Del Barto, Chair of Masuda Funai's Employment Practice, or your Masuda Funai relationship attorney.