



COVID-19

UPDATE:
October 30, 2020

**Coronavirus / COVID-19
Response Team**

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**Michigan's New COVID
Legislation for Business
Liability / Immunity**

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Today's Topics

- New Legislation
- Commercial General Liability Insurance
- Waivers
- Compliance and Documentation

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Overview of COVID-19 Litigation

- Most of the litigation in Michigan is constitution, employment-related, or insurance-related
- In Michigan, not a lot of personal injury claims so far
- Different in other states

Public Act 236 of 2020

- **Qualified** Immunity from “COVID-19 claim”
 - Tort (negligence / personal injury, not a claim based on a statute)
 - Related to exposure or potential exposure to COVID-19 or to conduct intended to reduce the transmission of COVID-19
 - Does not protect against workers compensation claims
 - Does not protect against government enforcement of statutes, regulations, executive orders, or agency orders

Public Act 238 of 2020

- Why is the immunity qualified?
 - It applies when the person acts in compliance 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
 - BUT: “An isolated, de minimis deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency order unrelated to the plaintiff’s injuries does not deny a person the immunity provided in this section.”

Public Act 236 of 2020

- Who is protected? “A person”
 - Nonprofit charitable organizations
 - Schools and colleges
 - Individuals
 - Any legal entity
- Employees, agents, independent contractors, and volunteers of a “person”

Public Act 238 of 2020

- Retroactive to any claim or cause of action that accrues after March 1, 2020

Who Are The Biggest Beneficiaries?

- The highest-risk enterprises
 - Nursing homes
 - Day cares
 - Schools
 - Hotels
 - Gyms
 - Bars / restaurants
 - Theatres

How To Lose Qualified Immunity (Don't Do This)



Public Act 237 of 2020

- Amends Public Act 174 of 1974, the worker protection statute
- An employer is not liable under that statute if it was operating in compliance with all federal, state, and local statutes, rules, and regulation, executive orders, an agency orders related to COVID-19 that had not been denied legal effect at the time of the exposure. 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 in this section.

Commercial General Liability Insurance

- Covers liability for “bodily injury” caused by an “occurrence” (i.e., an accident)
- Some policies have mold / bacteria exclusions
- Beware the pollution exclusion

What About Waivers?

- May dissuade litigation
- Practicality depends on your business



But:

- Cannot waive workers' comp
- Parents cannot waive for children



Compliance and Documentation

- MDHHS Order (October 29, 2020)
- MIOSHA Emergency Rule - Coronavirus Disease 2019 (COVID-19) (October 14, 2020)
- Public Act 238 of 2020 (Employment protections)
- FFCRA
- CDC Guidance
- OSHA Recommendations
- Check your local county
- Other industry specific orders
- Subject to change

Compliance and Documentation

- Keep records of all documents
- Keep records of all version of documents
- Appoint one person who is responsible
- Keep record of training
- Keep record of health assessments
- Consider an audit
 - Today
 - Repeat

Questions?

*Wishing you a safe &
Happy Halloween!*



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Back to Work Resource Center

<https://resources.millerjohnson.com/>

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Resource Center

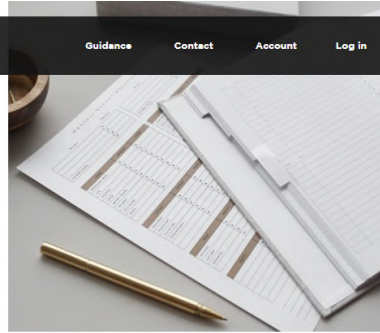
Guidance Contact Account Log in

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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