

Michigan Amends Isolation and Quarantine Requirements for Workers

January 7, 2021

On October 22, 2020, Governor Whitmer passed Public Act ("PA") 238 of 2020, outlining COVID-19 isolation/quarantine periods and prohibiting employers from taking certain actions against employees who do not report to work during those periods, as well as those who oppose violations of the act or report health violations related to COVID-19. On December 30, 2020, PA 339 of 2020 was enacted to amend sections 1, 5, and 12 of PA 238, and to add a new section 13.

Key Changes

PA 339 of 2020 made the following important changes to PA 238:

- Redefines the term "close contact" to integrate the definition used by the United States Centers for Disease Control and Prevention's (the "CDC") guidelines at the time the contact occurred.
- Revises the isolation requirements for employees who have tested positive for COVID-19. Those employees may not return 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:**
 - If the employee has a fever, 24 hours have passed since the fever has stopped with or without the use of fever-reducing medications;
 - the isolation period has passed;
 - the employee's principal symptoms of COVID-19 have improved; and
 - 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.
- Revises the isolation requirements for employees who display COVID-19 symptoms, but who have not yet tested positive. Those employees may not return to work until **one of the following conditions is met:**
 - a negative diagnostic test result has been received; or
 - 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 with or without the use of fever-reducing medication.
- Revises the isolation requirements for employees who have come into close contact with an individual who tests positive for COVID-19. As amended, an employee under these circumstances may not return to work until **one of the following conditions is met:**
 - the quarantine period has passed since the employee last had close contact with the individual; or
 - the employee is advised by a health care provider or public health professional that they have completed their period of quarantine. Significantly, PA 339 has removed the language requiring individuals to remain home if they came into close contact with an individual who has COVID-19 symptoms.

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- Clarifies that the categories of workers listed below who are otherwise subject to quarantine, but are not experiencing any COVID-19 symptoms and have not tested positive for COVID-19 may be required to work if the work is necessary to keep maintain functionality of a facility and the stoppage of operations would cause "serious harm or "danger to public health or safety." As amended, the following categories of workers may be required to work when otherwise subject to quarantine:
 - health care professionals;
 - workers at health care facilities;
 - first responders;
 - child protective service employees;
 - workers at child care institutions;
 - workers at adult foster care facilities;
 - workers at correctional facilities;
 - workers in the energy industry who perform 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; and
 - workers identified by 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.

Adds a section to provide employers with an affirmative defense to violations of PA 238 arising between February 29, 2020, and October 22, 2020, if the employer was operating in compliance with all of the following: a) the CDC's guidance; b) all federal, state and local statutes, rules and regulations that had legal effect at the time of the alleged violation; and c) all executive orders and agency orders that had legal effect at the time of the alleged violation.

Key Provisions that Remain Intact from PA 238

- The definition of the "principal symptoms of COVID-19," which includes either: fever, shortness of breath, uncontrolled cough, or two or more of abdominal pain, diarrhea, loss of taste or smell, muscle aches, severe headache, sore throat, and vomiting, was left untouched and was not amended to integrate the CDC's entire list of symptoms.
- The amendment did not alter the section providing employees with a private cause of action against employers for alleged violations, and sets out the minimum amount of damages that may be awarded to a prevailing plaintiff.
- PA 238 continues to apply to public employers and public employees.

Based on PA 339 of 2020, Michigan employers may need to update their COVID-19 Preparedness Plans and screening protocol.

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If you have any questions, please feel free to contact the authors or your Miller Canfield attorney.

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