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## Michigan Bureaucrats Want Permanent COVID Regulations

By Michael Van Beek

### Summary

The governor's mid-April COVID rules on commerce are burdensome, inflexible and worst of all, could be permanent.

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In mid-April, Gov. Gretchen Whitmer extended the emergency COVID-19 rules that all Michigan employers must follow. Among other things, they require businesses to conduct daily health screenings of employees, require masks to be worn whenever anyone could be within six feet of someone else, and isolate employees who have a suspected case of COVID. Unless rescinded, these rules will continue until October. But they could last even longer, because the Michigan Occupational Safety and Health Administration wants to transform these emergency rules into permanent ones.

In the department's filings, required by state law to create new administrative rules, MIOSHA admits that only one other state in the country has created permanent COVID-19 regulations like these — Virginia. This means Michigan is one of the first states where unelected bureaucrats are seeking permanent COVID regulations on businesses.

The department says in its filings with the state's Office of Administrative Hearings and Rules that these regulations are needed because "Michigan's experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place." But that rationale doesn't hold much water, considering identical emergency rules have been in place since October, and Michigan has experienced two separate COVID-19 waves since then.

Regardless of whether the state should impose permanent regulations in response to a temporary emergency, the proposed rules raise concerns for several other reasons. Here are some of them:

- They do not automatically expire when the COVID-19 epidemic is over. Even after the state health department rescinds its epidemic-related orders and no other emergency declarations are active, these rules can stay on the books. They only require state bureaucrats to "examine the continued need for these COVID-19 rules" after the state's other emergency controls are lifted.
- The rules do not mention the word "vaccine" and could remain in place regardless of how many people are vaccinated. This means that employers would still have to require their employees to wear masks, work from home and socially distance even if the entire workplace is fully vaccinated.



Some new rules from the governor could turn businesses into mask police.

- Some of the proposed rules originate from mandates issued by Gov. Whitmer through executive orders last spring and are based on an outdated understanding of the coronavirus. For instance, they prohibit employees from sharing equipment and require employers to “increase facility cleaning and disinfection.” That’s because last spring it was thought that the virus could easily spread on surfaces. That’s no longer supported by the science, and the Centers for Disease Control and Prevention recently estimated that the chance of catching COVID from surface contact is one in 10,000.
- Some mandates are ill-defined and poorly written, making it difficult for employers to know if they are complying. For example, they require businesses to “create a policy promoting remote work for employees to the extent that their work activities can feasibly be completed remotely.” But what counts as “feasible” or “promoting” is not defined, so employers will have to guess.
- The rules turn businesses into mask police; it mandates that they require customers to wear face coverings. Current epidemic orders — mandates from the state health department, distinct from MIOSHA rules — obligate everyone 2 and older to wear masks in public. But even after those orders are lifted, these more recent rules would obligate employers to force customers to mask up nevertheless. Businesses will be stuck between turning away customers (including fully vaccinated ones) who don’t want to wear masks or risk state penalties.

As part of the rulemaking process, the department must submit a form called a “regulatory impact statement and cost-benefit analysis,” which requires it to consider the compliance costs these rules will impose on Michigan businesses. Amazingly, and somewhat disingenuously, MIOSHA claims these rules will impose “no additional burdens.” Its reasoning is that identical mandates are already in place, so businesses won’t face any new costs if these rules are made permanent. That’s akin to knocking a guy to the ground and then claiming that pinning him there won’t do him any harm because he’s already lying down.

Given an inch, MIOSHA stands poised to take a mile. Unfortunately, this has been the typical approach by the Whitmer administration, perhaps the only consistent aspect of the governor’s COVID-19 strategy.

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