STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SENATE JOURNAL
MAY 7 2020 AM8:38
(via e-mail 5/6/2020
AJB)

EXECUTIVE ORDER

No. 2020-76

Temporary expansions in unemployment eligibility and cost-sharing

Rescission of Executive Order 2020-57

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 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. 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. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

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 mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is reasonable and necessary to temporarily suspend rules and procedures to expand eligibility for unemployment benefits and cost-sharing with employers.

Executive Order 2020-10 took such action. Executive Order 2020-24 reaffirmed that action and clarified and strengthened its expansion of eligibility for unemployment benefits and cost-sharing with employers. Executive Order 2020-57 continued those provisions and added additional provisions to make it easier for employers and workers to implement and use shared-work plans, in order to avoid layoffs, and to allow certain retired state employees to return to service without losing access to pension payments. This order continues those provisions and relaxes certain other requirements in order to allow the Unemployment Insurance Agency to more quickly process unemployment claims. With this order, Executive Order 2020-57 is rescinded.

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

1. Strict compliance with subdivision (a) of subsection (1) of section 29 of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, as amended ("Employment Security Act"), MCL 421.29(1)(a), is temporarily suspended as follows:

   (a) An individual must be considered to have left work involuntarily for medical reasons if that individual leaves work for any of the following reasons:

      (1) The individual is under self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immuno-compromised.

      (2) The individual has displayed at least one of the principal symptoms of COVID-19, which are a fever, atypical cough, and atypical shortness of breath.

      (3) The individual has had contact in the last 14 days with someone with a confirmed diagnosis of COVID-19. Contact for the purposes of healthcare exposures is defined as follows: a) being within approximately 6 feet (2 meters) of a person with COVID-19 for a prolonged period of time, without appropriate personal protective equipment consistent with Department of Health and Human Services recommendations; or b) having unprotected direct contact with infectious secretions or excretions of the patient (e.g., being coughed on, touching used tissues with a bare hand).

      (4) The individual is required to care for someone with a confirmed diagnosis of COVID-19.

      (5) The individual has a family care responsibility as a result of a government directive.

(b) An individual may be deemed laid off if that individual became unemployed for any of the reasons identified in section 1(a)(1)-(5) of this order.

2. Strict compliance with subsection (3) of section 48 of the Employment Security Act, MCL 421.48(3), is temporarily suspended to allow an individual who is on a leave of absence for any of the reasons identified in paragraph 1(a)1–5 of this order to be considered to be unemployed unless that individual is already on sick leave or receives a disability benefit.

3. Strict compliance with subsections (4) through (7) of Rule 421.210 of the Michigan Administrative Code is temporarily suspended to allow a new or additional claim for unemployment benefits filed within 28 days of the last day the claimant worked to be considered to have been filed on time, and a continued claim filed within 28 days of the last day of the period for which the claimant is instructed to report and has continued to report in a claim series to be considered to have been filed on time.

4. Strict compliance with subsection (d) of section 27 of the Employment Security Act, MCL 421.27(d), is temporarily suspended such that each eligible individual who files a claim or has an active claim as of the effective date of this order will receive not more than 26 weeks of benefits payable in a benefit year.

5. In order to allow employers and workers more flexibility in the use of shared-work plans, strict compliance with several sections of the Employment Security Act are temporarily suspended, as follows:

   (a) Strict compliance with subsections (1) and (2)(b) of section 28c, MCL 421.28c(1) and (2)(b), is temporarily suspended to the extent necessary to allow the Unemployment Insurance Agency to approve an employer's participation in a shared-work plan upon application by the employer, regardless of whether the employer has met the requirements of MCL 421.28c(1) and (2)(b).

   (b) Strict compliance with subsection (2)(f) of section 28c, MCL 421.28c(2)(f), is temporarily suspended to allow an application for a shared-work plan to be approved without the employer's certification that implementation is in lieu of layoffs that would affect at least 15% of the employees in the affected unit and would result in an equivalent reduction in workers, provided that the application must contain a certification that it is in lieu of layoffs that would affect at least 10% of the employees and result in an equivalent reduction in work hours.

   (c) Strict compliance with subsection (1)(b)(i) of section 28d, MCL 421.28d(1)(b)(i), is temporarily suspended to allow a shared-work plan to be approved whether or not it includes as a participating employee an employee who has been employed in the affected unit for less than three months before the date the employer applies for approval of the shared-work plan.

   (d) Strict compliance with subsection (2)(a) of section 28d, MCL 421.28d(2)(a), is temporarily suspended to allow the reduction percentage of a shared-work plan

to be less than 15% and more than 45%, provided that it shall be no less than 10% and no more than 60%

6. Any benefit paid to a claimant who is laid off or placed on a leave of absence must not be charged to the account of the employer or employers that otherwise would have been charged but instead must be charged to the Unemployment Insurance Agency's non-chargeable account. Effective March 25, 2020 at 11:59 pm, the benefits conferred on employers by this section are not available to employers determined to have misclassified workers.

7. Strict compliance with subdivision (a) of subsection (1) of section 28 of the Employment Security Act, MCL 421.28(1)(a), is temporarily suspended to the extent necessary to allow an unemployed individual to be eligible to receive benefits without a finding by the Unemployment Insurance Agency that the individual is actively engaged in seeking work.

8. Strict compliance with section 68c of the State Employees' Retirement Act, 1943 PA 240, as amended, MCL 38.68c, is temporarily suspended to the extent necessary to provide that the provisions of that section do not apply to a retirant who becomes employed by the Unemployment Insurance Agency or by the Michigan Occupational Safety and Health Administration on or after the date of this order. If such retirant remains employed by either of these agencies after the expiration of this order, section 68c will again apply.

9. Strict compliance with subsection (5) of section 29 of the Employment Security Act, MCL 421.29(5), is temporarily suspended to the extent necessary to allow an individual to be considered to have met the requirements of MCL 421.29(5) regardless of whether the individual performed services for the new employer and regardless of whether the new employment was for permanent, full-time work. That individual is not disqualified from receiving unemployment benefits and any benefits payable are charged to the Unemployment Insurance Agency's non-chargeable benefits account.

10. Strict compliance with subsection (c) of section 32 of the Employment Security Act, MCL 421.32(c), is temporarily suspended as follows: in determining an individual's nonmonetary eligibility to qualify for benefits, the Unemployment Insurance Agency shall not issue a determination with respect to an individual's separation from a base period employer other than the separating employer, and the individual shall not be required to have satisfied the requirements of subsections (2) and (3) of section 29 of the Employment Security Act, MCL 421.29, as it relates to base period employer separations other than the most recent separation from the separating employer.

11. Unless otherwise specified in this order, this order is effective retroactive to March 16, 2020. This order is effective immediately upon issuance and remains in effect during the declared states of emergency and disaster.

12. Executive Order 2020-57 is rescinded.

13. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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

Date: May 6, 2020

Time: 7:26 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE