

April 2020

## COVID-19 IMPACT ON AVIATION: MICHIGAN'S EXTENDED STAY SAFE, STAY HOME ORDER

On April 9, Michigan Gov. Gretchen Whitmer rescinded the “Stay Home, Stay Safe” Executive Order that was set to expire at midnight on April 13, replacing it with Executive Order 2020-42 that extends the requirement that all Michigan residents stay at home and that suspends all in-person operations for noncritical infrastructure businesses through April 30.

It also contains additional exceptions to the stay at home requirement, and identifies additional critical infrastructure businesses and business activities that are allowed to continue minimum basic operations.

### Permissible Activities for Individuals

Like the original executive order, the new order allows individuals to leave their home or residence for certain necessary reasons, including to work as critical infrastructure or minimum basic operations workers if they have been designated as such.

When engaging in any of the outlined permissible activities, individuals must exercise social distancing practices, including remaining at least six feet from people from outside the individual's home. In addition, individuals are advised to limit the number of household members that leave the home for any of the designated permissible reasons.

### Critical Infrastructure Workers: Transportation and Logistics Businesses

The new order, just as in the original order, affects certain critical transportation and logistics entities. This revised order again incorporates by reference the March 19 guidance from the U.S. Cybersecurity and Infrastructure Security Agency (CISA), excluding any subsequent guidance document released by the CISA.

The new order specifically refuses to adopt expanded guidance on what constitutes critical infrastructure, according to the March 28 issuance by the CISA, which means some individuals recognized as critical infrastructure workers at the federal level are not recognized in Michigan. For example, farm auction workers, pest control workers, chemical storage workers, mine workers, and certain warehouse workers are less likely to be included. Therefore, Michigan employers are not able to rely on the expanded descriptions of critical infrastructure that appeared in that new guidance, but instead must still rely upon the prior CISA guidance in making critical infrastructure determinations.

#### HIGHLIGHTS

Michigan governor signs new executive order that extends “Stay Home, Stay Safe” requirements until April 30

The new order details permissible activities for individuals, as well as for critical infrastructure industries such as aviation, that are exempt from the executive order

Aviation references in the guidance include a wide-variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools

The applicable March 19 guidance 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.

While the executive order includes these as aviation and transportation workers and activities that are allowed to continue, it is important to remember that the order limits the activities of the critical workforce and exempted businesses by allowing only those critical infrastructure workers and activities necessary to protect and sustain life.

### **Permissible Activities for Businesses Employing Critical Infrastructure Workers**

Businesses that are permitted under the new executive order to continue in-person operations may do so subject to additional requirements. Employers are still required to designate in writing – via letter, email, public website or other appropriate means – all employees they deem critical in supporting the noted critical infrastructure industries.

However, this order introduced a new requirement that employers – including those in the aviation sector – to develop a COVID-19 preparedness and response plan, consistent with the recommendations in Guidance on Preparing Workplaces for COVID-19, while continuing prior measures including: 1) restricting the number of critical infrastructure workers to no more than those strictly necessary for the business to perform its critical infrastructure functions, 2) promoting remote work to the fullest extent possible, 3) keeping at least six feet from other employees or patrons to the maximum extent possible, 4) increasing standards of facility cleaning and disinfecting, 5) adopting policies to prevent workers from entering the premises if they display symptoms of COVID-19 or have recently come into contact with someone who is known or suspected to have COVID-19, and 6) implementing protocols to clean and disinfect in the event a critical infrastructure worker tests positive for COVID-19.

## Permissible Activities for Non-Critical Infrastructure Businesses

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 who are necessary to conduct minimum basic operations. Employees designated as necessary to conduct minimum basic operations must observe social distancing to the fullest extent possible, including keeping six feet away from other employees.

## Next Steps for Critical Infrastructure Businesses and Suppliers

Despite the CISA Guidance, it is still unclear in some cases as to the extent to which companies qualify as a critical infrastructure business. If your company believes it falls into one of the designated critical infrastructure industries, you should prepare a written summary assessment of your operations and the critical infrastructure nature of your businesses. Although not determinative, the CISA's guidance on critical infrastructure sectors may also be useful in supporting your analysis.

Additionally, if your company believes it is a supplier or manufacturer to a critical infrastructure business, it is important to receive written designation from your customers to further support your analysis. You should consider asking your customers to confirm that it is engaged in a critical infrastructure function and the basis for that belief as part of its designation.

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 paid leave and other requirements applicable to employers.

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](mailto:mary.comazzi@btlaw.com), Todd A. Dixon at 616-742-3959 or [todd.dixon@btlaw.com](mailto:todd.dixon@btlaw.com), or Clifford G. Maine at 616-742-3944 or [clifford.maine@btlaw.com](mailto:clifford.maine@btlaw.com).

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