

## EMPLOYER GUIDANCE

Michigan's Extended Stay Home (EO 2020-42) and  
Worker Protection (EO 2020-36) Orders  
April 9, 2020

### I. STAY HOME ORDER EXTENDED AND EXPANDED

On April 9, 2020, Governor Whitmer also extended and expanded the current Stay Home Order through April 30, 2020. The extended Stay Home Order (Executive Order 2020-42) prohibits all businesses and operations from requiring workers to leave their homes, unless those workers are necessary to sustain or protect life or to conduct minimum basic operations. Businesses and operations are to designate the workers who meet those criteria, and must adopt social distancing practices and other mitigation measures to protect workers and patrons in the performance of that in-person work. The new Order provides that essential and/or minimum basic operations workers are *not* required to carry written designations when commuting to and from work.

Under the new Order 2020-42, all public and private gatherings among persons outside a single household remain temporarily prohibited. Though Michiganders may leave the house to get groceries or needed supplies, the new order encourages people to limit the number of household members running errands to the maximum extent possible. As before, people may engage in outdoor activities like walking, hiking, running, cycling, kayaking, canoeing, or any other recreational activity, consistent with remaining at least six feet from people from outside a person's household and with other restrictions imposed by prior executive orders. The order clarifies, however, that *travel for vacations or for any other purpose is prohibited*. Also, after April 10, travel between two residences within the state is not permitted.

Order 2020-42 includes a new section imposing crowd-reduction restrictions on retail stores. Large stores must limit the number of people in the store at one time to no more than 4 customers for every 1,000 square feet of customer floor space; small stores must limit capacity to 25% of the total occupancy limits (including employees) under the fire codes. To regulate entry, stores must establish lines with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Large stores must also close areas of the store that are dedicated to carpeting, flooring, furniture, garden centers, plant nurseries, or paint.

### II. PROTECTING WORKERS WHO STAY HOME

Governor Whitmer expanded protections for employees who themselves or their family members contract symptoms of the novel coronavirus (COVID-19). Effective April 3, Executive Order 2020-36, titled "Protecting workers who stay home, stay safe when they or their close contacts are sick" (the "Order") continues until the end of the declared states of emergency and disaster. The

Order provides **mandatory leave for employees who contract symptoms of the novel coronavirus (COVID-19) (or test positive) to stay home until the symptoms pass or a negative test result is received.** Employers may not terminate, discriminate, or otherwise retaliate against employees for complying with this Order.

### **Sick Essential Workers Must Stay Home**

The Order provides that Essential Workers permitted to go to work under Michigan’s Stay Home Order must stay home when they or their close contacts are sick—and they must not be punished for doing so. Now, *all workers who test positive for COVID-19 or who display one or more of the principal symptoms of COVID-19 (e.g., abnormal cough, fever, shortness of breath)* must stay home until three days have passed since their symptoms have resolved, and seven days have passed since their symptoms first appeared or since they were first swabbed for the test that yielded the positive result. In all cases, the quarantine period expires when workers receive a negative COVID-19 test.

This Order additionally applies to all Essential Workers who have had close contact with an individual who tests positive for COVID-19 or with an individual who displays symptoms of COVID-19. In this instance, workers should stay home until either 14 days have passed since the last close contact with the sick or symptomatic individuals, or the symptomatic individual receives a negative COVID-19 test. This additional requirement does not apply to certain classes of workers, such as those in health care, first responders, child protective services, childcare institutions, and prisons, so long as the employer’s rules regarding occupational health otherwise permit them to go to work.

Essential Workers subject to the Order who are either sick or symptomatic (or who have been exposed to one who is sick or symptomatic) may still leave their home to obtain food, medical care, supplies, and engage in outdoor activities. In all cases, social distancing measures must be observed and some form of covering over their nose and mouth, such as a scarf, bandana, or handkerchief should be worn. N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders, and other critical workers.

### **New Protections For Sick Workers**

Employers may not terminate, discipline, discriminate, or otherwise retaliate against essential workers acting in compliance with this Order. Employers must treat employees as if he or she were taking medical leave under the Michigan Paid Medical Leave Act. If the employee has no paid leave, then the leave may be unpaid. Employers may debit leave under the Order from the employee’s accrued leave. In all cases, if paid and unpaid leave is exhausted, the employer must extend the unpaid leave as long as the employee remains away from work pursuant to the Order. Likewise, employers may not discipline, discharge, or retaliate against an employee for failing to provide documentation regarding their COVID-19 symptoms.

Importantly, the Order applies to **all** employers, not just those with 50 or more employees, unlike the Paid Medical Leave Act. In addition, we previously wrote that on March 18, 2020, the federal government enacted the Families First Coronavirus Response Act (“FFCRA”). Effective April 2, 2020 and continuing through December 31, 2020, employers with fewer than 500 employees must

provide two weeks of Emergency Paid Sick Leave (“EPSL”) to their employees (including part time employees) for their employees who must take leave due to COVID-19. Employers may not require employees to use other forms of paid leave prior to use of EPSL. Employers cannot retaliate against employees for taking EPSL.

The Order does not prevent an employer from discharging or disciplining an employee who is allowed to return to work but refuses to do so; where the employee consents; or for any other lawful reason.

### **Enforcement**

The Director of the Department of Labor and Economic Opportunity shall have authority to enforce the Order and shall refer all credible complaints to the relevant licensing authority. Importantly, there is no private right of action for enforcement of this Order.

Also importantly for employers, the Order does not mention bad faith claims from employees that either they or those close to them tested positive for COVID-19/exhibited COVID-19 symptoms. We expect that in most cases, the State will side with employees, given the stated policy objective to keep as many Michiganders as home as possible and the explicit directive that employees need not provide documentation of their health condition.