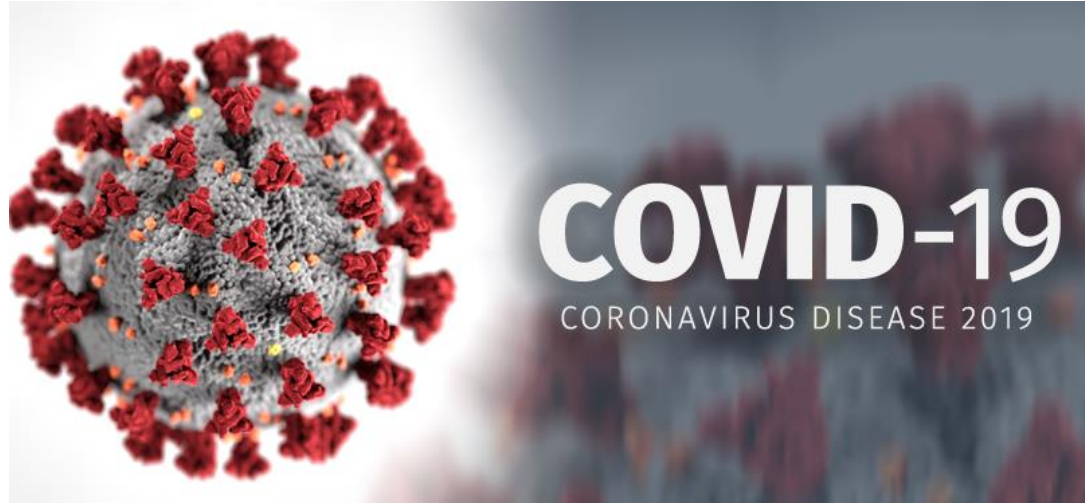


Now that the Stay at Home Order is Lifted, What Do Municipalities Need to Know?



Presented by Foster Swift Collins & Smith, PC

Anne Seuryrnck



Anne's entire career has focused on the representation of municipalities and public entities. Anne has extensive experience addressing day to day matters for municipal clients, drafting and reviewing ordinances and policies, serving as general counsel, counseling clients on Freedom of Information Act and Open Meetings Act issues, and working with communities on millage and Michigan Campaign Finance Issues. Anne also has an expertise in library law. She currently serves as the firm President and Chair of the Executive Committee.

Laura Genovich



Laura works closely with municipal clients on issues related to zoning, election law and campaign finance issues, Freedom of Information Act and Open Meetings Act compliance, labor/employment matters, real estate transactions, public finance, marijuana business regulation, and contract drafting and negotiation. She handles complex property tax appeals and has special expertise in property tax exemptions and special assessments. Laura is also a seasoned litigator who has represented local governments and private clients in both trial-level and appellate matters.

Mike Blum



Mike primarily focuses on Michigan labor and employment law and has litigated some of the state's most important cases. He went to work for the NLRB as a field examiner right out of college and became an NLRB trial attorney in 1987, when he finished law school and was admitted to the bar. Mike also has extensive experience working with municipalities and public employers, including helping in compliance with state and federal statutes affecting private-sector employers in Michigan and defense of claims before federal and state agencies.

Overview

- This session will focus on the requirements of the latest Executive Orders and what those requirements mean to municipal governments.
- We will also discuss Open Meetings Act and FOIA requirements in light of the new Executive Order.
- We will also focus on frequently asked employment questions and what municipal employers need to know when bringing employees back.

Latest Executive Order Requirements for Municipalities

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What is Opening and When?

- **Open as of June 1** – Outdoor Activities, Indoor Facilities, Offices (if work cannot be performed remotely)
- **Open as of June 4** – Retail Stores.
- **Opening on June 8** – Bars, Restaurants and “Summer Staples” (pools, day camps, libraries, and museums).
- **Opening on June 10 in Regions 6 and 8**- Indoor pools, indoor workout facilities, and indoor sports and entertainment facilities.
- **Opening June 15**- Hair, nail, tanning, massage, spa, tattoo, body art, and piercing services (statewide).

OPEN AS OF JUNE 1ST

Outdoor parks and recreational facilities

- Public parks, outdoor recreational facilities, and playgrounds can open immediately
- Individuals must maintain six feet of social distance.
- Equipment supplies may only be shared to the minimum extent possible and are subject to frequent and thorough disinfection and cleaning.
- This includes outdoor activities performed by gyms and fitness centers as well as athletic practices.

Indoor Facilities

- Indoor social gatherings and events among no more than 10 persons not part of single household are allowed.
- All persons must wear mask/face covering unless medically unable to tolerate when in enclosed public space
- Municipalities may:
 - Require removal of a mask when entering public space for ID purposes.
 - Refuse entry/access to persons if they refuse to wear a mask or allow ID.

Indoor Facilities: Guidance

- City/village buildings can open to the public, but no gathering should have more than 10 people (other than regions 6 & 8).
- Because indoor events are limited to 10 people, cities/villages should not be renting out rooms/halls to larger groups.
- Buildings like city hall should use sneeze guards and tape markings to ensure social distancing – i.e., when members of the public are waiting in line for the city clerk or treasurer

Municipal Offices: Who Can Return

- If a public employee's work **can** be performed remotely from home, they may work as directed by the employer, but must continue to perform it at home.
- If any public employee's work **cannot** be performed remotely from home, the employer *may call employees back to work*, but must provide workplace safeguards.
- An employer must promote remote work to the fullest extent possible.

Municipal Offices- Preparedness and Response Plan

- All employers, including public bodies, must have a COVID-19 Preparedness and Response Plan consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by OSHA.
- The Response Plan must lay out how to deal with a confirmed infection in the workplace, including protocols for sending employees home and for temporary closures of all or part of the workplace to allow for deep cleaning.
- Within two weeks of resuming in-person activities, the plan must be made readily available to employees, labor unions, and customers, whether via website, internal network, or by hard copy.

Municipal Offices: Required Training

Employers must provide COVID-19 training to employees that covers, at a minimum:

- Workplace infection-control practices.
- The proper use of personal protective equipment.
- Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
- How to report unsafe working conditions.

Workplace Safeguards - Arrival

- Assign dedicated entry points for employees to reduce congestion at one entrance.
- Provide visual indicators like tape markings to show appropriate spacing for employees outside the building in case of congestion.
- Reduce entry congestion created by the screening process by staggering start times, adopting a rotational schedule, or other appropriate steps.

Workplace Safeguards - Workspaces

- Require face coverings in shared spaces, such as hallways, meeting rooms, and bathrooms.
- Spread out workspaces to increase distance between employees.
- Restrict non-essential spaces like cafeterias.
- Provide cues to guide movement and activity. For instance, use visual cues to restrict elevator capacity and lock conference rooms to prevent in-person meetings.

Workplace Safeguards – Workspaces (cont'd)

- Prohibit social gatherings and meetings that do not allow for social distancing.
- Restrict non-essential travel and in-person conference events.
- Suspend non-essential visitors.
- Institute cleaning and communication protocols if an employee is sent home with symptoms.
- Disinfect high-touch surfaces and minimize shared items when possible

Workplace Safeguards – Required Notifications and Supplies

- Provide non-medical grade face coverings to their employees
- Provide disinfecting supplies and require employees to wipe down their work stations at least twice daily
- Post signs about the importance of personal hygiene.
- Notify employees if any individual, including a worker, customer, supplier, or visitor, with a confirmed case of COVID-19 visited the office.

Primarily Outdoor Jobs

- Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.
- Limit in-person interaction with clients and patrons to the maximum extent possible, and bar any such interaction in which people cannot maintain six feet of distance from one another.
- Provide and require the use of personal protective equipment such as gloves, goggles, face shields, and face coverings, as appropriate for the activity being performed.
- Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning and disinfection of tools, equipment, and frequently touched surfaces.

PREVENT THE SPREAD OF COVID-19

RE-OPENING CHECKLIST



[https://www.michigan.gov/documents/leo/Workplace_Guidelines-
Reopening_Checklist_692021_7.pdf](https://www.michigan.gov/documents/leo/Workplace_Guidelines-
Reopening_Checklist_692021_7.pdf)

- ☐ **Review** the [MIOSHA COVID-19 Workplace Safety Guidelines for Employers](#) or industry specific guidelines:
 - [Construction](#)
 - [Research Laboratories](#)
 - [Manufacturing](#)
 - [Restaurants and Bars](#)
 - [Offices](#)
 - [Retail](#)
- ☐ **Establish** exposure determination for all employees
- ☐ **Develop** [COVID-19 Preparedness and Response Plan](#)
- ☐ **Examine & update** policies and protocols
- ☐ **Develop** daily entry self-screening protocol
- ☐ **Designate** one or more worksite supervisors to implement, monitor and report on COVID-19 Preparedness and Response Plan
- ☐ **Install** physical barriers between customers and/or employees
- ☐ **Install** demarcation lines to maintain social distancing
- ☐ **Provide** employee training on new procedures and protocols
 - Ensure employees review the [MIOSHA COVID-19 Workplace Safety Guidelines for Employees](#)
- ☐ **Review** MIOSHA Enforcement Guidance - [COVID-19 Interim Enforcement Plan](#)

Outdoor public swimming pools, day camps, libraries and museums.

OPENING ON JUNE 8TH

Public Outdoor Swimming Pools

- Pools must be outdoors (except Regions 6 & 8)
- Limited to 50% capacity

Day Camps

- Day camps may open, but are subject to guidance to be issued by the Department of Licensing and Regulatory Affairs (LARA).
- Residential, travel, and troop camps are still closed (no overnight camping).

Museums and Libraries: Restrictions on the number of people in the building.

- Less than 50,000 square feet – 25% of occupancy.
- More than 50,000 square feet – limit of 4 people per 1,000 square feet of customer space and create at least 2 hours each week for vulnerable people (people over 60, pregnant women, and those with chronic conditions)
- Unless in Regions 6 and 8 (Per EO 2020-115)

Museums and Libraries: Required Safeguards

- Establish lines to regulate entry. Use markings to keep customers at least 6 feet apart while waiting in line. Alternatively, have customers wait in their cars and text or call them when they may enter the building.
- Install physical barriers at checkout and other service points. This includes Plexiglass barriers, tape markers, and tables, as appropriate.
- Design spaces to encourage employees and customers to remain 6 feet apart.
- Establish enhanced cleaning and sanitizing protocols for high touch areas.
- Limit the number of staff to the minimum amount necessary to operate.

Museums and Libraries: Required Notifications to the Public

- Create communications that inform the public of changes to new practices and explains the precautions being taken.
- Post signs at the entrance instructing the public of their legal obligation to wear a face covering.
- Post signs informing the public to not enter if they are or recently have been sick.

Museums and Libraries: Required Notifications and Training for Employees

- Train employees on appropriate cleaning procedures.
- Train employees on how to manage symptomatic customers that may be in or enter the store.
- Notify employees if an individual, such as an employee, customer, or suppliers, with a confirmed case of COVID-19 has visited the store.

Indoor public swimming pools, indoor exercise facilities and sports and entertainment facilities.

OPENING JUNE 10 IN REGIONS 6 AND 8

Regions 6 and 8

- Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
- Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

Indoor Public Swimming Pools

- Indoor swimming pools may operate at 25% of maximum capacity

Indoor Exercise Facilities: Definition

- The indoor exercise facilities in Regions 6 and 8 allowed to open on June 10 include:
 - Gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities and exercise studios

Indoor Exercise Facilities: Capacity

- Limited to 25% capacity and 250 persons total.

Sports and Entertainment Venues: Definition

- Sports and entertainment venues opening on June 10 in Regions 6 and 8 include any:
 - Arcade, bowling alley, cinema, climbing facility, convention center, performance space, meeting hall, night club, sports arena, theater, or similar venue.

Sports and Entertainment Venues: Indoor Restrictions

- Persons not part of the same household must maintain six feet of distance from one another.
- The gathering or event may not exceed 50 people
- If open to spectators: the number of people in the venue is limited to 25% of its maximum capacity not exceeding 250 persons

Sports and Entertainment Venues: Outdoor Restrictions

- Persons not part of the same household maintain six feet of distance from one another.
- The gathering or event does not exceed 250 people.
- If open to spectators: the number of people in the venue is limited to 25% of its maximum capacity not exceeding 500 persons.

Sizes of social gatherings and workers returning.

GENERAL CHANGES COMING JUNE 10 IN REGIONS 6 AND 8

Sizes of Social Gatherings

- After June 10 in Regions 6 and 8
 - Indoor social gatherings and events are permitted among persons not of the same household up to 50 or fewer persons
 - Outdoor gatherings and events are permitted up to 250 or fewer persons

Workers Returning

- Office work that can be performed remotely no longer must be performed remotely but only should be.
 - The same work safeguards laid out earlier remain in place however.

Open Meetings Act and the FOIA Deadline Suspension

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Open Meetings Act (“OMA”) in General

- Generally, the OMA requires that any meeting of a public body must occur in person and must be open to the general public.
- However, in response to COVID-19 public gathering concerns multiple Executive Orders have addressed this requirement.

Executive Order 2020-110

- Reopens businesses and rescinds shelter-in-place.
 - However, meetings of a public body should still be held remotely by an electronic method until June 30 under EO 2020-75.
 - The public may now attend an in-person meeting, but there may be no more than 10 persons in attendance unless you are in Regions 6 or 8 where there is a 50 person maximum .
 - Social distancing must be observed as well in meetings.
 - If all or some of the members of a public body meet in-person, electronic access must still be provided.

Executive Order 2020-75

- If a public body directly or indirectly maintains an official internet presence (i.e., has a website), the public body must post “advance notice” of a meeting held electronically.
- The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings or electronic meetings and accessible through a prominent and conspicuous link on the website’s homepage that clearly describes its purpose for public notification of those non-regularly scheduled or electronic public meetings.

Executive Order 2020-75

- Additional Notice Requirements must include all of the following:
 - An explanation of the reason why the public body is meeting electronically.
 - Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address, or both. This is the portion of the notice where the public body should list its instructions of how to call into the meeting or how to connect with any video meeting.

Executive Order 2020-75

- Additional Notice Requirements must include all of the following:
 - Procedures by which persons may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
 - Procedures by which persons with disabilities may participate in the meeting.

Executive Order 2020-75

- Other OMA Requirements Still Apply.
 - A public body may not require a person as a condition of participating in a meeting of the public body held electronically to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms necessary to permit the person to participate in a public comment period of the meeting.

Executive Order 2020-75

- Other OMA Requirements Still Apply.
 - A person must be permitted to address a meeting of a public body held electronically under rules established and recorded by the public body.
 - A person must not be excluded from a meeting held electronically otherwise open to the public except for a breach of the peace actually committed during the meeting.

Executive Order 2020-75

- Access to Agenda and Board Packet.
 - If a public body holding a meeting electronically has a website, the public body is encouraged to make available to the general public through the public body's website homepage the agenda and other materials relating to the meeting.
 - This is to be an “encouragement” rather than a mandate.

Executive Order 2020-75

- Closed Session.
 - The EO provides that members of the general public may be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of the OMA applicable to a closed session.

Executive Order 2020-75

- No Texting, Email, or “Round-the-Horn” Communications. Members of a public body must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision, and must avoid “round-the-horn” decision-making in a manner not accessible to the public at an open meeting.

Freedom of Information Act (“FOIA”) In General

- Generally, FOIA requires that a request for information be responded to within five (5) business days, subject to a 10-business day extension by written notice. Additionally, there is a 10-business day response window for appeals of both denials and fees
- However, like the OMA, in response to COVID-19 multiple Executive Orders have addressed this requirement

Executive Order 2020-38 and FOIA

- Requires only a response within ten (10) business days of “actual receipt,” (meaning the time in which the envelope containing the request is physically opened or the fax is physically removed from the fax machine.)
- If the request involves physical records that must be retrieved in person, responses may be delayed until after June 10, 2020.
- Requests for electronic records must still be provided to the extent they can be accessed remotely.

Executive Order 2020-112 on FOIA

- The FOIA deadlines that were extended by Executive Order 2020-38 end June 10.
- “The temporary extension of certain FOIA deadlines provided by Executive Order 2020-38 will no longer be necessary as soon as public bodies have an opportunity to plan for a return to normal FOIA response processes.” Executive Order 2020-112 (June 3, 2020)

What to Expect for OMA and FOIA Now

- We are likely to see a full return to the 5-business day response window for all FOIA requests, while allowing a 10-business day extension.
- Similarly, the 10- business day response window for appeals are likely to be enforced after June 10th

Returning Employees to the Workplace

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Discrimination

- www.eeoc.gov/coronavirus

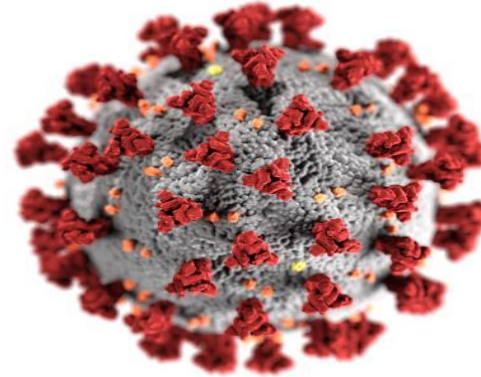


**CAN I FILE A
COMPLAINT WITH THE
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION (EEOC)**

An employee can file a complaint with the Equal Employment Opportunity Commission (EEOC) against an employer if they believe they have been discriminated against on the basis of a variety of factors prohibited by law. These include:

Pandemics and the ADA

- <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>
 - Before a Pandemic
 - During a Pandemic
 - After a Pandemic



FAQs and the ADA

- How much information may an employer request from an employee who calls in sick in order to protect the rest of its workforce when an influenza pandemic appears imminent?
- When may an ADA-covered employer take the body temperature of employees during a pandemic?
- Does the ADA allow employers to require employees to stay home if they have symptoms of the pandemic influenza virus?
- When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

Medical Inquiries

- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>



Medical Inquiries



Stay-at-Home



Returning to Work



Returning to Work

- ADA – Medical Certifications
- Michigan Executive Order 2020-114
- Centers for Disease Control and Preventions
 - https://www.cdc.gov/coronavirus/2019-ncov/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2Findex.html
- Occupational Safety and Health Administration
 - <https://www.dol.gov/newsroom/releases/osa/osa20200309>

Returning to Work

- MIOSHA Resources:
- <https://www.michigan.gov/leo/0,5863,7-336-100207---,00.html>
- <https://adms.apps.lara.state.mi.us/File/ViewDmsDocument/13356>

Pay and Leave Issues

- Families First Coronavirus Response Act (FFCRA)
 - Paid Sick Leave
 - Paid Expanded Family and Medical Leave Act
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- The Coronavirus Aid, Relief, and Economic Security (CARES) Act

Addressing Employee Concerns



Questions?

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