



Michigan Law Aligns With CDC Guidance: COVID-19 Compliance Just Got A Little Bit Easier

Insights

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Just before the New Year, Governor Whitmer amended state law and eased employers' COVID-19 compliance burdens by deferring to the CDC's guidance on when infected or exposed employees may return to work. The amendment was necessary to resolve the conflict between then-existing state law and the CDC's newest guidance on quarantine periods (related to exposed individuals) issued shortly after the law's passage, as well as clearing up some administrative issues. This article aggregates all the changes made by the amendment by recasting how Michigan employers can comply with the amended COVID-19 law.

State Law Now Offers Some Flexibility

The amended law, Senate Bill 1258, which amends provisions from House Bill 6032 (discussed in previous Legal Alert), still protects employees who contract COVID-19, display COVID-19 symptoms, or come in "close contact" with someone who has tested positive for COVID-19. However, the law now defers to the CDC's guidance to define what it means to come in "close contact," which currently is:

Someone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.

Section 5 of the amended law also still expressly forbids certain COVID-19 impacted employees from reporting to work until certain conditions are met. However, it now has separate parameters for employees who test positive for COVID-19, display the "principal symptoms of COVID-19" (term's definition unchanged), and who come in "close contact" with an individual who tested positive for COVID-19. The newly segmented Section 5 also defers to CDC guidance for the length of "quarantine periods" (for "close contact" exposed individuals) and "isolation periods" (for infected individuals and symptomatic individuals, which is generally 10 days after symptoms appear). Michigan law now states:

- **Employee tests positive:** Must not report to work until either—
 - (1) They are advised by a health care provider or public health official that they have completed their isolation period; *OR*

- (2) all of the following occurs—(a) 24 hours since any fever has passed without use of fever-reducing drugs; (b) the “isolation period” has ended; (c) the employee’s principal symptoms have improved; and (d) if the employee has been advised by a health care provider or public health official to remain isolated, then once the employee is no longer subject to such advisement.
- **Symptomatic employee:** Must not report to work until either—
 - (1) a negative test has been received; *OR*
 - (2) all of the following occurs—(a) “isolation period” has passed since principal symptoms started; (b) the employee’s principal symptoms have improved; and (c) 24 hours since any fever has passed without use of fever-reducing drugs.
- **Employee in “close contact” with a COVID-19 positive individual:** Must not report to work until either—
 - (1) the “quarantine period” is over (currently 7 days since exposure if test negative and no symptoms, or 10 days since exposure with no symptoms); *OR*
 - (2) the employee is advised by a health care provider or public health official that they have completed their “quarantine period.”

Impact Of Statutory Amendments

The two biggest takeaways from the work prohibition requirement amendments are that: (1) employees can no longer self-exclude themselves from work for 14 days due to a possible “close contact” (now likely seven or 10 days depending on if the employer requests the employee get tested); and (2) employers can rely on the specific advice of a healthcare provider or public health official for dictating a return to work date.

As before, certain employees are exempt from the “close contact” prohibition, which include first responders, healthcare professionals, “healthcare facility” (term defined in the [law](#)) workers, childcare workers, and correctional facility workers. However, there are two key changes to the exemption. Two new groups of people are now exempted from the “close contact” prohibition, certain energy employees (see [CISA Guidance for more detail](#)) and workers designated by the Michigan Department of Health and Human Services Director (none designated as of yet). In addition, the exemption now only applies if the employee meets three requirements: (1) must not be experiencing symptoms; (2) must not have tested positive for COVID-19; and (3) only when strictly necessary to preserve the function of a facility where cessation of operation of the facility would cause serious harm or danger to public health or safety.

What Do Michigan Employers Need To Know?

Michigan employers should note that the amended law still provides that an employer shall not discharge, discipline, or otherwise retaliate against an employee who: (1) complies with Section 5; (2) opposes a violation of the law; 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.

It is worth reminding employers that violations of the amended law's anti-adverse action provision **or** requiring an employee to come into work prior to the timelines laid out in Section 5 can lead to lawsuits or being faced with fines of at least \$5,000 per violation.

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](#).

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Stephen R. Gee
Partner
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