

**Emergency Order Under MCL 333.2253  
Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers  
Frequently Asked Questions**

Additional questions can be shared with [MDARD-COVID19@Michigan.gov](mailto:MDARD-COVID19@Michigan.gov). This document may be updated to include new questions periodically.

**General**

**Why is testing being required?**

COVID-19 can spread quickly in crowded settings when social distancing isn't available.

Throughout the pandemic, outbreaks have occurred in migrant housing camps and food and beverage manufacturing or processing facilities with life-threatening consequences. Regular testing is important to quickly identify cases, prevent severe outbreaks, and safely keep businesses open.

To keep people safe and help Michigan continue to reopen, Michigan Department of Health and Human Services, alongside the Department of Agriculture and Rural Development, is issuing a public health order to require COVID-19 diagnostic testing in high risk settings.

**Who must be tested and how often is testing required?**

The Michigan Department of Health and Human Services (MDHHS) is issuing a public health order requiring migrant housing camp operators to provide COVID-19 testing as follows:

- One-time baseline testing of all residents who are 18 years of age and older
- Testing of all new residents with 48 hours of arrival, with separate housing for newly arriving residents for 14 days afterward and a second test at the end of that period
- Testing of any resident with symptoms or exposure

MDHHS guidance also requires some agricultural employers with over 20 employees on-site at a time to provide COVID-19 testing as follows:

- One-time baseline testing of all workers
- Testing of all new workers prior to any in-person work
- Testing of any worker with symptoms or exposure

These agricultural employers are:

- Any employer of migrant or seasonal workers
- Meat, poultry, and egg processing facilities
- Greenhouses

## **Employers and Testing Requirements or Guidance**

### **Are all agriculture employers required to provide testing?**

MDHHS guidance also requires some agricultural employers with over 20 employees on-site at a time to provide COVID-19 testing.

These agricultural employers are:

- Any employer of migrant or seasonal workers
- Meat, poultry, and egg processing facilities
- Greenhouses

### **Should employers test workers who arrive between the emergency order announcement and implementation?**

All workers employed and all residents present at housing camps on August 24, 2020 must have completed one-time baseline testing.

Employers or housing operators may use testing conducted prior to this public health order to fulfill the baseline testing requirement for any individual still at the same migrant housing camp or working at the same employer. Residents or workers who did not participate in prior testing, because they declined, they were not present at the facility, or for any other reason, still need to complete a baseline test.

### **How is testing arranged and scheduled at my farm or processing business?**

There are several options to complete testing, including creating a testing program managed by the employer, requesting state assistance, and utilizing testing resources in the general community.

MDHHS has issued [guidance](#) along with the Public Health Order on how employers can complete required testing. Forms, templates and information are available on the [Michigan COVID-19 website's agriculture worker testing page](#).

### **Do employers have to pay for employee testing programs?**

Employers and housing operators are responsible in the first instance for financial costs resulting from testing, though they may seek reimbursement from health insurance where applicable and may seek [state assistance to conduct testing](#).

Producers and processors are eligible to apply for grants to cover the costs (i.e. on-site testing, with full plant or individual testing at certified sites, including costs for staffing/medical personnel to administer tests and personal protection equipment for testing sites) associated with COVID-19 testing. Additional information and application instructions are available at [www.michiganbusiness.org/agsafety](http://www.michiganbusiness.org/agsafety).

Many agricultural workers, including H-2A workers and undocumented individuals, may be eligible for Emergency Services Only (ESO) Medicaid, which covers the costs of COVID-19 testing. Another option for covering testing costs is assisting workers in applying for this insurance coverage and billing testing for eligible employees to insurance.

Employers and housing operators may not pass costs along to employees, including costs uncovered by health insurance, whether in the form of direct charges or indirect charges, fees, compensation changes, or other financial means.

MDHHS has issued [guidance](#) along with the Public Health Order on how employers can complete required testing, including financial implications and options for assistance like grants, insurance coverage, or [requesting state assistance](#). Forms, templates and information are available on the [Michigan COVID-19 website's agriculture worker testing page](#).

### **How can I request assistance with testing?**

Employers and housing operators seeking assistance should submit a request to MDHHS at [MDHHS-Migrant-Affairs@michigan.gov](mailto:MDHHS-Migrant-Affairs@michigan.gov), [using the MDHHS request template](#), by August 11, 2020.

The State of Michigan will provide testing support as capacity allows. The state retains sole discretion to determine whether to fulfill requests for assistance. The state may alternatively direct requestors to testing resources available through medical providers and in the community.

### **What if the local Federally Qualified Health Center (FQHC) isn't providing testing?**

Employers have several options for how to complete testing, including creating a facility-managed testing program, requesting state assistance, and utilizing testing resources in the general community. MDHHS has issued guidance along with the Public Health Order on how employers can complete required testing.

While the state plans to partner with FQHCs to provide most agricultural worker testing, the state has several other vendor partners who are also able to conduct testing in areas not covered by the FQHCs.

### **How must testing records be kept?**

Employers and housing operators must maintain records of testing conducted for one year. MDARD may review such records and compliance with this order during any inspection, licensing renewal, or at its discretion. MDHHS may review such records at its discretion. MDHHS will refer any known violation of this order to MDARD, and MDARD may refer to MDHHS violations of this order.

### **Who will receive test results if the employer is providing testing? Employer or employee?**

Results must be provided to the employee/patient.

**Can testing conducted before this Order was issued fulfill any of the new testing requirements?**

Employers or housing operators may use testing conducted prior to this public health order to fulfill the baseline testing requirement for any individual still at the migrant housing camp or working at the employer. Residents or workers who did not participate in prior testing still need to obtain a baseline test.

**At covered agricultural employers, for testing of new workers prior to in-person work, can testing conducted before arrival fulfill the requirement? Can individuals work prior to receiving results?**

Testing conducted within 72 hours before arrival can fulfill the requirement for testing new workers prior to in-person work. New workers cannot work in-person until a negative test result is received.

**During 14-day period when newly arriving migrant housing camp residents must be housing in separate living units, can these individuals work?**

Yes, though MDHHS encourages precautions like social distancing, cloth face coverings, and hand washing.

**Can individuals work during the period between testing and receiving the results?**

For nearly all of the testing requirements, yes, individuals can work while awaiting results, though MDHHS encourages precautions such as social distancing, cloth face coverings, and hand washing.

However, for testing of new workers before beginning in-person work at covered agricultural employers, workers may not begin in-person work until a negative test result is received.

**What happens if one of my employees tests positive?**

Employers and housing operators must take the following steps when a worker or resident tests positive for COVID-19 or is exposed to the virus:

- a. Agricultural employers must exclude employees with COVID-19 from work until they have met all return to work criteria established by the CDC.
- b. Agricultural employers must also exclude from work employees with known exposure to an individual with COVID-19 (i.e., close contact (within six feet) with the individual for a prolonged duration (15 minutes or over)).
- c. Employers and housing operators must follow CDC guidance on infection prevention and safety measures.

- d. Employers and housing operators must make reasonable efforts to connect positive individuals with state and local resources to support their basic needs like food and housing.
- e. Finally, employers and housing operators must notify the local health department and the MDHHS Office of Migrant Services at [MDHHS-Migrant-Affairs@michigan.gov](mailto:MDHHS-Migrant-Affairs@michigan.gov). These notifications will allow public health departments to appropriately implement a public health response and to assist with supports for workers.

**If workers are required to be isolated or self-quarantined, how will employers achieve the ¾-hour guarantee?**

Paid sick leave under the FFCRA would be considered paid work hours and therefore account towards the ¾-hour guarantee.

**If an employee tests positive, are they eligible for sick leave or unemployment during the time they must isolate?**

Many workers and employers are covered by the federal Families First Coronavirus Response Act, which provides for paid sick leave in some circumstances. [Employers should consult federal guidance to better understand whether they are covered by the Act.](#)

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Workers receiving paid sick leave may not be eligible for unemployment benefits as they are considered to still be employed. Workers not receiving paid sick leave must apply for unemployment benefits, they are not automatically enrolled, nor are they automatically eligible, they must still meet UIA eligibility requirements. Workers can apply on the [State of Michigan's Unemployment Insurance Agency website](#).

Michigan's Paid Medical Leave Act (PMLA) Effective April 3, 2020, Governor Whitmer

expanded certain protections associated with the Paid Medical Leave Act entitlements under state law due to the COVID-19 emergency.

1. Protects workers who stay home when they or their close contacts are sick and pose a risk of infecting others with COVID-19.
2. Covers most employees who work in Michigan and most employers regardless of the number of employees.
3. This expansion provides time off for COVID-19 reasons with discrimination protection.
4. Prohibits employers from discharging, disciplining, or retaliating against an employee who stays home to avoid infecting others with COVID-19 due to having or had close contact with someone having one or more of the principal symptoms or a positive test.
5. Prohibits employers from discharging, disciplining, or retaliating against an employee for failing to provide documentation that the employee or the employee's close contact has one or more of the principal symptoms.
6. Leave time used to stay home should be treated as PMLA time and paid using PMLA banked time (accrued or frontloaded), or unpaid if no PMLA banked time exists.

Review [Executive Order 2020-36](#) for additional information. Questions about PMLA be directed to the Leo/Wage and Hour Division at [PMLA-INFO@michigan.gov](mailto:PMLA-INFO@michigan.gov).

### **Can I temporarily replace a worker during the time they are in isolation?**

An employer may hire a worker to temporarily replace an isolated/quarantined worker. The temporary replacement worker must be hired under the same employment terms and conditions (wages, work duties, work hours, etc.) of the isolated/quarantined worker.

### **Are workers who test positive and are eligible for unemployment automatically enrolled?**

No, they must apply for unemployment by visiting the [State of Michigan's Unemployment Insurance Agency website](#).

### **How should an agriculture business or camp operator help individuals and families isolate when someone tests positive?**

EO 2020-137 requires that migrant housing camp operators provide assistance with isolation housing for COVID positive residents. The state is also working to expand options for isolation housing.

### **How is "on site" defined? What about employers whose staff work spaced out in fields?**

"On site" means on the property of the agricultural employer at a particular location.

### **Does this order change the housing requirements in EO-137?**

No.

**Are USDA-regulated processing facilities covered by this Order?**

Yes.

**Workers**

**What happens if I refuse to be tested?**

Workers who decline testing may not conduct in-person work and, if living in a licensed migrant housing camp, must stay in isolation housing to protect other people from COVID-19.

The employee must be informed of these requirements in the employee's preferred language. These measures must continue for 14 days to ensure the worker is non-symptomatic, or the worker is tested and receives a documented negative result.

**Can my employer prevent me from working again when I am healthy or for future harvests?**

Michigan is an "employment-at-will" state. This means that an employer or employee may generally terminate an employment relationship at any time and for any reason unless a law or agreement provides otherwise.

For example, a federal or state law, collective bargaining agreement, or employment contract may place limitations on an otherwise at-will relationship. Employment Terminations that violate such law, agreement, or contract, may be subject to legal recourse.

**Is there help if I test positive and I cannot earn income?**

Yes, the federal Families First Coronavirus Response Act requires that covered employers provide up to two weeks of paid sick leave for employees in isolation or quarantine due to COVID-19 infection or exposure. This Act also provides a process for employers to be reimbursed for these costs.

[Employers should consult federal guidance to better understand the provisions of this Act.](#)

Individuals who test positive will be connected to an MDHHS Migrant Program Specialist, who can help workers find other types of resources. This includes local Community Action Agencies that may be able to help.

**If I test positive and I can receive unemployment, will I automatically be enrolled?**

Workers not receiving paid sick leave must apply for unemployment benefits. They are not automatically enrolled, and they must still meet UIA eligibility requirements. Workers can apply at the [State of Michigan's Unemployment Insurance Agency website.](#)

**If I test positive and I cannot receive unemployment, is there other help available? How do I receive help?**

Additional help is available through your local Community Action Agency while you are serving your required isolation period. A local DHHS Migrant Program Specialist will connect positive individuals to the local Community Action Agency for assistance.

**Is there help if I test positive and I cannot isolate or keep my distance from others?**

EO 2020-137 requires that migrant housing camp operators provide assistance with isolation housing for COVID positive residents. The state is also working to expand options for isolation housing.

**Technical Assistance Questions Received**

**1. Does meat and poultry processing testing also refer to the non-frontline workers (i.e., office staff)?**

Yes. Testing should include all workers who work on-site at the facility, not only those working in a processing role.

**2. Does testing cover “field crews” who do not work in a warehouse but rather in a field?**

The order covers all employees who work on-site at the facility. This takes into account the fact that employees may utilize shared spaces to clock in/out, for breaks or meals, and for restroom facilities. It also takes into account that migrant or seasonal workers may commute together or share other spaces in close quarters.

**3. Does the order apply to businesses inspected by USDA or by FDA or both?**

The order applies to all businesses in the covered categories (e.g., “meat, poultry, and egg processing”), regardless of which regulatory agency inspects the facility.

**4. Does the order apply to food processors besides meat, poultry, and eggs – for example, fruit and vegetable processors?**

The order applies to the following agricultural employers with over 20 employees on-site at a time:

- Any employer of migrant or seasonal workers
- Meat, poultry, and egg processing facilities
- Greenhouses

A fruit or vegetable processor would be covered if they 1) employed migrant or seasonal workers and 2) had over 20 employees on-site at a time.

**5. What is the definition of “on-site” for an employer who operates multiple farms?**

“On site” means on the property of the agricultural employer at a particular location. If an employer has multiple properties whose day-to-day operations, physical locations, and employee spaces are separate, these would constitute multiple sites.

**6. What is the definition of “seasonal agriculture worker”? Does it include student workers?**

“Seasonal agriculture worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

This could include students who meet the definition above.

**7. Are there exemptions to the public health order for employers who already have testing and isolation/quarantine processes in place?**

No, there are not exemptions. However, employers should assess whether their existing procedures meet some of the requirements under the order. The state’s [implementation guidance](#) provides greater detail on how the requirements are defined.

Of note, employers or housing operators may use testing conducted prior to this public health order to fulfill the baseline testing requirement for any individual still at the same migrant housing camp or working at the same employer. Residents or workers who did not participate in prior testing, because they declined, they were not present at the facility, or for any other reason, still need to complete a baseline test.

**8. Are there particular requirements for how proof of testing is documented? What you are expecting of owners/operators?**

Any documentation that details the type of testing conducted, the number of individuals tested, and the number of employees or residents at the facility. This could include individualized records or an aggregate record.

**9. How does this order affect a business that not involved in the fresh-kill processing of meats such as live cattle, pigs, or poultry? Rather, it purchases butcher grade raw meat cuts as you would purchase at the grocery and processes them into fully cooked ready to eat meat products like luncheon meats. Another example would be a beef jerky manufacturer.**

For the purposes of the order, “meat processing plant” is considered a location where animals are killed and processed into meat. Businesses purchasing butchered meat and producing meat products such as lunch meat, hot dogs and jerky are not covered by the order. These facilities are not required to complete testing, but it is recommended.

**10. Would the requirements of the order apply in this situation: a processor of fresh and frozen vegetables that employs seasonal workers in its vegetable processing plant during the “fresh pack” season? These employees are not involved in harvesting, handling, or transporting of fresh vegetables in “agriculture” as they report to work at the plant every day and process the vegetables through sorting and packaging equipment.**

Yes, the order would apply in this situation.

**11. Would the requirements of the order apply in this situation: a larger dairy farm with foreign workers are considered permanent rather than temporary?**

The order defines seasonal and migrant workers as follows:

- “Migrant agriculture worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence, including H-2A workers.
- “Seasonal agriculture worker” means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

A business whose workers do not meet the definitions above would not be considered an employer of migrant or seasonal workers under the order.

**12. If a farm covered by the order has both migrant workers and non-migrant workers, do both types of workers need to be tested?**

Yes: employers are covered by the order should test all employees.

**13. As a processor (manufacturer) of fruits and vegetables, does our company fall under this order even though we currently employ seasonal workers (a very small percent of our total work force) due to peak harvest periods?**

Yes: the order covers employers of seasonal workers with over 20 employees on-site at a given time (i.e., on the same shift).

**14. Would a pickle processing plant be considered an “agricultural employer”?**

Yes, it would be.

**15. What exactly does baseline testing mean? Does this mean that all employees need to have a COVID test done?**

Baseline testing means conducting COVID-19 diagnostic testing for all employees (or residents of migrant housing camps). Baseline testing occurs one-time, as opposed to other types of recurring testing.

This testing provides baseline knowledge of whether COVID-19 infections exist, including among people without symptoms, so that a public health response can occur.