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# Employer Obligations as Michigan Gets Back to Work

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June 3, 2021



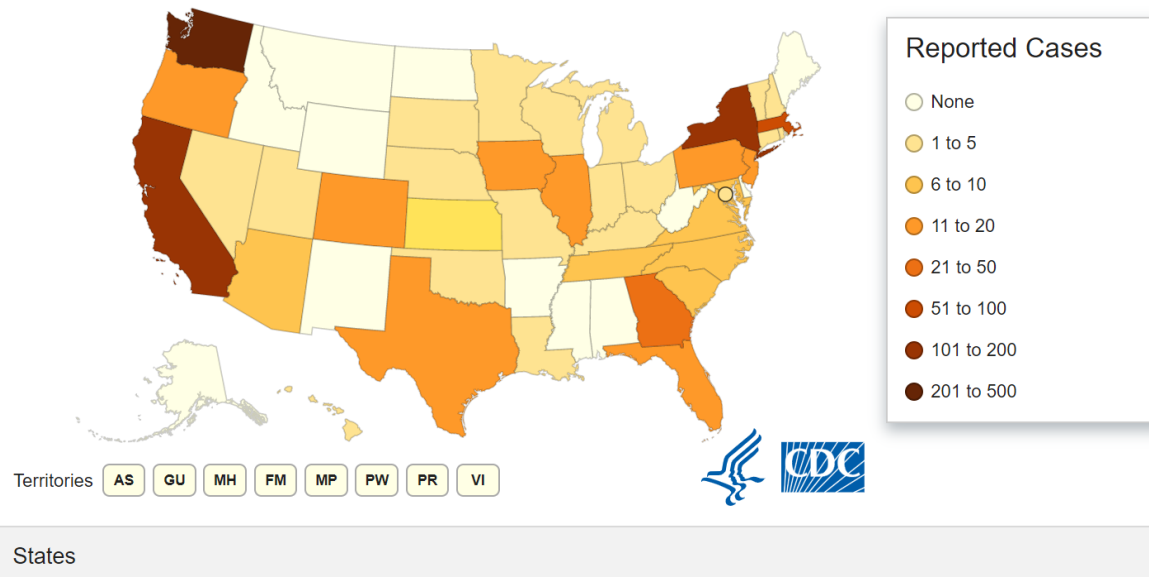
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# It's Been A Long 15 Months....

- March 11, 2020 WHO declared a global pandemic – at that time the spread in the U.S. looked like this:

States Reporting Cases of COVID-19 to CDC\*



## Since then....

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- More than 33.2 million cases of COVID-19 reported in the U.S.; 170.6 million worldwide.
- More than 590,000 deaths tied to COVID-19 in the U.S.; nearly 3.6 million worldwide.
- Unprecedented shutdowns of social, educational and economic activity caused by efforts to reduce the spread of COVID-19.
- In Michigan, that included a “work from home” order originally issued by Governor Whitmer, later incorporated into emergency rules promulgated by MIOSHA.
- Progress in combating the pandemic, including widespread vaccinations have resulted in the “work from home” order being lifted effective May 24, 2021.

# Current Rules of the Michigan Workplace

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- Revised MIOSHA Rules effective May 25, 2021.
- Rules Set To Expire on October 14, 2021 (NOT July 1, 2021)
  - At least for now....
- Not the same as DHHS Orders – MIOSHA takes the position that employers have a greater duty to ensure they are providing a workplace safe from danger to employees who are returning.
- Good news – comply and it’s a shield to liability under Michigan’s COVID-19 Response and Reopening Liability Assurance Act.
- Bad news – we’re not back to “how it was before.”

# Current Rules of the Michigan Workplace

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- Where Do You Find The MIOSHA Rules?
  - [https://www.michigan.gov/documents/leo/Final\\_MIOSHA\\_Rules\\_705164\\_7.pdf](https://www.michigan.gov/documents/leo/Final_MIOSHA_Rules_705164_7.pdf)
- What Do The Rules Require?
  - No longer need to work from home.
  - All employees in the workplace must complete a daily self-screening protocol.
  - Send positive or suspected COVID-19 positive employees away, returning only when no longer infectious per current CDC guidelines.
  - Notify any co-workers, contractors, or suppliers who have come into contact with a COVID-19 positive employee of exposure within 24 hours.

# Current Rules of the Michigan Workplace

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- What else do the Rules require?
  - Have current COVID-19 preparedness and response plan and on-site coordinator.
  - Continue to promote hand washing at work and provide hand sanitizer if soap and running water is not available.
  - Train all employees in infection control practices, workplace infection control, and how to report unsafe working conditions.
  - Keep records of training, health screening protocols, and reports of required notifications for 6 months.

# Current Rules of the Michigan Workplace

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- Treat vaccinated and unvaccinated employees differently:
  - For VACCINATED employees, no social distancing or mask wearing is required (except health care and public transportation).
  - For UNVACCINATED employees, must continue to socially distance 6 feet or, if not possible, wear a mask (that must be made available by employer).
- How do you differentiate vaccinated and unvaccinated employees?
- What about employees who have had COVID-19? What bucket are they in?

# Returning Employees To Work

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- How hard to push for vaccination of employees at return?
  - Mandatory?
  - Incentives?
  - Recommended?
  - Don't ask, don't tell?
- Employees who can't/won't be vaccinated
  - Disability
  - Religious Issue
  - Personal, nonreligious belief



# Returning Employees To Work

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- Employees who don't want to come back.
  - Employee at risk.
  - Spouse/family member at risk.
  - Child care issue.
  - Prefer to work from home.

# Returning Employees to Work -- Considerations

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1. Review all applicable public health orders in advance.
2. Consider reopening in phases rather than simply having everyone return at once.
3. Decide how you will address vaccination status reporting and whether you will mandate vaccination for returning employees.
4. Implement additional safety precautions consistent with the MIOSHA requirements.
5. Consider whether some degree of post-pandemic remote work is right for your organization.

# Miscellaneous Questions

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1. Can an employer require vaccination of employees to return to work?
2. Can an employer require an employee to show a copy of their vaccination card and keep a copy for files?
3. Are employers required to do daily temperature screenings under the new MIOSHA emergency orders?
4. How long are employers required to keep the MIOSHA screening sheets employees must fill out daily?
5. Can an employer segregate employees according to vaccination status to attempt to reduce the risk of spread at work?
6. Are there state laws that would prohibit discrimination based on vaccination status?

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# QUESTIONS

# Speaker

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**Jim's** practice focuses on the defense and trial of employment cases in federal and state courts, as well as counseling, advising and training corporations regarding their obligations under state and federal employment laws. He represents a broad range of clients in a variety of employment and discrimination related matters, including representation in administrative proceedings before the EEOC, defense of lawsuits involving race, national origin, age, and sex discrimination, defense of sexual harassment claims, defense of disability and religious accommodation claims under state and federal law, and the defense and prosecution of claims for alleged violations of covenants not to compete. He also assists employers in the drafting and implementation of employment policies, as well as the negotiation of employment and severance agreements with highly placed corporate executives.