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Question of the Day: Key Provisions of Governor Walz's March 12 Executive Order

Legal Update

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Question

What does the Governor's March 12, 2021, Executive Order mean for Minnesota employers?

Answer

On Friday, March 12, 2021, Minnesota Governor Walz issued a new executive order loosening restrictions on restaurants, pools, venues and other businesses.

Notably, the executive order also returned to employers decisions about whether to require employees to work in-person versus remote. Almost one year ago, the Governor issued an executive order stating that "all workers who **can** work from home **must** do so." Beginning April 15, 2021, remote work will become a "strong recommendation," rather than a requirement. This means employers can require employees to return to in-person work, even if the job can be performed from home. However, employers may need to provide exceptions to disabled employees who qualify for a reasonable accommodation under the Minnesota Human Rights Act (MHRA) or Americans with Disabilities Act (ADA).

The key provisions of the March 12 executive order are as follows:

- Until April 14, 2021, at 11:59 p.m., employees who can work from home, must work from home.
- Beginning April 14, 2021, at 11:59 p.m., employers are strongly encouraged to allow employees who can work from home to continue to work from home. Employers are also strongly encouraged to implement reasonable accommodations for at-risk employees or employees with one or more members of their household who have underlying medical conditions and are not yet eligible for vaccination.
- Employers must follow all existing federal and state anti-discrimination rules and statutes, including but not limited to the Minnesota Human Rights Act (MHRA), regarding employers' obligations to provide reasonable accommodations for qualified employees with disabilities.

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Importantly, employers who decide to require employees to return to in-person work should do so only after thoughtful planning. For instance, the executive order reminds employers that they continue to have the obligation to develop a written COVID-19 Preparedness Plan. Employers must distribute their COVID-19 Preparedness Plan to employees, designate an individual at the company responsible for overseeing the Plan, and train all employees in how to comply with it.

In addition to a COVID-19 Preparedness Plan, employers should be thoughtful about when and how to implement a "return-to-work" policy that ends remote work and brings employees back to the office. Among other things, employers should consider the following:

- Will all employees be required to return to work, or only certain job classifications? If only certain job classifications will be returned to return, how will that line be drawn and what objections should we anticipate from employees?
- Will the return be staggered, or are we prepared for a return "all at once"?
- Will employees be required to work in-person five days a week, or will we test a "hybrid" approach that allows or requires 1-2 remote workdays per week?
- How will a "return-to-work" policy be consistently and fairly implemented and enforced? Specifically, will there be any exceptions for at-home work (other than legally required exceptions that may exist for disabled employees who qualify for a reasonable accommodation)? What are those exceptions and how will they be clearly communicated to employees and consistently applied?
- How do we ensure that all confidential documents, electronic data and information at employees' homes is returned to the office with the return to in-person work?
- Do we understand our obligations to provide reasonable accommodations to disabled employees? Who is designated to receive and evaluate those requests?
- Will we provide accommodations to employees who are not disabled, but who live with an at-risk individual? While this is not legally required, the executive order encourages it.
- Will employees be required, incentivized or encouraged to obtain the COVID-19 vaccine if they return to in-person work?
- Even with a return to in-person work, will we continue some meetings via Zoom or other video conferencing software to maintain social distancing and limit group gatherings?
- Is our COVID-19 Preparedness Plan updated, and have we carefully thought through employee travel, visitors at the office, masking at the office and related issues?
- Have we considered the potential impact on employee retention and recruiting if we require 100 percent in-person work? Have we gauged employee attitudes and thoughts on returning to work full-time? What are our competitors doing and

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is our plan putting top talent at risk?

Fredrikson's Employment & Labor Group is hosting a webinar that will discuss some of these issues and others on April 1, 2021. [Learn more and register here.](#)

Contact your Employment attorney or any member of our team for assistance.

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