

UPDATE:
January 7, 2021



Covid-19

Coronavirus / COVID-19
Response Team

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**Changes to Michigan Public Act 238
(NOW COVID-19 Employment
Rights Act)**

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Today's Topics

- Help! My head is spinning. Please tell me the Michigan isolation/quarantine requirements if an employee:
 - Tested positive
 - Just has symptoms (no test yet)
 - Was in close contact with someone who might or does have COVID
- Can I just ignore these requirements if my organization is “critical infrastructure?”
- Bonus: potential immunity for mistakes prior to 10/22/20

COVID-19 ERA

- Mandates COVID-19 isolation and quarantine in certain circumstances
- Provides job protection for time off
- Contains anti-retaliation provision for complying with isolation/quarantine requirements, opposing any violation of PA 238 and reporting any health violation
- Creates private cause of action
- Does NOT mandate paid time off

Prior to Amendments

- Michigan isolation and quarantine requirements
 - Were not aligned with CDC guidance and most other states
 - Required an act of Michigan legislature to revise as CDC guidance evolved

Updated Isolation and Quarantine Requirements

My Employee Tests Positive For COVID

- Employee must not work until
 - 10 days since the date of test or symptoms started, whichever is later
 - 24 hours without fever and medication
 - If there are symptoms, they are improving AND
 - If a HCP had advised the employee to isolate, the employee is no longer subject to that advisement

Positive Test - Other Common Questions

- You can request a copy of the positive test results
- If the local health department has issued an isolation notice, you can request a copy
- If a HCP has advised employee to isolate, you can request note from HCP
- You do NOT have to require proof of a negative test before return to work
 - And this practice can be problematic because individuals can continue to test positive after isolation period has ended and they are no longer spreading the virus

My Employee Has Principal Symptoms Of COVID But Has Not Yet Been Tested

- Employee must not work until either:
 - He/she receives a **negative test** OR
 - 10 days since the date of test or symptoms started, whichever is later
 - 24 hours without fever and medication AND
 - If there are symptoms, they are improving

Symptoms - Other Common Questions

- You CAN request that the employee be tested and a copy of the results
 - If he/she fails to make a reasonable effort to do so within 3 days after the request, he/she loses legal protection under the COVID-19 EPA
 - That means that attendance discipline *could* be an option
- If employee HCP's advises isolation, can request copy of note
- Persons who are severely immunocompromised might require a longer isolation period per their HCP. This is also within the CDC guidelines
- There is not yet an exception for individuals who have been vaccinated, but we hoping that is coming soon from the CDC

Principal Symptoms

- Principal symptoms of COVID-19 defers to latest definition by Michigan DHHS, which is currently:
 - One of the following: fever, uncontrolled cough or atypical new onset of shortness of breath OR
 - Two or more of the following not explained by a known medical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting or abdominal pain

Close Contact

- My employee has had “close contact” with a person who **tested positive** for COVID
 - Employee cannot return to work until:
 - CDC best practice = 14 days have passed since the last close contact
 - CDC alternative option if approved by local health department
 - 10 days have passed since date of last close contact OR
 - 7 days have passed since date of last close contact AND employee was tested at least 5 days after contact and test was negative
 - Employee is advised by HCP or local health professional that that he/she has completed period of isolation

Close Contact (Cont.)

- There is no longer an obligation under the COVID EPA to quarantine after close contact with a person with only principal symptoms
- Employers could still chose to require quarantine (and test)

Close Contact – Other Common Questions

- You CAN request that the employee be tested and a copy of the results
- If employee HCP or local health dept advises quarantine, can request copy of note/order
- CDC says that if positive person is not isolating from household member, that household member's quarantine period does not start until isolation period ends
- CDC states that anyone who has close contact with COVID does NOT need to stay home if they had COVID within the last 3 months, recovered and remain without symptoms
- There is not yet an exception for individuals who have been vaccinated, but we hoping that is coming soon from the CDC

Definition of Close Contact

- Definition of “close contact” defers to CDC guidelines

Close Contact

Someone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period* starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.

Definition of Close Contact (Cont.)

** Individual exposures **added together over a 24-hour period** (e.g., three 5-minute exposures for a total of 15 minutes). Data are limited, making it difficult to precisely define “close contact;” however, 15 cumulative minutes of exposure at a distance of 6 feet or less can be used as an operational definition for contact investigation. **Factors to consider** when defining close contact include proximity (closer distance likely increases exposure risk), the duration of exposure (longer exposure time likely increases exposure risk), whether the infected individual has symptoms (the period around onset of symptoms is associated with the highest levels of viral shedding), if the infected person was likely to generate respiratory aerosols (e.g., was coughing, singing, shouting), and other environmental factors (crowding, adequacy of ventilation, whether exposure was indoors or outdoors). Because the general public has not received training on proper selection and use of respiratory PPE, such as an N95, the determination of close contact should generally be made irrespective of whether the contact was wearing respiratory PPE. At this time, differential determination of close contact for those using fabric face coverings is not recommended.*

Critical Infrastructure

What About “Critical Infrastructure?”

- This is a consideration *only for quarantine requirements* (does not apply if an employee has principal symptoms or a positive test)
- Two potential arguments
 - CDC guidelines
 - COVID EPS specific exemptions

CDC Guidelines

- COVID EPA now refers to the CDC’s quarantine guidelines, which include special considerations for critical infrastructure as defined in the CISA Guidance
- This has been greatly narrowed since mid-November
 - Should be used as a **last resort and only in limited circumstances, such as when cessation of operation of a facility may cause serious harm or danger to public health or safety.**
 - Employers are encouraged to work with local health dept to determine whether appropriate
 - Must still follow risk mitigation precautions (temperature screening, etc.)

Critical Infrastructure COVID EPA Exemptions

- The close contact quarantine requirements do not apply to employees *who*:
 - *Are strictly necessary to preserve the functions of a facility where cessation of operation of the facility would cause serious harm or danger to the public health or safety AND*
 - Fall into one of these categories: healthcare professional, worker at healthcare facility, first responder, child protective services employee, worker at child care institution, worker at adult foster facility, worker at correctional facility, worker in energy industry who performs essential energy services as described in CISA Guidance or worker who has been specifically designated by Director of MDHHS as necessary for public health services

Immunity For Mistakes Prior to October 22

- PA 238 was first enacted on October 22, but it's provisions were retroactive to March 1
- Now, employers have an affirmative defense to claims based on acts prior to October 22 if they were operating in compliance with
 - CDC Guidance
 - Federal, state and local rules and regulations that had not been denied legal effect and the time of the conduct
 - Executive orders that had not been denied legal effect and the time of the conduct



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