Executive Order 2020-137: Protecting the Food Supply and Migrant and Seasonal Agricultural Workers from the effects of COVID-19

EXECUTIVE ORDER

No. 2020-137

Protecting the Food Supply and Migrant and Seasonal Agricultural Workers from the effects of COVID-19

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v. Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On June 18, 2020, I issued Executive Order 2020-127, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature had declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)–(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

COVID-19 can spread easily in setting when many people live in close proximity, such as the migrant housing camps that house thousands of migrant agricultural workers in Michigan each year. Migrant agricultural workers are an essential workforce in Michigan and securing their health and well-being will ensure that Michigan's food supply chain is not disrupted.

Taking preventive measures now will save lives and keep the state's agricultural sector running smoothly and consistently. Those who provide housing for Michigan's migrant agricultural workers must implement plans to prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and prevent the spread of disease among their workers based on this directive. The state must take proactive, preventive measures to create safer living conditions for migrant workers.

Executive Order 2020-111 provided such protection for migrant workers living in licensed congregate housing. Because it remains reasonable and necessary to ensure the safety of migrant workers as well as the sustainability of Michigan's food supply, this order continues those requirements until the end of the growing season. With this order, Executive Order 2020-111 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. All owners and operators of employer-provided migrant housing camps licensed by the Michigan Department of Agriculture and Rural Development ("camps") must comply with section 1 of Executive Order 2020-114 or any order that follows it, providing camp residents with the same safeguards as businesses are required to provide their workers while at work. Within two weeks of the effective date of this order, a camp must post its COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available at **https://www.osha.gov/Publications/OSHA3990.pdf**. Nothing in this section shall be construed to permit owners or operators of employer-provided migrant housing camps to deny access to any person on the basis that the camp is a worksite.
2. In addition to section 1, all camp owners and operators must, at a minimum:
    a. Except in single-family housing, separate beds by at least six feet or more in all directions wherever possible, and encourage camp residents to sleep head-to-toe.
    b. Provide isolation housing for COVID-19-suspected residents who have not received a positive result from a COVID-19 test, unless the COVID-19-suspected resident resides in a one-family housing unit or in a family living unit that is part of a multifamily unit and can effectively isolate themselves within the unit.
    c. Provide housing, dining, and bathroom facilities for COVID-19-confirmed residents separate from residents who are not COVID-19-confirmed. Such facilities may be shared with other COVID-19-confirmed residents.
    d. Ensure regular ventilation of rooms where COVID-19-suspected residents are housed (e.g., by opening screened windows to the outside to let fresh air circulate).
    e. Ensure that anyone who delivers food and water to isolated residents is equipped with appropriate PPE.
    f. Arrange for COVID-19-suspected and COVID-19-confirmed residents to be evaluated by a medical provider through the local health department or federally qualified health center.
    g. Attempt to collect emergency contact numbers for each resident.
    h. Ensure that camp employees and residents have access to the phone number of the local health department. MiOSHA requires "camp superintendents" (or those providing the housing) to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease. (29 CFR 1910.142(l)(1)). Additionally, camp owners and operators must ensure that the name, phone number, and email address of the camp superintendents is posted prominently in a central location.
    i. Conspicuously post the address of the camp in a central location and in any isolation housing to ensure that residents will be able to call a 911 operator if needed.
    j. Conspicuously post the phone number for the Michigan Coronavirus hotline, 888-535-6136, in a central location and in any isolation housing, along with a statement

that if residents would like to make a CONFIDENTIAL complaint about unsafe working or employer provided living conditions, they may call the hotline number.

k. Adopt any additional infection control measures consistent with guidance issued by the Department of Health and Human Services ("DHHS").

3. MDARD must use best efforts to conduct outreach visits to each migrant labor housing camp licensed under Part 124 of the Public Health Code within 20 working days of occupant arrival to review the rules issued pursuant to this order and any relevant DHHS guidance. MDARD may contract with third-party providers to provide these services.

4. Definitions.

   a. "COVID-19-suspected resident" includes a camp resident who has symptoms of COVID-19 but has not yet received a COVID-19 diagnostic test result. Symptoms of COVID-19 include but are not limited to fever, cough, difficulty breathing or shortness of breath, sore throat, muscle pain, chills, new loss of taste or smell, nausea or vomiting, and/or diarrhea.

   b. "COVID-19-confirmed resident" includes a camp resident who has received a positive result from a COVID-19 diagnostic test and has not subsequently discontinued transmission-based precautions based on a strategy outlined by the CDC. A description of the CDC recommendations for discontinuation of transmission-based precautions may be accessed at **https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-hospitalized-patients.html**.

5. The rules described in sections 1 and 2 have the status of regulations adopted by the Michigan Department of Agriculture and Rural Development ("MDARD"). Any challenge to civil or criminal penalties imposed by MDARD for violating any of the rules described in sections 1 and 2 will proceed through the same administrative review process as any challenge to a civil or criminal penalty imposed by the department or agency for a violation of its own rules.

6. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

7. Executive Order 2020-111 is rescinded.

8. This order is effective upon issuance and remains effective through November 1, 2020 at 11:59 pm, unless rescinded at an earlier time.

Given under my hand and the Great Seal of the State of Michigan.

GRETCHEN WHITMER
GOVERNOR

Date: June 29, 2020

Time: 8:15 pm

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