



**COVID-19**

UPDATE:  
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**Coronavirus / COVID-19  
Response Team**

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**Michigan's New COVID-19  
Legislation: What It Means  
for Your Business and Your  
Employees**

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## Today's Topics

- 3 new Michigan laws
  - Two provide business protection
    - COVID-19 Response and Reopening Liability Assurance Act (Public Act 236/HB 6030)
    - Amendment to Michigan OSHA (Public Act 237/HB 6031)
  - One provides public/employee protection
    - Quarantine/Isolation requirements and protection (Public Act 237/HB 6032)

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## PA 236: COVID-19 Response and Reopening Act

## PA 236: COVID-19 Response and Reopening Act

- A ***person*** who acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that has not been denied level effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a ***COVID-19 claim***.

## PA 236: COVID-19 Response and Reopening Act

- An isolated, de minimus deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency orders unrelated to plaintiff's injuries does not deny a person the immunity provided in this section.

## Definitions

- **Person:** an individual, partnership, corporation, association, governmental entity, or other legal entity, including but not limited to a school, a college or university, an institution of higher education, and a nonprofit charitable organization.
- Person includes an employee, agent, or independent contractor of the person, regardless of whether the individual is paid or an unpaid volunteer.

## Definition

- **COVID-19 claim:**
  - A tort claim or tort cause of action for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to ***exposure or potential exposure to COVID-19 or conduct intended to reduce transmission of COVID-19.***
  - 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

## Elements of a Negligence Tort Claim

- If you can't claim the protection, an individual would still have to prove the requisite elements of a claim, such as negligence:
  - Duty
  - Breach
  - Causation
  - Damages

## PA 237: MIOSH Act Amendment

## PA 237: Amendment to MIOSH Act

- An employer is not liable under ***this act*** for ***an employee's exposure*** to COVID-19 if the employer was operating in compliance with all federal, state, and local statutes, rules, and regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure.

## PA 237: Amendment to MIOSH Act

- An isolated, de minimis deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency orders unrelated to the employee's exposure to COVID-19 does not deny an employer the immunity provided by this section.

## PA 237: Amendment to MIOSH Act

- Does not:
  - Create, recognize, or ratify a claim or cause of action of any kind
  - Eliminate a required element of a claim of any kind, including, but not limited to, a causation or proximate cause element
  - Amend, repeal, alter or affect any other immunity or limitation of liability
  - Affect a right, remedy or protection under the worker's disability compensation act.
- Retroactive effect: March 1, 2020



## PA 238: Quarantine/Isolation Requirements and Protection

### Quarantine/Isolation Requirements and Protection – PA 238

- Mandates employee to not work under certain COVID-19 circumstances
- Creates a civil cause of action for employees
  - Damages and injunctive relief
  - Minimum damages \$5,000
- Retroactive to March 1, 2020
- No sunset provision



## Isolation Requirements

- An employee who tests positive for COVID-19 (with no symptoms) shall not report to work until:
  - 10 days after the date of the test that yielded the positive result

## Isolation Requirements

- An employee who displays the primary symptoms of COVID-19 (whether or not there was a positive test) shall not report to work until:
  - 10 days have passed since symptoms first began AND
  - 24 hours fever-free without fever reducing medication AND
  - Principal symptoms have improved

## Isolation Requirements

- If an employee tests positive AND has symptoms, they cannot report to work until:
  - The later of the date of the test or the date symptoms began AND
  - 24 hours fever-free without medication AND
  - Symptoms have improved

## Principal Symptoms of COVID-19

- Defers to the definition provided by Director of MDHHS, if available
- October 9, 2020 MDHHS Emergency Order
  - Fever, uncontrolled cough or new onset of shortness or breath OR
  - Two of the following not explained by a known physical or medical condition: Loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting or abdominal pain

## Quarantine Requirements

- An employee who has close contact with an individual who tests positive for or displays the primary symptoms of COVID-19 shall not report to work until:
  - 14 days have passed since last close contact OR
  - Individual with whom employee had close contact tests negative
- NOTE: This does not include CDC exceptions for healthcare workers and critical infrastructure employees. But....

## Quarantine Requirements

- Does not apply to
  - Healthcare professionals
  - Workers at healthcare facilities
    - As defined by MI Public Health Code OR
    - State-owned hospital, surgical center, outpatient facility or veterans' facility
  - First responders
  - Child protective service employees
  - Workers at child caring institutions (as defined by MI Child Care Organizations Act)
  - Workers at adult foster care facilities (as defined by MI Adult Foster Care Facility Licensing Act)
  - Workers at correctional facilities

## Civil Right of Action

- Employer shall not discharge, discipline or otherwise retaliate against any employee who:
  - Complies with the isolation and quarantine requirements in the law
  - Opposes a violation of the law
  - Reports health violations related to COVID-19
- Does NOT apply to employee who, after displaying principal symptoms fails to make reasonable effort to schedule a test within 3 days after employer request

## Definition of Close Contact

- Being within approximately 6 feet of an individual for 15 minutes or longer
- Does not utilize definition as revised by CDC last week (total of 15 minutes over 24 hour period, starting 2 days before illness onset.
  - But local health departments will likely use that definition, and MDHHS Order says that employees who are subject to recommendation to quarantine or isolate consistent with CDC guidance should not be present at work.

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## Back to Work Resource Center

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Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

For less than the cost of a typical handbook update, you gain access to an extensive collection of resources and Miller Johnson work product that we are confident will provide meaningful support to your efforts to navigate waters that are not only choppy but continuously changing direction.

Here is a sampling of what subscribers will find:

- Forms, Plans and Policies – we have drafted templates for you to put into service immediately
- Practical Guidance – tools to effectively, safely and confidently return to work incorporating best practices from outside organizations, including community partners such as Spectrum Health
- Industry Specific Guidance – pages devoted to industries singled



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