

Update on Employer Requirements When Workers are Affected by COVID-19

On August 7, 2020, Governor Whitmer issued **Executive Order 2020-166**, which amends Executive Order 2020-36, regarding when an employee is permitted to miss work and return to work if the employee tests positive or is diagnosed with COVID-19, has COVID-19-related symptoms or has come into close contact with someone with COVID-19. The Order went into effect immediately.

Many of the worker-protection requirements previously addressed remain in place:

- Employers are prohibited from discharging, disciplining or otherwise retaliating against an employee who stays home from work for COVID-19-related reasons during the time periods described below.
- Employers **must** treat employees as if the employee were taking medical leave under the Michigan Paid Medical Leave Act.
- Employers may use any paid time off/sick leave an employee has accrued.
- If an employee has exhausted paid leave, the leave may be unpaid.
- Employers are not prohibited from discharging or disciplining an employee who (1) is allowed to return to work after the time periods described below but declines to do so; (2) voluntarily terminates his/her own employment; or (3) for any other reason that is not unlawful.



However, there is some new guidance regarding how long employees must remain home:

- Individuals who **test positive for COVID-19 or display one or more of the principal symptoms** of COVID-19, ***should*** remain home until:
 - (a) 24 hours have passed since the resolution of fever without the use of fever-reducing medications;
 - (b) 10 days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result; and
 - (c) Other symptoms have improved.
- Individuals who have 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 ***should*** remain home until either:
 - (a) 14 days have passed since the last close contact with the sick or symptomatic individual; or
 - (b) The individual displaying COVID-19 symptoms receives a negative COVID-19 test.
 - “Close contact” means being within six feet of an individual for 15 or more minutes.

Note, under the previous EO 2020-36, an employee could come back to work if he/she received a negative test result prior to the recommended quarantine period. However, it appears that this is no longer the case under the new Executive Order. Note also, the EO uses the term "should" rather than "must", but that may be an oversight.

The following workers are exempt from the requirement to stay home if they came into close contact with an individual diagnosed with COVID-19 or with COVID-19 symptoms:

- Health care professionals
- Workers at a health care facility
- First responders
- Child protective service employees
- Workers at child caring institutions
- Workers at adult foster care facilities
- Workers at correctional facilities

The "principal symptoms of COVID-19" have been updated, and are now:

- fever
- sore throat
- a new uncontrolled cough that causes difficulty breathing
- diarrhea, vomiting, or abdominal pain
- new onset of a severe headache
- new loss of taste or smell

Employers should update their screening questions with this set of COVID-19 symptoms to be prudent, though that is not required by the EO.

The Governor's full Executive Order 2020-166 can be found at:
https://content.govdelivery.com/attachments/MIEOG/2020/08/07/file_attachments/1513961/EO%202020-166%20Emerg%20order%20-%20worker%20protections%20-%20reissue.pdf.

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