

# Important COVID-19 Updates for Michigan Employers

January 13, 2021

In a highly unusual move, the Michigan Legislature enacted PA 339 of 2020 on Dec. 29, amending Sections 1, 5, and 12 of 2020 PA 238 Employment Rights Act, MCL 419.401, et seq, *retroactively* applying the amendments back to March 1, 2020.

So how can obligations be imposed on employers retroactively, effectively holding them liable for not doing what they did not know they had to do, back at the time?

On Oct. 22, Gov. Gretchen Whitmer signed several bipartisan House Bills intended to protect workers from the spread of COVID-19 by requiring employers to allow workers who are exposed to COVID-19 or exhibit the symptoms of COVID-19 to stay home and protecting such employees from retaliation.

In addition, the bills signed in October protect businesses from liability for people becoming sick at their business if the business complied with relevant COVID-19 related statutes, orders and rules issued by federal, state and local authorities. These protections extend to Michigan Occupational Safety and Health Administration (MIOSHA) liability as well as liability to the individuals.

The COVID-19 Employment Rights Act as amended, was given immediate effect as of Oct. 22, 2020 and retroactively dates back to March 1, 2020.

The amendment revises requirements for employees who are diagnosed with COVID-19, who display the principal symptoms of the disease, or who have had close contact with someone else who tests positive by prohibiting them from reporting to work until all the legal requirements are met as set forth in the new act.

The act clarifies that essential workers who are otherwise subject to quarantine but are not experiencing symptoms and have not tested positive may be required to work if they are necessary to prevent a stoppage of operations that would cause serious harm or danger to public health or safety. The exception for essential workers now includes workers who perform “essential energy services.”

In addition, it provides employers with an affirmative defense to retaliation claims from employees arising between Feb. 29, 2020 and Oct. 22, 2020, if the employer acts in compliance with all CDC guidance; local, state and federal laws; as well as all executive or agency orders.

The guidance on when employees can return to work changes periodically so employers may need to update their COVID-19 Preparedness Plans and Screening Protocol to comply with the amended act.

IMPORTANT COVID-19 UPDATES FOR MICHIGAN EMPLOYERS Cont.

Consult an experienced labor and employment attorney for guidance in complying with this law. This law as well as other leave laws applicable to COVID-19 will be discussed in detail at Plunkett Cooney's annual (virtual) seminar on Feb. 25, 2021. Watch for upcoming information!