

## State Employment Law Tracker, ¶20,131D, Governor adds new protections for workers required to stay home over COVID-19 concerns — MICHIGAN — State law, (Apr. 8, 2020)

On April 3, Michigan Governor Gretchen Whitmer signed Executive Order 2020-36, prohibiting all employers from discharging, disciplining, or otherwise retaliating against an employee for staying home from work if they or one of their close contacts tests positive for COVID-19 or has symptoms of the disease. The prohibition takes effect immediately and will remain in place until the end of the governor's declared emergency or until otherwise rescinded.

Executive Order 2020-36 also strengthens the governor's "Stay Home, Stay Safe" executive order by declaring it the public policy of the state that all Michiganders who test positive or show symptoms, or who live with someone who tests positive or shows symptoms, should not leave their homes unless absolutely necessary.

**No discipline or retaliation.** Specifically, under Executive Order 2020-36, employers are prohibited from discharging, disciplining, or otherwise retaliating against an employee required to stay at home from work under this executive order for the periods described. Further, employers must treat such employees as if they were taking medical leave under the Paid Medical Leave Act (2018 PA 338, as amended, MCL 408.961 *et seq.*).

**Type and length of leave.** To the extent that the employee has no paid leave, the leave may be unpaid. Employers are permitted, *but not required*, to debit any hours from the employee's accrued leave that the employee is required to stay home from work under this executive order. The length of the leave is not limited by the amount of leave the employee has accrued under MCL 408.963 and must extend, *whether paid or unpaid*, as long as the employee remains away from work pursuant to this executive order.

**Documentation.** Employers are also prohibited from discharging, disciplining, or retaliating against employees who stay home from work under the executive order for failing to comply with a requirement to document that the employee or the individual with whom the employee has had close contact has one or more of the principal symptoms of COVID-19.

**Discipline may be imposed.** The executive order does not prevent an employer from discharging or disciplining an employee:

- Who is allowed to return to work under this executive order *but declines to do so*;
- With the employee's consent; or
- For any other reason that is not unlawful.

**Stay at home directive.** Executive Order 2020-36 directs that individuals who test positive for COVID-19 or who display one or more of the principal symptoms, such as fever, atypical cough, and atypical shortness of breath, *must remain* in their home or place of residence, including Michiganders who are otherwise free to leave their homes under Executive Order 2020-21.

**Wait at home.** Those who test positive or are experiencing symptoms must wait to leave their homes until *three days* after their symptoms have resolved and *seven days* have passed since symptoms first appeared, or since they were swabbed for the test that yielded the positive result.

Further, any and all close contacts of a symptomatic individual or of someone who has tested positive for COVID-19 should remain in their home until *14 days* have passed or the symptomatic individual receives a negative COVID-19 test.

**Necessity-based exceptions.** Individuals and household members who test positive for COVID-19 or who display one or more of the principal symptoms may leave their home or place of residence *when necessary to obtain food, medicine, or supplies that are needed to sustain or protect life and when those items cannot be obtained via delivery.*

**Outdoor activities.** People may also engage in outdoor activities, including walking, hiking, running, cycling, or any other recreational activity consistent *while remaining at least six feet from people from outside the individual's household.*

**Nose and mouth coverings.** When symptomatic people or their close contacts leave the home, they should wear some form of covering over their nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief. At least for now, supplies of N95 masks and surgical masks should generally be reserved to health-care professionals, first responders, and other critical workers.

**Exemption.** The executive order provides an exemption for the following individuals, who are exempt from staying at home if a member of their household tests positive for COVID-19 or displays one or more of the principal symptoms, *provided* their employers' rules governing occupational health allow them to go to work:

- Health-care professionals
- Workers at a health-care facility
- First responders (e.g., police officers, fire fighters, paramedics)
- Child protective service employees
- Workers at child caring institutions
- Correctional officers

"People who are prioritizing the health and safety of their families, neighbors, and loved ones during this crisis should not be punished by their workplace," Governor Whitmer said in a release. "Staying home and staying safe is one of the most important things we can do to mitigate the spread of COVID-19 in Michigan, and this executive order will ensure more people can do so without facing discrimination from their workplace. We have taken aggressive measures to protect our communities, but it's on all of us to work together to fight this virus."

By Pamela Wolf, J.D.