

Michigan Amends COVID-19 Legislation

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Michigan has amended its COVID-19 legislation, codified as the COVID-19 Employment Rights Act (MCL 419.401 *et seq.*) (Act), effective December 30, 2020. [New 2020 PA 339 amends the Act](#) to include references to the U.S. Centers for Disease Control and Prevention (CDC) Guidance, provide additional exceptions for essential workers who come into “close contact” with an individual who tested positive for COVID-19, and provide an affirmative defense for employers who are in compliance with all current COVID-19 regulations.

Background

Initially enacted in October 2020, the COVID-19 Employment Rights Act prohibits employees with “principal symptoms” of COVID-19 from reporting to work and forbids employers from discharging, disciplining, or retaliating against employees who do not report to work under circumstances related to COVID-19 exposure.

Changes

Employees who test positive for COVID-19 or display “the principal symptoms” of COVID-19 (as defined under the Act) are legally prohibited from reporting to work until *all* prescribed legal conditions are met. Under new 2020 PA 339, the legal conditions include 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 isolation period (as defined by the CDC recommendations) has passed;
- (c) The employee’s principal symptoms “have improved”;
- (d) The employee is no longer subject to an advisement from a healthcare provider or public health professional to remain isolated.

The Act also prohibits employees from reporting to work if they had “close contact” (defined by CDC guidelines at the time the contact occurred) with a person who tests positive for COVID-19 or displays the principal symptoms of COVID-19. In addition to healthcare professionals and first responders, the amended Act includes exceptions for workers who perform “essential energy services” and workers “necessary to ensure continuation of essential public health services and enforcement of health laws or to avoid serious harm or danger to public health or safety.”

Finally, while the Act provides that employees may sue their employers for injunctive relief or money damages if the employer violates the anti-retaliation provision of the Act, the amended Act provides employers an affirmative defense to liability. Employers have a defense to liability under the Act if they can show they were operating in compliance with *all* CDC guidance; federal, state, and local statutes, rules, and regulations; and all executive or agency orders applicable to quarantine and isolation of employees that were in place at the time of the alleged violation.

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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