

Michigan Gov. Orders: No Adverse Action Against Workers Who Must Stay Home to Prevent COVID-19 Spread

April 3, 2020

On April 3, 2020, Michigan Governor Gretchen Whitmer signed **Executive Order No. 2020-36** (the "Order"). The Order requires certain individuals to stay at home even if they were otherwise allowed to leave home for work as a critical infrastructure worker or otherwise necessary to conduct minimum basic operations under Executive 2020-21 (otherwise known as "Stay Home Stay Safe" Executive Order). The Order also prohibits employers from taking adverse action against **employees who stay home in compliance with the Order**.

Individuals Who Must Stay at Home

Under the Order, except for certain limited activities, the following individuals must stay at home or their places of residence:

- Individuals testing positive for COVID-19 or displaying one or more principal symptoms of COVID-19, which are defined to be fever, atypical cough, or atypical shortness of breath, 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; or
 - The individual has received a negative COVID 19 test.
- Individuals who have had close contact with (within approximately six feet) an individual who tests positive for COVID-19 or who displays one or more principal symptoms of COVID-19, until the earlier of 14 days after the contact or the symptomatic individual receives a negative COVID-19 test. Workers in certain occupations, including health care professionals, workers at a health care facility, and first responders, are exempted so long as their employer's rules governing occupational health allow the worker to continue working.

These individuals are ordered to stay at home by the Order even though they would otherwise be permitted to leave under the Stay Home, Stay Safe Order. In other words, critical infrastructure workers and workers who are necessary to conduct minimum basic operations who would otherwise be allowed to go to work are now not allowed to leave their home if they test positive for COVID-19, display a principal COVID-19 symptom(s), or come in close contact with individuals having COVID-19 or its principal symptoms.

The above-described individuals must not leave their home unless:

- Doing so is absolutely necessary to obtain food, medicine, medical care, or supplies that cannot be obtained via delivery and are needed to sustain or protect life. To the fullest extent possible, food, medicine, and supplies should be picked up at the curbside.
- To engage in outdoor or recreational activities consistent with remaining at least six feet from people not in the individual's household.

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When leaving their home, the individuals ordered to stay home by the Order must wear items that cover their nose and mouth but should reserve N95 masks and surgical masks for health care professionals, first responders and other critical workers.

Employers May Not Discipline, Discharge or Retaliate Against Employees Who Must Stay at Home Under This Order

Employers have the following obligations to any employee who meets the definition of an individual who must stay home according to the Order:

- The employer may not discharge, discipline, or otherwise retaliate against those employees for staying at home for the periods described above.
- The employer must treat the employee as if he or she was taking medical leave under the Michigan Paid Medical Leave Act:
 - Leave may be unpaid if the employee has no paid leave.
 - The time the employee stays at home can be counted against the employee's accrued leave.
 - The length of the leave is not limited by the amount of paid medical leave accrued by an employee under the Paid Medical Leave Act, and must be extended, whether paid or unpaid, to the length the employee is required to be away from work by the Order.
- The employer may not discharge, discipline, or otherwise retaliate against the employee for failing to comply with a requirement to document that the employee or an individual with whom the employee comes into close contact has the principal symptoms of COVID-19.

On the other hand, an employer may discharge or discipline an employee who is ordered to stay at home by the Order if:

- The employee returns to work before he or she is allowed to do so by the Order;
- The employee is allowed to return to work under the Order, but declines to do so;
- The employee consents to the discharge or discipline; or
- A lawful reason to discharge or discipline the employee exists.

If an employer violates the Order, the Director of the Department of Labor and Economic Opportunity has the authority to enforce it in the same manner and to the same extent as the Director may enforce the Michigan Paid Medical Leave Act. However, like the Paid Medical Leave Act, the Order does not allow an employee to bring an action directly against an employer for an alleged violation.

If you have questions about Executive Order No. 2020-36, please call your Miller Canfield attorney or one of the authors of this alert.

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This information is based on the facts and guidance available at the time of publication, and may be subject to change.