

***** Act 238 of 2020 This act is effective and applies retroactively beginning March 1, 2020: See 419.410

COVID-19 EMPLOYMENT RIGHTS

Act 238 of 2020

AN ACT to prohibit an employer from taking certain actions against an employee who does not report to work under certain circumstances related to COVID-19; to prohibit an employee from reporting to work under certain circumstances related to COVID-19; to prohibit discrimination and retaliation for engaging in certain activities; and to provide remedies.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020.

The People of the State of Michigan enact:

***** 419.401 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.401 Definitions.

Sec. 1. As used in this act:

(a) "Close contact" means that term as defined in the United States Centers for Disease Control and Prevention's guidelines regarding COVID-19 at the time the contact occurred.

(b) "COVID-19" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.

(c) "Employee" means an individual employed by an employer and whose primary workplace is not the individual's residence.

(d) "Employer" means a person or a state or local governmental entity that employs 1 or more individuals.

(e) "First responder" means any of the following:

(i) A law enforcement officer.

(ii) A firefighter.

(iii) A paramedic.

(f) "Health care facility" means any of the following facilities, including those that may operate under shared or joint ownership, and a facility used as surge capacity by any of the following facilities:

(i) An entity listed in section 20106(1) of the public health code, 1978 PA 368, MCL 333.20106.

(ii) A state-owned hospital or surgical center.

(iii) A state-operated outpatient facility.

(iv) A state-operated veterans' facility.

(g) "Infected with COVID-19" means displaying the principal symptoms of COVID-19 or having tested positive for COVID-19 prior to the end of the isolation period.

(h) "Isolation period" means the recommended number of days that an individual be in isolation after the individual first displays the principal symptoms of COVID-19 as prescribed in the United States Centers for Disease Control and Prevention's guidelines regarding COVID-19.

(i) "Person" means an individual, partnership, corporation, association, or other legal entity.

(j) "Principal symptoms of COVID-19" has the definition provided by order of the director or chief medical executive of the Michigan department of health and human services. In the event that the term is not defined by the director or chief medical executive of the Michigan department of health and human services at the time of an action taken under section 5, principal symptoms of COVID-19 means either or both of the following:

(i) One or more of the following not explained by a known medical or physical condition:

(A) Fever.

(B) Shortness of breath.

(C) Uncontrolled cough.

(ii) Two or more of the following not explained by a known medical or physical condition:

(A) Abdominal pain.

(B) Diarrhea.

(C) Loss of taste or smell.

(D) Muscle aches.

(E) Severe headache.

(F) Sore throat.

(G) Vomiting.

(k) "Quarantine period" means the recommended number of days that an individual be in quarantine after the individual is in close contact as prescribed in the United States Centers for Disease Control and Prevention's guidelines regarding COVID-19.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020;—Am. 2020, Act 339, Imd. Eff. Dec. 29, 2020.

***** 419.403 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.403 Employer prohibitions related to employees who test positive or symptomatic for COVID-19; exception.

Sec. 3. (1) Except as provided in subsection (2), an employer shall not discharge, discipline, or otherwise retaliate against an employee who does any of the following:

(a) Complies with section 5, including where an employee who displays the principal symptoms of COVID-19 does not report to work and later tests negative for COVID-19.

(b) Opposes a violation of this act.

(c) Reports health violations related to COVID-19.

(2) Subsection (1) does not apply to an employee described in section 5 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.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020.

***** 419.405 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.405 Employees that are COVID-19 positive, symptomatic, or exposed; duty not to report; conditions.

Sec. 5. (1) An employee who tests positive for COVID-19 must not report to work until they are advised by a health care provider or public health professional that they have completed their isolation period, or 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) The isolation period has passed.

(c) The employee's principal symptoms of COVID-19 have improved.

(d) If the employee has been advised by a health care provider or public health professional to remain isolated, the employee is no longer subject to such advisement.

(2) An employee who displays the principal symptoms of COVID-19 but has not yet tested positive shall not report to work until 1 of the following conditions are met:

(a) A negative diagnostic test result has been received.

(b) All of the following apply:

(i) The isolation period has passed since the principal symptoms of COVID-19 started.

(ii) The employee's principal symptoms of COVID-19 have improved.

(iii) If the employee had a fever, 24 hours have passed since the fever subsided without the use of fever reducing medication.

(3) Except as provided in subsection (4), an employee who has close contact with an individual who tests positive for COVID-19 shall not report to work until 1 of the following conditions is met:

(a) The quarantine period has passed since the employee last had close contact with the individual.

(b) The employee is advised by a health care provider or public health professional that they have completed their period of quarantine.

(4) An employee who is any of the following, is otherwise subject to quarantine, is not experiencing any symptoms, and has not tested positive for COVID-19 may be allowed to participate in onsite operations 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:

(a) A health care professional.

(b) A worker at a health care facility.

(c) A first responder.

(d) A child protective service employee.

(e) A worker at a child caring institution, as that term is defined in section 1 of 1973 PA 116, MCL

722.111.

(f) A worker at an adult foster care facility, as that term is defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(g) A worker at a correctional facility.

(h) A worker in the energy industry who performs essential energy services as described in the United States Cybersecurity and Infrastructure Security Agency's Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response, Version 2.0, March 28, 2020.

(i) A worker identified by the director of the department of health and human services as necessary to ensure continuation of essential public health services and enforcement of health laws, or to avoid serious harm or danger to public health or public safety. The director of the department of health and human services shall designate categories of critical employees at facilities where cessation of operations would cause serious harm or danger to public health or safety.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020;—Am. 2020, Act 339, Imd. Eff. Dec. 29, 2020.

***** 419.407 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.407 Employer violation; civil action; damages.

Sec. 7. (1) An employee aggrieved by a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both, in the circuit court for the county where the alleged violation occurred or for the county where the employer against whom the action is filed is located or has its principal place of business.

(2) A court shall award to a plaintiff who prevails in an action brought under this act damages of not less than \$5,000.00.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020.

***** 419.409 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.409 Applicability to public employers and employees.

Sec. 9. This act applies to public employers and public employees, except to the extent that it is inconsistent with section 5 of article XI of the state constitution of 1963.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020.

419.410 Retroactive effective date.

Sec. 10. This act is effective retroactive to March 1, 2020.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020.

***** 419.412 This section is effective and applies retroactively beginning March 1, 2020: See 419.410

419.412 Effect of act on worker's disability compensation act.

Sec. 12. This act does not do either of the following:

(a) Affect rights, remedies, or protections under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, including the exclusive application of that act.

(b) Affect rights, remedies, or protections under the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

History: 2020, Act 238, Imd. Eff. Oct. 22, 2020;—Am. 2020, Act 339, Imd. Eff. Dec. 29, 2020.

419.413 Employer liability; affirmative defenses.

Sec. 13. Notwithstanding any other provision of this act, for a claim brought under section 7 relating to violations of section 3(1)(a) to (b) and section 5 arising after February 29, 2020 and before October 22, 2020, an employer may demonstrate, as an affirmative defense to liability under section 7, that it was operating in compliance with all of the following related to quarantine and isolation of employees:

(a) United States Centers for Disease Control and Prevention guidance.

(b) All federal, state, and local statutes, rules, and regulations that had not been denied legal effect at the time of the conduct that allegedly violated section 7.

(c) All executive orders and agency orders that had not been denied legal effect at the time of the conduct

that allegedly violated section 7.

History: Add. 2020, Act 339, Imd. Eff. Dec. 29, 2020.

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