Executive Order 2020-36 (COVID-19)

EXECUTIVE ORDER

No. 2020-36

Protecting workers who stay home, stay safe

when they or their close contacts are sick

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. In response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To suppress the spread of COVID-19, protect this state's critical health care resources from rapid depletion, and prevent needless deaths, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. This order limited gatherings and travel, and required all workers who are not necessary to sustain or protect life to stay home. Slowing the aggressively persistent spread of this destructive virus, however, requires more. Individuals permitted to go to work under Executive Order 2020-21 must stay home when they or their close contacts are sick—and they must not be punished for doing so. Accordingly, it is reasonable and necessary to provide certain protections against workplace discrimination to such individuals, to ensure they can do what is now most needed from them to protect the health and safety of this state and its residents.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. It is the public policy of this state that an employer shall not discharge, discipline, or otherwise retaliate against an employee for staying home when he or she is at particular risk of infecting others with COVID-19. To effectuate that policy:

   a. Employers are prohibited from discharging, disciplining, or otherwise retaliating against an employee described in sections 2 or 3 of this order for staying home from work for the periods described in those sections.

b. Employers must treat such an employee as if he or she were taking medical leave under the Paid Medical Leave Act, 2018 PA 338, as amended, MCL 408.961 et seq.

1. To the extent that the employee has no paid leave, the leave may be unpaid. Employers are permitted, but not required, to debit any hours that an employee described in sections 2 or 3 of this order stays home from work from the employee's accrued leave.

2. The length of such leave is not limited by the amount of leave that an employee has accrued under MCL 408.963 and must extend, whether paid or unpaid, as long as the employee remains away from work within the time periods described in sections 2 or 3 of this order.

c. Employers are prohibited from discharging, disciplining, or retaliating against an employee described in sections 2 or 3 of this order for failing 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.

d. Nothing in this section shall be taken to prevent an employer from discharging or disciplining an employee:

1. Who is allowed to return to work under sections 2 or 3 of this order but declines to do so;

2. With the employee's consent; or

3. For any other reason that is not unlawful.

e. The director of the Department of Labor and Economic Opportunity shall have authority to enforce this order in the same manner and to the same extent as the director enforces the Paid Medical Leave Act under section 7 of that act, MCL 408.967. In addition, the director shall refer all credible complaints of violations to the relevant licensing authority.

2. Subject to the exceptions in section 5 of this order, it is the public policy of this state that any and all individuals who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 should remain in their home or place of residence, even if they are otherwise permitted to leave under Executive Order 2020-21 or any executive order that may follow it, until:

a. three days have passed since their symptoms have resolved, and

b. seven days have passed since their symptoms first appeared or since they were swabbed for the test that yielded the positive result.

This section will cease to apply to anyone who, after showing symptoms, receives a negative COVID-19 test.

3. Subject to the exceptions in section 5 of this order, it is the public policy of this state that any and all people who have had close contact with an individual who tests positive for COVID-19 or with an individual who displays one or more of the principal symptoms of COVID-19 should remain in their home or place of residence, even if they are otherwise permitted to leave under Executive Order 2020-21 or any executive order that may follow it, until either 14 days have passed since the last close contact with the sick or symptomatic individual, or the symptomatic individual receives a negative COVID-19 test.

This section does not apply to the following classes of workers, provided that their employers' rules governing occupational health allow them to go to work:

a. Health care professionals.

b. Workers at a health care facility, as defined in section 7(d) of this order.

c. First responders (e.g., police officers, fire fighters, paramedics).

d. Child protective service employees.

e. Workers at child caring institutions, as defined in section 1 of Public Act 116 of 1973, MCL 722.111.

f. Workers at correctional facilities.

4. An individual described in sections 2 or 3 of this order who returns to work prior to the periods specified in sections 2 or 3, respectively, shall not be entitled to the protections against discharge, discipline, or retaliation provided under section 1 of this order.

5. It is the public policy of this state that individuals described in sections 2 and 3 of this order should leave the home or place of residence only:

a. To the extent absolutely necessary to obtain food, medicine, medical care, or supplies that are needed to sustain or protect life, where such food, medicine, medical care, or supplies cannot be obtained via delivery. All food, medicine, and supplies should be picked up at the curbside to the fullest extent possible.

b. To engage in outdoor activity, including walking, hiking, running, cycling, or any other recreational activity consistent with remaining at least six feet from people from outside their household.

6. It is the public policy of this state that if an individual described in sections 2 and 3 of this order leaves the home, he or she should wear some form of covering over their nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief, but that supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers.

7. For purposes of this order:

a. “The principal symptoms of COVID-19” are fever, atypical cough, or atypical shortness of breath.

b. “Employer” means the same as it does in section 2(f) of the Paid Medical Leave Act, MCL 408.962(f), except that it shall also include employers with fewer than 50 employees.

c. “Close contact” means being within approximately six feet of an individual for a prolonged period of time. Close contact can occur, for example, while caring for, living with, visiting, or sharing a health care waiting room with an individual.

d. “Health care facility” means the following facilities, including those which may operate under shared or joint ownership:

1. The entities listed in section 20106(1) of the Public Health Code, 1978 PA 368, as amended MCL 333.20106(1).

2. State-owned hospitals and surgical centers.

3. State-operated outpatient facilities.

4. State-operated veterans facilities.

5. Entities used as surge capacity by any of the entities listed in subdivisions (1)-(4) of this subsection.

8. Nothing in this order shall be taken to diminish or relax the restrictions on leaving the home established in Executive Order 2020-21 or any executive order that may follow it.

9. 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.

10. This order is effective immediately and continues until the end of the declared states of emergency and disaster.

Given under my hand and the Great Seal of the State of Michigan.

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