

New COVID-19-Related Laws

Recently the Michigan legislature passed three new laws related to COVID-19 that affect businesses and employers.

Summary of the New COVID-19 Laws

All three laws went into effect on October 22, 2020, and are retroactive to March 1, 2020.



"COVID-19 Response and Reopening Liability Assurance Act"

Employers and all other persons are immune from liability for a COVID-19 claim, IF that person acts in compliance with all applicable laws, including regulations, executive orders, and agency orders related to COVID-19 (that had not yet been voided at the time of the conduct or risk that allegedly caused the harm). The covered claims include torts and any action for damages, losses, indemnification or other relief relating to exposure to COVID-19.

Amendment to the Michigan Occupational Safety and Health Act (MIOSHA)

Employers are not liable under MIOSHA for an employee's exposure to COVID-19, IF the employer was operating in compliance with all laws, rules, regulations, executive orders and agency orders related to COVID-19 (that had not been voided at the time of the exposure). This section applies retroactively to an exposure to COVID-19 that occurs after March 1, 2020.

Protection for Employees

The third act mirrors a now-void Executive Order and **prohibits an employer from taking negative action against an employee in relation to COVID-19, as follows:**

- (1) An **employee who tests positive for COVID-19 or displays the principal symptoms of COVID-19 shall not report to work until all** of the following conditions are met:
 - (a) If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications;
 - (b) Ten days have passed since either of the following, whichever is later:
 - (i) The date the employee's symptoms first appeared
 - (ii) The date the employee received the test that yielded a positive result for COVID-19; **and**
 - (c) The employee's principal symptoms of COVID-19 have improved.
- (2) An **employee who has close contact with an individual who tests positive for COVID-19 or with an individual who displays the "principal symptoms of COVID-19"** shall not report to work until one of the following conditions is met:
 - (a) Fourteen days have passed since the employee last had close contact with the individual; or

- (b) 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.
 - Section 2 does not apply to the following types of employees: a health care professional, a worker at a health care facility, a first responder, a child protective service employee, a worker at a child caring institution, a worker at an adult foster care facility, or a worker at a correctional facility.

Employers are also prohibited from discharging, disciplining or otherwise retaliating against an employee for any of the following reasons:

- An employee is absent from work in accordance with subsections (1) or (2) above, even if the employee later receives a negative test result.
 - However, this section does not apply to an employee who after displaying the principal symptoms of COVID-19, fails to make reasonable efforts to schedule a COVID-19 test within 3 days after receiving a request from their employer to get tested for COVID-19.
- An employee opposes a violation of the Act.
- An employee reports health violations related to COVID-19.

An employee may bring an action against an employer in violation of this Act for injunctive relief and/or damages, and a prevailing plaintiff shall be entitled to damages of not less than \$5,000.

The Act does include a definition of "principal symptoms of COVID-19" but the definition set forth by the Michigan Department of Health and Human Services (MDHHS) would apply if it was in effect at the time the action was taken. This Act does not affect any rights, remedies or protections under worker's compensation laws.

These new COVID-19 laws and recent emergency orders from MIOSHA and MDHHS leave many unanswered questions for employers. Please contact us to discuss any of these new laws or other COVID-related issues.

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 Lawrence](#) or [Stacey DiDomenico](#).