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REAL SOLUTIONS

Will COVID Continue to Impact my Township in 2022?

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Open Meetings Act

LIMITATIONS ON MEETING ELECTRONICALLY





PA 228 and 254 of 2020

- Allowed for increased use of electronic meetings during the pandemic.
- As of **January 1, 2022:**
 - Township boards lose the ability to use electronic meetings to:
 - Accommodate members with qualifying medical conditions
 - Host a meeting electronically when Township is subject to a statewide or local state of emergency
 - Electronic attendance at public meetings ***is only permitted*** for officials ***requiring accommodation for absence due to military duty.***



Electronic Attendance - Military Duty

Additional requirements under OMA:

1. Use a method that allows “two-way communication” between the members of the governing body and the public
2. Each member attending electronically must state that they are attending remotely and their physical location
3. Township must adopt procedures for providing notice of the absent member and how to contact them in advance of a meeting to provide input
4. Township must post the meeting notice on its website, and if it exists, the meeting agenda must be posted on the website at least 2 hours before the meeting



Public Notice for Electronic Meetings

A public notice of a meeting with electronic attendance must contain the following additional information, where applicable:

1. Why the public body is meeting electronically
2. Which members will be participating electronically
3. How the public may participate in the meeting electronically, including telephone number, internet address or both
4. How the public may contact members of the public body attending electronically to provide input or ask questions
5. How persons with disabilities may participate in the meeting



Options to Mitigate Threat of COVID-19 Spread at Meetings

- A Township retains the ability to allow members of the **general public** to attend meetings electronically. If elected, individuals attending the meeting on Zoom could be granted the right to speak during public comment.
- However, if the Township allows an electronic meeting component, it cannot exclude members of the general public from attending the meeting in person. Per the OMA, a member of the general public can only be excluded from a public meeting for “a breach of the peace actually committed at the meeting.” MCL 15.263(6).
- To fully participate in the meeting (e.g., vote on matters before the board, engage in deliberations, make motions) Board members must be physically in attendance.
- Townships retain discretion to adopt COVID-19 abatement procedures at meetings (e.g., social distancing, requiring those in attendance wear masks, and forum selection that allows enhanced social distancing). However, a Township Board could not exclude individuals from a public meeting based on vaccination status. MCL 15.263(6).



What About Board Members Who Are Absent?

- Per the amended OMA, the only types of Board Members who can fully participate in a meeting electronically are those who are away on Military Duty.
- Board Members who cannot attend a Public Meeting in-person for other non-military duty related reasons cannot be accommodated electronically (e.g., deliberations and voting).
- Is there any way for Board Members to participate, such as listen or give public comment?
- OMA does not make a distinction between Board Members and public; multiple interpretations:
 - Allow to speak in public comment or, at a minimum, attend and listen.
 - Others view any participation as impermissible accommodation.
 - Potential First Amendment issue.
- Determinations on absent unaccommodated board members and public meetings may be context specific. Please consult your Township Attorney if you encounter this or similar issues.



Federal Vaccine Mandates

*TO WHAT EXTENT WILL THEY APPLY TO MI PUBLIC SECTOR
EMPLOYERS?*





Vaccine Mandates

- A “vaccine mandate” is any executive order, legislation, or administrative rule or standard that requires an employer to mandate its staff get vaccinated or submit to routine testing as an alternative.

Federal Vaccine Mandates

- There are three potentially applicable federal COVID-19 vaccination mandates:
 1. OSHA's Emergency Temporary Standard for Private Sector Employers with 100 or more employees ("OSHA ETS")
 2. The Centers for Medicare & Medicaid Interim Final Rule for entities that receive Medicare & Medicaid funding ("CMS Vaccine Mandate")
 3. Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors ("Federal Contractor Vaccine Mandate")



Vaccine Mandate Litigation

- Federal vaccine mandates have been subject to much litigation.
- As of December 30, 2021, there has been an emerging trend of courts ruling these mandates are permissible and enforceable.
- However, this trend of determining that the federal vaccine mandates are permissible is not without exception. The nationwide injunction blocking the Federal Contractor Vaccine Mandate from taking effect was upheld by the Eleventh Circuit on December 17, 2021.
- The U.S. Supreme Court will hear oral argument on the lawfulness of the OSHA ETS and CMS Vaccine Mandate on January 7, 2022.



OSHA ETS

- OSHA ETS will not immediately apply to Michigan public sector employers, because local governments are exempt from the federal OSH Act but covered by Michigan's MIOSH Act
- OSHA ETS can only be applied to your Township *if* the Michigan Occupational Health and Safety Administration ("MIOSHA") adopts a state-wide analogue of the OSHA ETS.



CMS Vaccine Mandate

- The CMS Vaccine Mandate only applies to municipal governments to the extent the township has contracted to provide service to covered Medicare- and Medicaid-certified providers and suppliers, such as hospices, hospitals, clinics, community mental health centers, and rural health clinics, to name a few).



Federal Contractor Vaccine Mandate

- It would be a rare occurrence that a township became subject to the Federal Contractor Vaccine Mandate *if the injunction blocking it is removed.*
- This is because this mandate was designed to apply to federal contractors and subcontractors.



COVID-19 Protocol Mandates

COVID-19 PROTOCOL MANDATES ARE STILL IN EFFECT





MIOSHA COVID-19 Rules

- MIOSHA COVID-19 protocol mandates are still in effect.
- These rules apply to *facilities* with workers who respond to emergency calls, perform healthcare services and/or transport patients to medical facilities
 - Municipal first responders like EMS, Fire and Law Enforcement Employees)
 - Applies to those who work in a setting where care is rendered are covered—not all township employees.

MIOSHA COVID-19 Rules

These rules require impacted employers to take additional measures, such as:

- Adopting a COVID-19 Plan Specific to Emergency Responders Covered by the Rule consistent with the requirements of 29 CFR Section 1910.502(c);
- Requiring certain employees wear facemasks
- Conducting daily health screenings of employees
- Requiring employees to isolate or quarantine on account of the employee being impacted by COVID-19
- Adhering to requirements that the township provide covered employees paid leave to secure/recover from vaccination and paid leave for isolation or quarantine purposes.

Changes to CDC Quarantine/Isolation Guidelines

- The CDC recently modified its guidance on how long individuals who have COVID-19 should isolate, and how long those exposed should quarantine.
- These changes reduce isolation and quarantine periods in certain circumstances.
- These changes impact your township's workplace because Michigan's COVID-19 Employment Rights Act adopted the CDC's definitions of "isolation period" and "quarantine period." MCL 419.401
- Since the law requires employees stay out of the workplace until their "isolation period" or "quarantine period" has ended or other conditions are met, the CDC's reduced isolation and quarantine periods allows affected employees to report back to work sooner.



All Employees 

Vaccinated Employees 

Unvaccinated Employees 

If Employee Has Close Contact

An employee who has **close contact** with a COVID-19 positive individual must remain off work until **one** of the following applies:

1. The employee is advised by a health care professional that their quarantine period is complete; **or**
2. The CDC's recommended quarantine period has passed, as determined by:
 - a. Individuals who were exposed to someone with COVID-19 and have been boosted, completed their series of Pfizer or Modern within the last 6 months, or completed their series of Johnson & Johnson within 2 months **need not quarantine at all**, but instead should:
 - ✓ Wear a mask around others for 10 days.
 - ✓ Test on day 5, if possible
 - b. Individuals who were exposed to someone with COVID-19 and you have not been boosted, completed your series of Pfizer or Modern more than 6 months ago, or completed your series of Johnson & Johnson more than 2 months ago, **or are unvaccinated** must:
 - ✓ Isolate at home for 5 days. Continue wearing a mask around others for an additional 5 days.
 - ✓ If isolation is not possible, mask for 10 days.
 - ✓ Test on day 5, if possible.

All Employees 

Vaccinated Employees 

Unvaccinated Employees 

If Employee Tests Positive

An employee who tests **positive for COVID-19** cannot return to work until they are advised by their health care provider that they may leave isolation or **all** of the following have occurred:

1. 24 hours have passed since the employee's last fever without the use of fever-reducing medications;
2. The employee has improvement in COVID-19 symptoms;
3. The CDC recommended isolation period (**regardless of vaccination status**) has passed:
 - ✓ Isolate at home for 5 days. If asymptomatic after 5 days, isolation may end. If symptoms persist, the isolation should be extended until symptom improvement.
 - ✓ Continue wearing a mask around others for an additional 5 days.

All Employees  Vaccinated Employees  Unvaccinated Employees 

If An Employee Displays Symptoms of COVID-19 But Has Not Yet Tested Positive

In this scenario, an employee must remain off work until **either**:

1. The employee receives a negative COVID-19 test; **or**
2. All of the following apply:
 - a. The employee has improvement in COVID-19 symptoms;
 - b. 24 hours have passed since the employee's last fever without the use of fever-reducing medications; and
 - c. The CDC's isolation period has passed

SPECIAL NOTE: The CDC only updated its guidance for those who test positive or are exposed to someone else with COVID-19. Therefore, if an employee does not test but is symptomatic, the CDC **still recommends 10 days of isolation**. However, Michigan law expressly gives the employer the right to request that a symptomatic employee obtain a test, and if the employee fails to make a reasonable effort to do so within 3 days, he/she could be subject to discipline or discharge.



Questions?

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