



Michigan Employers Get New Year Relief With Revised COVID-19 Anti-Retaliation Law

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Michigan employers got substantial relief from some of the more onerous provisions of the COVID-19 anti-retaliation law that was part of the Oct. 22 COVID-19 compromise legislative package. The amended law is effective as of Dec. 29, 2020, when it was signed by Michigan Governor Gretchen Whitmer.

Perhaps the most significant amendment is the removal of a provision from the original legislation entitling employees to disqualify themselves from work for up to 14 days due to alleged close contact with an individual displaying COVID-19 symptoms. Employers found this provision to be almost impossible to fairly police, though close contact with an individual who tests positive for COVID-19 is still covered by the law. Overall, the statute prohibits an employer from taking adverse action against an employee who is absent from work because of COVID-19.

[View a marked copy of the amended law showing the changes to the original P.A. No. 238.](#)

This updated legislation was prompted by the CDC's revision of its quarantine guidelines that conflicted with the language in the original P.A. No. 238. With its updated guidance, the CDC recommends a 10-day quarantine without testing or symptoms and a 7-day quarantine with a negative diagnostic test and no symptoms. The original Michigan legislation was based on the previous guidance recommending 14- and 10-day quarantines, respectively.

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The amended Michigan law now takes an “evergreen” approach with new language that adopts the latest CDC guidance. This approach is also taken regarding the law’s definitions of “close contact,” “isolation period,” and “quarantine period.” An isolation period applies to someone infected with COVID-19 (typically 10 days after the onset of symptoms) while a quarantine period applies to someone with close contact.

The amended law also provides employers with opportunities to follow the specific advice of a health care provider or public health official concerning the impacted employee, and adds a couple of new exemptions. In addition to the health care, first responder, care giving, and correctional employees exempted in the original legislation, now workers in the energy industry who perform essential energy services (as described in [CISA guidance “Essential Critical Infrastructure Workforce,” version 2.0, March 28, 2020](#)) are also exempted.

Other industries were less successful in their lobbying efforts to be exempt from Michigan’s COVID-19 Anti-Retaliation Law. The Michigan Department of Health and Human Services director can exempt workers identified as “necessary to ensure the continuation of essential public health services, or to avoid serious harm or danger to public health or public safety,” but none have been designated so far.

For all exempted employees, the law now clarifies that they must not be experiencing symptoms, must not have tested positive for COVID-19, and “may be allowed to participate in onsite operations when strictly necessary to preserve the function of a facility where cessation of operation of the facility would cause serious harm or danger to public health or safety.”