

Governor Whitmer Signs Bills to Preserve COVID-19 Related Unemployment Benefits, Protect Employers from COVID-19 Lawsuits and Protect Employees Who Stay Home

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Governor Whitmer signed several bills into law following the Michigan Supreme Court's October 2nd decision which invalidated all COVID-19 related executive orders that Governor Whitmer issued after April 29, 2020. The bills were a bipartisan effort to address questions created by the Michigan Supreme Court decision which limited Governor Whitmer's authority to issue and renew executive orders.

Unemployment Benefits

On Tuesday, October 20, Governor Whitmer signed Senate Bill 0886, which amends the Michigan Employment Security Act and codifies Executive Order 2020-76. The bill allows employees who are laid off or placed on a leave of absence because of COVID-19 to receive unemployment benefits. Under the bill, such benefits are charged to the nonchargeable account of the Unemployment Insurance Agency. The bill allows employees who file claims for weeks beginning before January 1, 2021 who have COVID-19 or need to take time off to care for someone with COVID-19 to receive 26 weeks of unemployment benefits, as opposed to 20 weeks of benefits. The bill also allows more businesses to participate in the shared-work program.

Protections for Businesses and Employers

On Thursday, October 22, Governor Whitmer signed House Bill 6030 and House Bill 6031 which create protections for businesses.

House Bill 6030 provides minimum requirements for tort claims alleging exposure to COVID-19 and establishes liability standards. The bill protects a "person" who acts in compliance with all federal, state, and local statutes, rules, regulations, executive orders, and agency orders related to COVID-19 that had not been denied legal effect at the time of exposure from liability for a COVID-19 claim.

Similarly, House Bill 6031 amends the Michigan Occupational Safety and Health Act to specify that an employer is not liable for an employee's exposure to COVID-19 if the employer was operating in compliance with all federal and/or state statutes or regulations, executive orders, state agency orders, and public health guidance that had not been denied legal effect at the time of the exposure.

In other words, these two bills will protect business from liability if they were following all legal authority and guidance concerning COVID-19 at the time of the exposure.

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Requirements and Protections for Employees

House Bill 6032, effective retroactive to March 1, 2020, prohibits an employee who tested positive for COVID-19 or displayed the principal symptoms of COVID-19 from reporting to work until the employee meets certain conditions. Additionally, it prohibits an employee who has had close contact with someone who has tested positive for COVID-19 or was with an individual who displayed the principal symptoms of COVID-19 from reporting to work until the certain conditions are met. The bill codifies Executive Order 172.

The bill makes clear that the “principal symptoms of COVID-19” follows the definition provided by the Michigan Department of Health and Human Services.

The bill also prohibits an employer from discharging, disciplining, or otherwise retaliating against an employee who complied with the return-to-work conditions relating to COVID-19. It also bans employers from terminating an individual who opposes a violation of the bill or who reports a violation of public health protocols.

An employee who is aggrieved by a violation of this bill may bring a civil action for injunctive relief or damages, or both, in the circuit court for the county where the violation occurred. A prevailing plaintiff may receive damages of at least \$5,000.

The Bottom Line

Employers should continue to follow the all COVID-19 related laws and guidance and update their COVID-19 preparedness and response plans as appropriate in order to avoid liability.

Employers may contact any member of Bodman’s Workplace Law Group to discuss the effects of the bills on their workforce. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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