

# CLIENT ALERTS

---

## Recent Executive Order Focuses on Michigan Employers

4.6.2020

On Friday, April 3, 2020, Governor Whitmer issued Executive Order 2020-36. This recent Executive Order focused primarily on the employment setting and also stressed that those who have been infected or in close contact with someone who was infected, stay home unless absolutely necessary and then, wear a mask.

Focusing on the employment issues, the Governor's order addresses the topics of retaliation, leave, and quarantine restrictions.

### **Anti-Retaliation Provisions**

Executive Order 2020-36 specifically prohibits an employer's ability to "discharge, discipline, or otherwise retaliate against an employee" when an employee:

- stays "home when he or she is at particular risk of infecting others with COVID-19";
- stays home from work when the employee tests "positive for COVID-19 or displays one or more of the principal symptoms of COVID-19"; or
- stays home because 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.

Most of these requirements are consistent with the CDC guidelines or the health orders issued by various counties. Therefore, it is likely that employers have already been implementing these practices.

The Governor did recognize, however, that employers retain the right to discharge or discipline an employee:

### **Related Services**

Labor and Employment

## CLIENT ALERTS

---

- who is allowed to return to work because three days have passed since their symptoms have resolved and seven days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result but fails to return;
- with the employee's consent; or
- for any other reason that is not unlawful.

### **Leave Provisions**

The Governor's Order further requires that employers "treat such an employee as if he or she were taking medical leave under the Paid Medical Leave Act." The Governor's Order does not require employers to provide any additional time beyond the already mandated 40 hours required under the Paid Medical Leave Act. Instead, "to the extent that the employee has no paid leave, the leave may be unpaid."

The Governor further recommends but does not require that the employee be allowed to utilize unused accrued leave time.

### **Quarantine Restrictions**

The Governor's Executive Order 2020-36 also requires that an individual who "display one or more of the principal symptoms of COVID-19 should remain in their home or place of residence" until:

- three days have passed since their symptoms have resolved, and
- seven days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result.

An employer, however, is entitled to discipline or discharge an individual who returns to work prior to these periods.

Additionally, the Governor also sets forth quarantine requirements for individuals who have 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. That section, however, does not apply to the following classes of workers:

1. Health care professionals.
2. Workers at a health care facility, as defined in section 7(d) of this order.
3. First responders (e.g., police officers, firefighters, paramedics).
4. Child protective service employees.
5. Workers at child caring institutions, as defined in section 1 of Public Act 116 of 1973, MCL 722.111.
6. Workers at correctional facilities.

## CLIENT ALERTS

---

### **Enforcement Powers**

The Executive Order does not create a private right of action against an employer. Instead, enforcement power lies solely with the Department of Labor and Economic Opportunity.

### **Stay at Home**

Focusing on the person who tested positive or came in close contact with someone who tested positive, the Executive Order stresses that those individuals should stay at home “[t]o the extent absolutely necessary to obtain food, medicine, medical care, or supplies that are needed to sustain or protect life, where such food, medicine, medical care, or supplies cannot be obtained via delivery. All food, medicine, and supplies should be picked up at the curbside to the fullest extent possible.” These individuals may also exercise outside. However, when out of the house, they should wear a face mask, but not N95 masks or surgical masks, which are generally being “reserved, for now, for health care professionals, first responders (e.g., police officers, firefighters, paramedics), and other critical workers.”

#### **Rebecca Davies**

313.225.7028

davies@butzel.com

#### **Beth Gotthelf**

248.258.1303

gotthelf@butzel.com