

Aviation Department

March 2020

COVID-19 IMPACTS MICHIGAN AVIATION COMPANIES AS GOVERNOR WHITMER ISSUES STAY SAFE, STAY HOME ORDER

On Monday, March 23, 2020, Governor 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 the COVID-19 virus and temporarily suspends in-person operations for non-critical infrastructure businesses. The Order remains in effect from 12:01 a.m. on Tuesday, March 24, 2020 through April 13, 2020. EO 2020-21 contains certain exceptions to the stay at home requirement and identifies certain critical infrastructure businesses and business activities, including certain businesses engaged in certain transportation and logistics activities, and allows these businesses to continue minimum basic operations.

EO 2020-21 requires all businesses to cease all in-person operations unless the business employs critical infrastructure workers or to conduct minimum basic operations. For purposes of determining whether a business is engaged in critical “transportation and logistics” activities, Governor Whitmer’s Order incorporates by reference the March 19, 2020 guidance from the U.S. Cybersecurity and Infrastructure Security Agency (“CISA”) which specifically includes the following aviation related workers:

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, and workers that maintain and inspect infrastructure (including those that require cross-border travel).
- Employees of firms providing services that enable logistics operations.
- Employees who repair and maintain aircraft, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers.
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management.
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers.

Further guidance from the CISA includes in the definition of “Transportation Systems Sector” the “Aviation” subsector which includes commercial and recreation aircraft (manned and unmanned), air traffic control systems, and about 19,700 airports, heliports, landing strips, and sea plane bases. In addition, the aviation mode includes a wide-variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools.

HIGHLIGHTS

EO 2020-21 requires all businesses to cease all in-person operations unless the business employs critical infrastructure workers or to conduct minimum basic operations

Certain transportation and logistics qualify as critical infrastructure businesses

Businesses exempted by EO 2020-21 are required to designate in writing the workers that meet this criteria, inform the workers of such designation, and must adopt social distancing and other mitigation measures to protect workers and patrons in the performance of necessary, in-person work

While EO 2020-21 includes these described aviation and transportation workers and activities in the critical workforce activities that are allowed to continue, it is important to remember that the order limits the activities of the critical workforce and exempted businesses allowing only those workers necessary to conduct minimum basic operations. Businesses exempted by EO 2020-21 are required to designate in writing the workers that meet this criteria, inform the workers of such designation, and must adopt social distancing and other mitigation measures to protect workers and patrons in the performance of necessary, in-person work.

Businesses that do not employ critical infrastructure workers are permitted to continue in-person operations 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 and must adopt social distancing and other mitigation measures to protect workers and patrons in the performance of necessary, in-person work.

Despite the CISA's Guidance, it is still unclear in many of the critical infrastructure industries whether any particular company qualifies as a critical infrastructure business. If your company believes it falls into one of these 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 Codes and CISA's guidance on Critical Transportation Systems Sectors may be useful in addition to the CISA Guidance to support your analysis.

Additionally, if your company believes it is a supplier or service provider to a critical infrastructure business, it is important to receive written designation from your customers to further support your analysis that you perform critical infrastructure functions. You should also ask that your customer to confirm that it is engaged in a critical infrastructure function and the basis for that belief as part of its designation.

Lastly, 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 emerging paid leave and other requirements applicable to employers. Additional information can be obtained by visiting the [Barnes & Thornburg LLP COVID-19 Resource](#) page or by contacting your Barnes & Thornburg attorney.

Additional information is available at the following links:

[Barnes & Thornburg LLP COVID-19 Resources](#)

Executive Order 2020-21

CISA Guidance on Essential Critical Infrastructure Workers

CISA Guidance on Transportation Systems Sector

All Barnes & Thornburg LLP legal and business support functions remain in operation. We are available to assist you with the requirements of EO 2020-21 and other emerging issues by phone, email or videoconference.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Mary E. Comazzi at 947-215-1319 or mary.comazzi@btlaw.com, Todd A. Dixon at 616-742-3959 or todd.dixon@btlaw.com or Clifford G. Maine at 616-742-3944 or clifford.maine@btlaw.com.

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