

Michigan Governor Whitmer Announces “Stay Home, Stay Safe” Executive Order to Address Coronavirus Spread - Updated May 21, 2020

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Update – May 21, 2020

On Thursday, May 21 Michigan Governor Gretchen Whitmer issued a revised “Safer at Home” [Executive Order 2020-96](#). The Order states that, effective immediately, gatherings of 10 or fewer people are permitted statewide.

Additionally, beginning May 26, retail businesses and auto dealerships across the state are authorized under the Order to reopen to in-person service by appointment. Nonessential medical, dental, and veterinary procedures are authorized to resume May 29.

Earlier in the week, Governor Whitmer ordered that all of the Upper Peninsula and 17 counties in Northern Michigan would be permitted to move to Phase IV (“Improving”) of the MI Safe Start Plan. In these regions, retail stores, offices, and restaurants and bars (with capacity limited to 50% of normal seating) are permitted to open beginning May 22. Laboratory research has also been permitted to resume as a “resumed activity” across the state.

These re-opening activities remain subject to social distancing and industry-specific workplace safety requirements, as well as local health official requirements. While earlier Orders have included these requirements within the “Safer at Home” Executive Order, beginning with Executive Order 2020-91 the Governor’s office has begun issuing its safety requirements for resumed activities separately. The most recent requirements were issued simultaneously with the revised “Safer at Home” order in [Executive Order 2020-97](#).

Similar to other re-engagement activities which have been permitted by earlier Executive Orders, businesses and operations who resume activities must, among other things:

- Develop a COVID-19 preparedness plan, consistent with recommendations in Guidance on

Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration;

- Provide COVID-19 safety training and designate worksite supervisors;
- Conduct daily self-screening protocols; and,
- Provide face coverings and cleaning supplies to employees and require coverings to be worn when employees cannot consistently maintain six feet of separation.

The “Safer at Home” order expires May 28, 2020. However, in the Governor’s May 21 press conference she stated that an extension will likely be necessary.

Update – May 8, 2020

[Executive Order 2020-77](#), issued by Michigan Governor Gretchen Whitmer on May 7, 2020 and taking immediate effect, modified the scope of the Order further by issuing new “safer at home” requirements. Critically, these revised provisions outline steps for re-starting general manufacturing in the state. The key provisions of the Executive Order remain in force, and procedures for resumed manufacturing activities have been added to the category, “Procedures for limited operation of certain non-critical businesses and operations under “resumed activities” guidelines.”

New categories of businesses that may operate under “Resumed Activities” Guidelines include:

- Workers necessary to train, credential, and license first responders (e.g., police officers, fire fighters, paramedics) and health-care workers, including certified nursing assistants, provided that as much instruction as possible is provided remotely.
- Workers necessary to perform start-up activities at manufacturing facilities, including activities necessary to prepare the facilities to follow the workplace safeguards.
- Effective at 12:01 am on May 11, 2020, workers necessary to perform manufacturing activities, subject to workplace safeguards.

For resumed manufacturing activities, the May 7 Order contains further requirements in addition to those described above. The following is a comprehensive list of those requirements:

- Conduct a daily entry screening protocol for workers, contractors, suppliers, and any other individuals entering the facility, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with temperature screening as soon as no-touch thermometers can be obtained.
- 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.
- Suspend all non-essential in-person visits, including tours.

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- Train workers on various COVID-19 related issues. These include transmission, symptoms, PPE use, and prevention rules.
 - Reduce congestion in common spaces wherever practicable by, for example, closing salad bars and buffets within cafeterias and kitchens, requiring individuals to sit at least six feet from one another, placing markings on the floor to allow social distancing while standing in line, offering boxed food via delivery or pick-up points, and reducing cash payments.
 - Implement rotational shift schedules where possible (e.g., increasing the number of shifts, alternating days or weeks) to reduce the number of workers in the facility at the same time.
 - Stagger start times and meal times.
 - Install temporary physical barriers, where practicable, between work stations and cafeteria tables.
 - Create protocols for minimizing personal contact upon delivery of materials to the facility.
 - Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible.
 - Frequently and thoroughly clean and disinfect high-touch surfaces, paying special attention to parts, products, and shared equipment (e.g., tools, machinery, vehicles).
 - Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers, and discontinue use of hand dryers.
 - Notify plant leaders and potentially exposed individuals upon identification of a positive case of COVID-19 in the facility, as well as maintain a central log for symptomatic workers or workers who received a positive test for COVID-19.
 - Send potentially exposed individuals home upon identification of a positive case of COVID-19 in the facility.
 - Encourage workers to self-report to plant leaders as soon as possible after developing symptoms of COVID-19.
 - Shut areas of the manufacturing facility for cleaning and disinfection, as necessary, if a worker goes home because he or she is displaying symptoms of COVID-19.

Update - April 24, 2020

Michigan Governor Gretchen Whitmer announced that, effective Tuesday, March 24 at 12:01 a.m., all residents of Michigan are subject to a “stay home, stay safe” Executive Order. On April 9, 2020, Governor Whitmer, extended the order and modified its scope. [Executive Order 2020-59](#), issued April 24, 2020 and taking immediate effect, modified the scope of the Order further and extended the “stay home, stay safe” requirements to May 15, 2020. Relevant sections of this alert were modified as a result of the newly issued Order.

The key provisions of the Executive Order that remain in force, or which have been added by the

April 24 Order, include:

- Procedures for limited operation of certain non-critical businesses and operations under “resumed activities” guidelines (described in greater detail below).
- Requirement that any individual able to medically tolerate a face covering must wear a mask or similar face covering while in an enclosed public space beginning April 27, 2020.
- Businesses and operations performing in person work must at minimum provide non-medical grade face coverings to their workers. More protective equipment such as gloves, goggles, face shields, and face masks must be provided as appropriate for the activity being performed.
- Issuance of required social distancing practices for ongoing in-person business, operations, and government activities. These include a general list for all activities as well as extensive additional requirements for stores that remain open for in-person sales.
- Explicitly rejecting any CISA guidance promulgated after March 19, 2020 regarding what constitutes “critical infrastructure”.
- Prohibition on rental of short-term vacation property except as necessary to assist in housing COVID-19 responders. The April 24 Order lifts the restriction on short-term rental advertising.
- Clarifying that hotels and motels may operate (with limited services).
- Permitting motor vehicle dealerships to engage in electronic sales and vehicle delivery.
- Clarifying that workers at laundromats and dry cleaners may be considered essential.
- Permitting attendance at funerals (with less than 10 people).
- Permitting attendance at addiction recovery mutual aid society gatherings (with less than 10 people).
- Permitting travel between residences within the state. (While the [March 24 Order](#) permitted such travel, this was prohibited under the [April 9 Order](#)).

With the exception of the new provision permitting certain resumed activities under the April 24 Order, all other nonessential business operations and in-person government activities not necessary to sustain or protect life or to maintain minimum basic operations have been ordered to cease.

In addition, Michiganders are ordered to stay home as much as possible. Residents are permitted to visit: (1) grocery stores; (2) restaurants for take-out; (3) hospitals and medical centers; (4) pharmacies; (5) gas stations; and (6) banks, among other essential businesses.

Under the April 24 Order, residents are additionally permitted to engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual’s household. This includes boating and golfing, which were prohibited under previous executive orders. Residents may also leave their homes to pick up non-necessary supplies at the curbside from a store

that must otherwise remain closed. Finally, guidelines have been added to facilitate visitation of a child in out-of-home care.

Certain categories of businesses may operate under new “Resumed Activities” Guidelines.

The April 24 Order includes a provision for the resumption of certain business activities and operations. These allow the resumption of work for:

- Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
- Workers who perform bicycle maintenance or repair.
- Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations (subject to enhanced social-distancing rules).
- Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under [Executive Order 2020-43](#) or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals (subject to enhanced social-distancing rules).
- Workers for moving or storage operations (subject to enhanced social-distancing rules).

To the extent businesses do not sell necessary supplies, sales may only be conducted remotely via delivery or at the curbside. Businesses must otherwise remain closed to the public.

Moreover, this category of operations remain subject to the requirements for operation applicable to all businesses, described in greater detail below. These include the designation of workers who may return to work in writing, the implementation of a preparedness and response plan, and heightened sanitation standards in compliance with CDC and OSHA guidelines. Finally, “resumed activities” operations are required to comply with enhanced social-distancing rules. These require businesses and operations to:

- Bar gatherings of any size in which people cannot maintain six feet of distance from one another.
- Limit in-person interaction with clients and patrons to the maximum extent possible, and bar any such interaction in which people cannot maintain six feet of distance from one another.
- Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
- Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.

Two categories of businesses and workers are exempt from the Order:

1. Critical Infrastructure Workers. Critical infrastructure workers and those necessary to sustain or protect life are exempt from the Order. This designation includes those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency (“CISA”) in his March 19th guidance ([available here](#)) (but, significantly, the Order does not incorporate amendments to the CISA guidance issued after March 29th), and certain workers in the following sectors:

- Health care 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.
- Workers who perform necessary government activities, as defined in the Order.
- Child care workers, to the extent necessary to serve those required to perform in-person work under the Order.
- Workers at designated suppliers, distribution centers, and service providers.
- Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
- Workers and volunteers for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals.

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- Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers.
 - Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
 - Workers at laundromats, coin laundries, and dry cleaners.
 - Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
 - Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

The April 9 Order additionally specifies that any subsequent CISA guidance promulgated later than March 19, 2020 on critical infrastructure designations is not adopted by the Order. While CISA on April 17 clarified essential services under transportation to include vehicle manufacturing and related supply chain, the April 24 Order reaffirms that this clarification has not been adopted by the State of Michigan. Therefore, automotive suppliers who make a decision that they may safely operate under the April 24 Order will be relying principally on the provisions of the March 19 CISA guidance.

Note that even for businesses operating within the foregoing categories, not all employees are considered “critical infrastructure workers.” Businesses must determine which of their workers are “critical infrastructure workers” required to perform in-person work and inform such workers of that designation in writing. The April 9 Order clarified that workers need not carry copies of their designations with them when they leave the home or place of residence for work.

2. Workers Necessary to Conduct Minimum Basic Operations. In addition, workers necessary to maintain minimum basic operations at any business are permitted to continue work. This includes workers whose in-person presence is strictly necessary to allow the business or operation 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.

Requirements Applicable to all Businesses.

Importantly, the Order requires all businesses that continue to operate to any extent to take proactive measures to ensure compliance with social distancing recommendations of the Centers for Disease Control, and requires employers to determine which of their workers are necessary to conduct minimum basic operations. The April 9 Order clarified that workers must be notified of this designation in writing, but need not carry copies of their designations with them when they leave the home or place of residence for work.

In addition, we recommend that businesses check with their clients and customers to determine whether those customers employ “critical infrastructure workers.” Under the Order, a business that

employs critical infrastructure workers may continue to receive products and services from suppliers, distribution centers or service providers whose continued operation is necessary to facilitate the work of such critical infrastructure workers.

The process for identifying which entities qualify has changed from the March 23 Order to the April 9 Order. The March 23 Order required that suppliers, distribution centers or service providers supporting critical infrastructure workers had to be designated in writing. The April 9 Order simply states that those suppliers, distribution centers or service providers may continue to operate to the extent required to support critical infrastructure work.

Finally, the April 9 Order promulgates a list of the social distancing practices which businesses continuing in-person work must adhere to in order to remain in operation. These requirements generally remain in force under the April 24 Order. Requirements include:

- Developing a 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. Such plan must be available at company headquarters or the worksite.
- Restricting the number of workers present on premises to no more than is strictly necessary to perform the business', operation's, or government agency's critical infrastructure functions or its minimum basic operations.
- Promoting remote work to the fullest extent possible.
- Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
- Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
- Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- Adopting any other social distancing practices and mitigation measures recommended by the CDC.

For stores that remain open for in-person sales, the requirements are more stringent. In addition to the general requirements, each in-person sales establishment must:

- Establish lines to regulate entry, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
- Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
- For stores of less than 50,000 square feet of customer floor space, limit the number of people

in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

- For stores of more than 50,000 square feet:
 - Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
 - Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
 - Under the April 24 Executive Order, the April 9 restrictions on the sale and advertisement of nonessential supplies of non-essential goods have been lifted.
 - Areas of stores previously ordered closed (including flooring, garden centers, furniture, and paint) may be opened and operated in the ordinary course of business, subject to social distancing requirements.

In conjunction with these requirements, the stay home, state safe orders additionally require individuals to limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.

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