

EXECUTIVE ORDER 2020-36: USE OF PTO FOR WORKERS AFFECTED BY COVID-19

On April 3, 2020, Governor Whitmer issued Executive Order 2020-36: "Protecting workers who stay home, stay safe when they or their close contacts are sick."

This Executive Order prohibits an employer from retaliating against an employee who stays home from work if the employee or a close contact has symptoms of COVID-19. **Employers must treat absences for such employees as paid medical leave under Michigan's Paid Medical Leave Act, which requires employers to allow employee use of accrued paid time off. Once accrued PTO is exhausted, unpaid leave must be granted.**

This Executive Order applies to any employee that tests positive for COVID-19 or who displays one or more of the principal symptoms of COVID-19 (e.g., fever, cough, shortness of breath). Such employees should remain home until (i) three days have passed since the employee's symptoms have resolved; and (ii) seven days have passed since the employee's symptoms appeared or since the employee was tested for COVID-19, and such test was positive. If the test is negative, then the employee may return to work.



In addition, the Executive Order applies to any employee that has "had close contact with an individual who tests positive for COVID-19 or with an individual who displays one or more of the principal symptoms of COVID-19." Such employees should remain home until (i) fourteen days have passed since the employee's last close contact with the symptomatic individual; or (ii) the symptomatic individual tests negative for COVID-19. "Close contact" for this purpose means being within six feet of an individual for a prolonged period of time (e.g., caring for, living with or visiting an individual). This provision does NOT apply to health care workers, first responders, child protective service workers, certain child care providers, and correctional facility workers, if the occupational health rules allow them to work.

Other key points of the Executive Order provide:

- An employee must remain at home even if the employee is designated a "critical infrastructure worker" under Executive Order 2020-21 (the "Stay at Home" order).
- The length of the leave must extend, whether paid or unpaid, for as long as the employee is required to remain at home by this Executive Order.
- **Employers shall not** discharge, discipline or otherwise retaliate against an employee for staying home in accordance with the Executive Order or for exercising the employee's rights under the Michigan Paid Medical Leave Act.
- **Employers may** discharge or discipline an employee who is allowed to return to work but declines to do so, unless entitled to leave under the Michigan Paid Medical Leave Act or the federal Families First Coronavirus Response Act (emergency paid leave and FMLA expansion). Employers may also discharge or discipline an employee who returns to work too soon, before the periods specified in this Executive Order.

Employees who remain at home under this Executive Order are *encouraged* to: (i) leave home only if "absolutely necessary" for food or medicine, or for outdoor exercise (but remaining six feet from others); and (ii) if they leave home, cover their nose and mouth with a face mask, scarf or otherwise.

This memo is intended only as a general overview. If you have any questions or would like legal advice regarding the Executive Order, or any other employment issue, please contact [David Lawrence](#), [Sarah Gidley](#) or [Stacey DiDomenico](#).