

# CLIENT ALERT

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## GOVERNOR WHITMER EXTENDS JOB PROTECTED LEAVE TO EMPLOYEES RELATED TO COVID-19 SYMPTOMS OR EXPOSURE

by David R. Deromedi

On April 3, 2020, Governor Whitmer issued Executive Order 2020-36 declaring that individuals permitted to go to work pursuant to the Governor's current stay-at-home order Executive Order 2020-21 must stay home when either they or their close contacts are sick related to COVID-19 – and they must not be punished by their employer for doing so. The Governor's recent Order provides certain protections against workplace discrimination to such individuals, to ensure they can do what is most needed from them to protect the health and safety of everyone.

The Governor's Order declares that effective immediately it is public policy of Michigan that an employer shall not discharge, discipline, or otherwise retaliate against an employee for staying home when he or she is at particular risk of infecting others with COVID-19.

The order prohibits employers from discharging, disciplining, or otherwise retaliating against an employee who stays at home from work as follows:

- The employee tests positive for COVID-19 or displays one or more of the principal symptoms of COVID-19 and is to remain in their home or place of residence, even if they are otherwise permitted to leave under Executive Order 2020 until: (1) three days have passed since their symptoms have resolved; and (2) seven days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result. This right to leave from work for a personal COVID-19 illness ceases if the person, after showing symptoms, receives a negative COVID-19 test.
- The employee 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 and should remain in their home or place of residence, even if they are otherwise permitted to leave under Executive Order 2020-21 until either: (1) 14 days have passed since the last close contact with the sick or symptomatic individual; or (2) the symptomatic individual receives a negative COVID-19 test.
  - This particular part of the Governor's Order excludes health care professionals, workers at a health care facility, as defined in section 7(d) of this order, first responders (e.g., police officers, fire fighters, paramedics), child protective service employees, and workers at child caring institutions, as defined under Michigan law, and workers at correctional facilities.

Employers are also prohibited from discharging, disciplining, or retaliating against an employee described above for failing to comply with a requirement to document that the employee or the individual with whom the employee has had close contact has one or more of the principal symptoms of COVID-19.

The Order applies to all employers regardless of size. Employers are to treat such an employee as if he or she were taking medical leave under the Michigan Paid Medical Leave Act. If the employee has paid time available under the Paid Medical Leave Act the employee can use that time. If no paid time is available then the leave is unpaid. The length of leave is not limited by the amount of paid time the employee has

available. The leave must extend as long as the employee remains away from work for the periods described above.

Employers should review each individual situation carefully because affected employees may also qualify for emergency paid sick leave pursuant to the Families First Coronavirus Response Act.

The Governor's executive order may be found at: [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-524136--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-524136--,00.html)

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