

New Michigan COVID-19 Law Restricts Employment Actions

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Michigan has enacted significant new legislation that prohibits employees with “the principal symptoms” of COVID-19 from reporting to work and forbids employers from discharging, disciplining, or retaliating against employees who stay home because they have been diagnosed with or exposed to COVID-19.

On October 21, 2020, Governor Gretchen Whitmer signed bipartisan legislation regarding COVID-19 into law shortly after the Michigan Supreme Court struck down Executive Orders she issued during the pandemic. The signing also comes just one day after Whitmer voiced concerns over the increasing number of COVID-19 cases in the state. The legislation includes a new law, codified as 2020 PA 238 (Act), which provides that employers may not discharge or discipline employees who stay home because they have been diagnosed with or exposed to COVID-19.

Significantly, employees who test positive for COVID-19 or display “the principal symptoms” of COVID (as defined under the Act) are legally prohibited from reporting to work until *all* prescribed legal conditions are met, including the following:

- (a) if the employee had a fever, they must be fever free for at least 24 hours without the use of fever-reducing medication;
- (b) the passing of 10 days since the latter of:
 - (i) the date on which employee’s symptoms first appeared, or
 - (ii) the date on which the employee received test results indicating a positive result for COVID-19
- (c) the employee’s principal symptoms “have improved.”

With exceptions for certain employees, including but not limited to healthcare professionals and first responders, the Act also prohibits employees from reporting to work if they had “close contact” (defined as being within six feet for at least 15 minutes) with a person who tests positive for COVID-19 or displays the principal symptoms of COVID-19. Such employees are prohibited from reporting to work until either:

1. Fourteen days have passed since the employee last had close contact with the individual, or
2. The individual with whom the employee had close contact receives a medical determination that they did not have COVID-19 at the time of the close contact with the employee.

The Act’s anti-retaliation provision prohibits employers from retaliating against employees who comply with the Act’s “stay-home” mandate when applicable. It prohibits employers from discharging, disciplining, or retaliating against any employees who stay home or

otherwise do not report to work pursuant to the Act, even if the employee stays home while displaying the principal symptoms of COVID-19 but later tests negative.

However, the Act permits employers to discharge or discipline employees who display the principal symptoms of COVID-19 but fail to make reasonable efforts to schedule a COVID-19 test within three days after receiving a request from their employer to undergo testing for COVID-19.

Employees may sue their employers for injunctive relief or money damages if the employer violates the anti-retaliation provision of the Act. Additionally, the Act indicates that it applies retroactively to March 1, 2020. Finally, unlike other Michigan laws affecting employers (such as those that prohibit discrimination), the Act does not provide for an award of attorney's fees to a prevailing employee. Thus, it is unclear if the Act will result in a significant uptick in employment litigation despite its potentially broad application.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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