



New Michigan COVID-19 Laws Should Prod Employers To Follow Workplace Safety Rules

Insights

10.27.20

Michigan just passed four new COVID-19 bills touching on workplace safety, employee protections, and legal immunity for businesses – and employers will need to be sure to stay on top of state rules if they want to avoid liability or safety concerns. The bills, passed on October 21, were the result of a compromise between Governor Whitmer and the Republican-held state legislature. In general, the bills incentivize Michigan employers to maintain similar workplace protections as laid out in Governor Whitmer’s now-invalid executive orders and MIOSHA’s recently enacted emergency rules. This article addresses what Michigan employers should do in light of each of the new laws.

Employee Protections

House Bill 6032 protects employees who contract COVID-19, display COVID-19 symptoms, or come in close contact with someone who contracted COVID-19 or displayed COVID-19 symptoms. Section 5 of the bill expressly forbids certain employees from reporting to work until certain conditions are met.

First, those who test positive for COVID-19 or display the “principal symptoms of COVID-19” (term defined in the bill) are barred from reporting to work until three conditions are met:

- 24 hours since the fever has passed without use of fever-reducing drugs;
- 10 days since the latter of the onset of symptoms or since taking the test that yielded the positive test; and
- the employee’s principal symptoms have improved.

Second, those who come in “close contact” (as defined in the bill) 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 either:

- 14 days have passed since the last close contact with the individual; **or**
- the individual with whom the employee had close contact with receives a medical determination that they did not have COVID-19 at the time of the last contact.

Certain employees are exempt from the “close contact” prohibition.

The bill also states that an employer shall not discharge, discipline, or otherwise retaliate against an employee who does one of three things: (1) complies with section 5; (2) opposes a violation of the bill; or (3) reports health violations related to COVID-19. Notably, employees lose section 5 protection if the employer requests they take a COVID-19 test and they fail to do so within three days after receiving the request.

Employers who violate this bill's anti-adverse action provision **or** require an employee to come into work prior to the timelines laid out in section 5 can be sued and face at least \$5,000 per violation.

Business Liability Immunity

House Bill 6030 protects business from COVID-19 related *tort* claims (i.e., personal injury) by customers, vendors, and any other person who entered the business after March 1, 2020, but only if the business "act[ed] in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 *that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm.*" The last part of the quoted bill means compliance with Governor Whitmer's executive orders in place "at the time of the conduct or risk that allegedly caused harm" will be required for any claims or causes of actions that accrued between March 1, 2020 and October 1, 2020.

Note however, that an isolated, *de minimis* deviation from strict compliance with any then-applicable statutes, rules, regulations, executive orders, or agency order, does not deny a business immunity as long as the deviation was unrelated to the plaintiff's injuries. What constitutes "de minimis" is unclear from the bill and could be a source of significant litigation.

Employer Liability Immunity

Similar to the above, House Bills 6101 and 6031 protects employers from liability under the Michigan Occupational Safety and Health Act "for an employee's exposure to COVID-19 if the employer was operating in compliance with all federal, state, and local statutes, rules, and regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure." These bills are retroactive to March 1, 2020 just like above.

Once again, compliance with Governor Whitmer's then-applicable executive orders will be required for MIOSHA claims or causes of actions that accrued between March 1, 2020 and October 1, 2020. Isolated *de minimis* deviations from the then-applicable legal requirements will similarly not jeopardize the employer's MIOSHA immunity, but also could be a source of significant litigation. Finally, it is important to know that these two bills do not impact employee rights to workers' compensation benefits under Michigan law.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our Detroit office, or any member of our Post-Pandemic Strategy Group Roster.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Stephen R. Gee

Partner

248.540.7041

Email

Service Focus

Workplace Safety and Catastrophe Management

Trending

COVID-19/Vaccine Resource Center

Related Offices

Detroit