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ATTORNEYS AND COUNSELORS

## *COVID-19 Limitations on Gatherings*

by Timothy J. Currier

We have received many questions from our clients during this difficult time regarding COVID-19 and the limitations on gatherings. Let's start out by saying this pandemic is real. As of this writing, 14,823,129 Americans have positively been tested for COVID-19 and there have been 282,785 fatalities. In Michigan, there have been 410,295 cases confirmed COVID-19 positive, and 10,138 fatalities. This is a snapshot, but COVID-19 is a moving picture. These numbers are only going to increase.

Many people consider that the Governor's Orders are in effect, but they are not. The Governor's Emergency Orders were issued under the Emergency Powers Act, and they have all been voided. However, the Michigan Department of Health and Human Services has issued new orders under the Public Health Code. Its Order from mid-November of this year, with respect to limitations at gatherings, states as follows:

### **2. General Capacity Limitations at Gatherings.**

#### a. Indoor gatherings:

1. Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
2. Are prohibited at non-residential venues.

#### b. Outdoor gatherings are permitted only as follows:

1. At residential venues, 25 or fewer persons are

gathered, comprised of no more than 3 households;

#### 2. At non-residential venues:

- A. 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
- B. 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.

- c. The limitations to gatherings in sections 2(a) and 2(b) do not apply to:
1. Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
  2. Gatherings between an employee and a customer for the purpose of receiving services;
  3. Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
  4. Voting or official election-related activities;
  5. Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
6. Education and support services at public, non public, and boarding schools serving students in prekindergarten through grade 8;
  7. Children in a child-care organization or camp setting;
  8. Persons traveling on a school bus or other public transit;
  9. Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
  10. Gatherings of up to 25 persons for the purpose of a funeral;
  11. Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order.
- d. As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

**3. Gathering Restrictions for Particular Types of Facilities.**

- a. Gatherings, are prohibited in the following settings:
  1. Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; stadiums; and theaters;
  2. Recreational facilities and places of public amusement, including: amusement parks; arcades; bingo halls; bowling alleys; casinos; night clubs; skating rinks; strip clubs; water parks; and trampoline parks;

- b. Gatherings are permitted at food service establishments under the following conditions:
  - 1. Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
  - 2. Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart.
- c. Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.

elsewhere in this order, the following limitations apply to gatherings in the following facilities:

- a. A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure.
  - 1. Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
- b. At exercise facilities:
  - 1. Gatherings must not exceed 25% of the total occupancy limits established by the State Fire

Marshal or a local fire marshal; and

- 2. There must be at least 12 feet of distance between each occupied workout station;
  - 3. Gatherings for group fitness activities or classes are prohibited.
- c. Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain six feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
  - d. A gathering at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.

**4. Gathering Restrictions for Facilities**-In addition to the gathering limitations set forth

- e. In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.

With the holiday season approaching, we should all be mindful of these limitations regarding holiday gatherings and concerns that you may have regarding attending events that are either indoor or outdoor.

Please note in Section 2b, that outdoor gatherings are also limited to 25 or fewer persons, and no more than 20 persons per 1,000 square feet. Another question that has been presented

to us is “Does this apply to public meetings or board meetings for school districts, cities, villages, and townships? On November 18, 2020 frequently asked questions were published by the Michigan Department of Health and Human Services. One of those questions was:

**Q: Are public meetings or board meetings permitted under this order?**

**A: “In-person meetings are prohibited unless the meeting is of fewer than 25 people and is held outdoors. Under Public Act 228 of 2020, public meetings may be held virtually under certain specified circumstances.”**

We hope this information is of assistance to you before making your holiday plans and public meetings in the future. With respect to public meetings, there is additional legislation pending to extend virtual meetings beyond the end of the year, but it

has not yet passed. As I stated previously, this is a moving picture. These numbers and rules will be changing over the course of time. ◊

Timothy J. Currier:  
[tcurrier@bhlaw.us.com](mailto:tcurrier@bhlaw.us.com)  
(248)282-1066



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3001 W. Big Beaver Road, Suite 200

Troy, MI 48084

(248)645-9400

[www.bhlaw.us.com](http://www.bhlaw.us.com)

