

Publications

Michigan Enacts COVID-19 Business Immunity and Employee Protection Laws

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CLIENT ALERT | 10.23.2020

On October 22, 2020, Michigan enacted four COVID-related laws that provide protections to businesses and to employees. Three of the laws provide broad civil immunity to persons from COVID-19 claims when they comply with the legal requirements related to COVID-19 that were in effect at the time. The fourth law prohibits discharging, disciplining, or retaliating against employees who stay home because they test positive for COVID-19. Each of these laws is effective immediately and is retroactive to March 1, 2020. Contact your Vorys lawyer if you have questions about these laws or COVID-related claims or other issues in your workplace.

Civil Immunity for COVID-19 Claims

The “COVID-19 Response and Reopening Liability Assurance Act” provides immunity from a “COVID-19 claim” for a person who complies with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm. An isolated, de minimis deviation from strict compliance unrelated to the alleged injuries does not deny a person the immunity. Two other laws make similar changes to Michigan’s Occupational Safety and Health Act.

The law broadly applies to individuals, partnerships, corporations, associations, governmental entities, schools, colleges, universities, and nonprofit organizations, as well as to employees, agents, independent contractors, and paid or unpaid volunteers.

A “COVID-19 claim” is a tort claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to (1) exposure or potential exposure to COVID-19, or (2) conduct intended to reduce transmission of COVID-19, such as health screening, testing, contact tracing, and other actions intended to reduce transmission of COVID-19 in a workplace or on other premises. A COVID-19 claim includes a tort claim made by or on behalf of an exposed or potentially exposed individual – as well as any

representative, spouse, parent, child, member of the same household, or other relative – for injury, mental or emotional injury, death, or loss to person, risk of disease, costs of medical monitoring or surveillance, or other losses allegedly caused by exposure or potential exposure to COVID-19. However, a COVID-19 claim does not include an administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce state statutes and regulations, executive orders, or state agency orders applicable to COVID-19.

The law does not (1) create, recognize, or ratify a claim or cause of action of any kind; (2) eliminate a required element of any claim such as causation and proximate cause; (3) affect rights, remedies, or protections under Michigan's workers' compensation law; (4) amend, repeal, alter, or affect any other immunity or limitation of liability; or (5) create a defense in an administrative or civil action brought by a prosecutor or agency to enforce COVID-related laws, regulations, or orders.

Employee Protection Related to COVID-19

An employer is now generally prohibited from discharging, disciplining, or retaliating against an employee who: (1) does not report to work after testing positive for or displaying the principal symptoms of COVID-19; (2) displays the principal symptoms of COVID-19 and does not report to work but later tests negative for COVID-19; (3) opposes a violation of the law; or (4) reports health violations related to COVID-19. These protections do not apply to an employee who, after displaying the principal symptoms of COVID-19, fails to make reasonable efforts to schedule a COVID-19 test within three days after receiving a request from their employer to get tested for COVID-19.

Under the law, an employee is prohibited from reporting to work in two circumstances. First, an employee who tests positive for COVID-19 or who displays the "principal symptoms of COVID-19" may not report to work until **all** of the following are met:

- If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications.
- Ten days have passed since either of the following, whichever is later: the date the employee's symptoms first appeared, or the date the employee received the test that yielded a positive result for COVID-19.
- The employee's principal symptoms of COVID-19 have improved.

Second, an employee who has "close contact" with an individual who tests positive for COVID-19 or with an individual who displays the principal symptoms of COVID-19 may not report to work until **either** (1) 14 days have passed since the employee last had close contact with the individual, or (2) the individual with whom the employee had close contact receives a medical determination that they did not have COVID-19 at the time of the close contact with the employee.

"Principal symptoms of COVID-19" is as defined by the Michigan Department of Health and Human Services. If there is no such definition, the principal symptoms include: (1) one or more of fever, shortness of breath, or uncontrolled cough not explained by a known medical or physical condition; or (2) two or more of abdominal pain, diarrhea, loss of taste or smell, muscle aches, severe headache, sore throat, or vomiting not explained by a known medical or physical condition. "Close contact" means being within

approximately 6 feet of an individual for 15 minutes or longer; but this does not apply to an employee who is a health care professional, a worker at a health care facility, a first responder, a child protective service employee, a worker at a child caring institution, a worker at an adult foster care facility, or a worker at a correctional facility.

An employee aggrieved by a violation of this law may bring a civil action for injunctive relief and/or damages. If the employee prevails, the court must award damages of not less than \$5,000.

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VORYS COVID-19 TASK FORCE

Outside of this new law, employers continue to face a [myriad of issues](#) as COVID-19 continues to spread and impact communities and workplaces. We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.