




COVID-19

UPDATE:
April 8, 2020

**Coronavirus / COVID-19
Response Team**


MILLER 
JOHNSON
Attorneys

1

MILLER 
JOHNSON
Attorneys

**“At Risk” Individuals &
Employment Protections
Under Executive Order
2020-36**

» Keith Eastland
Mary Tabin

MILLER 
JOHNSON
Attorneys

The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer–client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

Protecting Workers Who Stay at Home: The Basics

- The Executive Order does two general things:
 1. Directs individuals “at particular risk” of spreading COVID-19 to stay home, even if they could work under Michigan’s prior shutdown order
 2. Creates employment protections for employees who are “at particular risk” when they stay home.

Who is “at particular risk”?

- **Group 1**: individuals who test positive or who display at least one principal symptom.
- **Group 2**: individuals who have had “close contact” with a person who tests positive or who displays at least one principal symptom.
- **“Principal Symptoms”**: (1) fever; (2) atypical cough; or (3) atypical shortness of breath.
- **“Close Contact”**: means “being within approximately six feet of an individual for a prolonged period of time.”

How Long Must They Stay Home?

1. **Directly impacted**: stay home until: (a) three days after their symptoms have resolved, and (b) seven days after their symptoms first appeared or since they were swabbed, or they receive a negative test.
2. **Employees in “close contact”**: stay home until 14 days have passed since their last contact with an “at risk” person, or they receive a negative test.

Employment Protections

- Employers cannot discharge, discipline, or retaliate against an “at risk” employee for staying home for the periods described.
 - You can for failure to return after EO period ends.
- Employers cannot take adverse action for an employee’s failure “to comply with a requirement to document that the employee or the individual with whom the employee has had close contact has one or more of the principal symptoms of COVID-19.”
 - You can ask, but not take action if employee refuses.

Employment Protections cont.

- Employees “at risk” must be treated as taking a medical leave under Michigan’s Paid Medical Leave Act, MCL 408.961 et seq.
- If the employee has exhausted paid leave under MPMLA, or it does not apply, the leave can be unpaid.
- Employers are permitted, but not required, to reduce hours from employee’s accrued leave.
- Leave continues for duration of stay home periods under the EO.

What Employers are Covered?

- Employers of all sizes; no exception for small employers.
- No exclusions for Group 1 (individuals impacted)
- Some exclusions for Group 2 (close contact)
 - Health care professionals;
 - Workers at a health care facility, as defined by the EO;
 - First responders (e.g., police officers, fire fighters, paramedics);
 - Child protective service employees;
 - Workers at child caring institutions, as defined in MCL 722.111
 - Workers at correctional facilities.

Impact on Employers

- Need to stay home determined by employees
- Potential for abuse: cannot discipline or retaliate against employee if they refuse to document their need to stay home
- Potential consecutive periods
- Interaction with unemployment and FFCRA
- Enforcement issues

Interaction with Unemployment

- Can likely challenge in some cases, but unlikely to prevail – EO 2020-24
 - “For purposes of the able, available and seeking work requirements in section 28 . . . suitable work is unavailable because of COVID-19, which satisfies the requirements of section 28 for all claimants.”
- What if employee refuses suitable essential work?
- Compare reasons for stay home leave versus unemployment
- Is challenging unemployment a form of retaliation under EO 36? Probably not.

Interaction with Unemployment

EO 36 – Stay Home / Leave Reasons	EO 24 – Unemployment Reasons
<p>Stay home if:</p> <ul style="list-style-type: none"> – tested positive for COVID-19 – <u>display at least one principal symptom</u> – has had close contact with person who tested positive or who displays symptoms 	<p>Eligible for unemployment if:</p> <ul style="list-style-type: none"> – on a leave because of self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised – <u>displaying the symptoms of COVID-19</u> – having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19 – need to care for someone with a confirmed diagnosis of COVID-19 or a family care responsibility as a result of a government directive

Interaction with FFCRA

- Reasons for emergency paid sick leave; unable to work and need leave because and employee:
 - is subject to federal, state or local quarantine or isolation order
 - has been advised by health provider to self-quarantine
 - is experiencing symptoms and is seeking a medical diagnosis
 - is caring for an individual subject to quarantine or isolation order or who was advised by health provider to self-quarantine
- Do any apply? If so, you can secure information/documentation needed to grant the federal leave (same for FML) – you can follow federal law!
- **Note:** EO 2020-36 is a state “quarantined or isolation order” that may trigger paid emergency sick leave and documentation is likely going to be EO 36 itself.

Lawsuits for Violating EO 36?

- EO 36 does not create a private right of action.
- “Nothing in this order shall be taken to create a private right of action against an employer for failing to comply with section 1 of this order or against an individual for acting contrary to the public policies of sections 2, 3, 5, or 6 of this order.”
- Enforcement mechanisms are the same as under Michigan PMLA.

When is it safe to leave home if you have symptoms of COVID-19 or live with someone who does?

STAY HOME.
STAY SAFE. SAVE LIVES.
MICHIGAN.GOV/CORONAVIRUS

Employers can't retaliate against workers for taking time away from work under these circumstances.
File a complaint with MIOASHA. Learn more at Michigan.gov/MIOASHAcomplaint.

For Me	Close Contacts
<p>I have been diagnosed with COVID-19.</p> <p>I have developed one or more symptoms of COVID-19.</p>	<p>I live with someone diagnosed with COVID-19.</p> <p>I live with someone who has developed one or more symptoms of COVID-19.</p>
<p>Stay home for 7 days after you were tested or developed symptoms.</p>	<p>Stay home for 14 days after your last contact with the sick person. Monitor yourself for symptoms.</p>
<p>After staying home for 7 days, have you been symptom-free for 3 days?</p> <p>YES → You may leave if you are symptom-free.</p> <p>NO → Stay home until 3 days have passed after all symptoms have stopped.</p>	<p>You may leave if you are symptom-free.</p>

How do I monitor myself?

Pay attention for COVID-19 symptoms:

- Fever
- Cough
- Shortness of breath

If you are concerned about your health or develop symptoms, contact your health care provider or urgent care.

Should I wear a mask?

If you or your close contact is symptomatic and you must leave home, you should cover your nose and mouth with a homemade mask, scarf, bandana or handkerchief.

*Process for general public, does not specifically apply to workers at a health-care facility, first responders (e.g., police officers, fire fighters, paramedics), and prison employees.

COVID-19 Example #1

Keith works for Eastland Manufacturing as a machine operator. Eastland Mfg is a critical infrastructure supplier and Keith has been designated as a critical employee needed to physically perform work at the facility. Morale is not great at the plant.

Keith calls the attendance line and says that over the weekend he spiked a fever and has shortness of breath. He called his doctor who told him to stay home for seven days. Keith wants to know if he will get paid. He has previously exhausted all of his PTO.

What Hat Are You Wearing?

- FFCRA Benefits?
- Michigan EO 2020-36?
- UIA Benefits?

COVID-19 Example #2

Keith calls in 7 days later and reports that he got tested for COVID-19 and it was negative. Great news! You begin informing him when to report to work. Keith interrupts and responds that he does not want to come back because his wife now has an atypical cough.

What do you do? Can you ask for medical confirmation?

What Hat Are You Wearing?

- FFCRA?
- Michigan EO 2020-36?
- UIA Benefits?

COVID-19 Example #3

Same facts: Keith calls in 7 days later and reports that he got tested for COVID-19 and it was negative.

This time, Keith responds that he is excited to return to work but mentions that his wife is now not feeling well (shortness of breath and cough) but he is sure she just has what he had last week and asks you when he can report to work tomorrow? What do you tell him?

What Hat Are You Wearing?

- FFCRA?
- Michigan EO 2020-36?
- UIA Benefits?

COVID-19 Example #4

Keith has now been off of work for 21 days. You call him to discuss returning to work and he states that his elderly mother had a lung transplant several years ago and watches his kids sometimes. With everything that is going on in Michigan, he feels uncomfortable coming to work because he doesn't want his mom to get COVID-19.

What do you do?

What Hat Are You Wearing?

- FFCRA?
- Michigan EO 2020-36
- UIA Benefits?

COVID-19 Example #5

What if Keith tells you that his elderly mother is no longer watching the kids and he needs more time off to care for the kids?

What do you do?

What Hat Are You Wearing?

- FFCRA?
- UIA Benefits?
- Michigan EO 2020-36?



Keith Eastland

616.831.1749

eastlandk@millerjohnson.com



Mary Tabin

616.831.1753

tabinm@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW
Suite 1100
Grand Rapids, MI 49503

100 W Michigan Ave
Suite 200
Kalamazoo, MI 49007