

FEELING SICK OR EXPOSED? “Essential” Employees Can Avoid Work, Avoid Discipline And Get Paid

Proceed carefully before disciplining an “essential” employee who refuses to work during this pandemic. Executive Order 2020-36 (“Order”) prohibits discharge, discipline, or retaliation against an “essential” employee permitted to work under Executive order 2020-21 if the refusal is based on a “particular risk of infecting others with COVID-19.” Under the Order, this risk exists when the employee:

- Tests positive for or displays one or more principle symptoms of COVID-19; or
- Has had “close contact” with someone who tests positive for or displays one or more principle symptoms of COVID-19.¹

While these requirements are largely consistent with CDC guidelines, the Order prohibits discharge, discipline or retaliation against an employee for failing to provide documentation substantiating the claimed risk.

And, while handicapping employer’s ability to verify employee claims, the Order directs employers to provide leave consistent with the Michigan Paid Medical Leave Act and, if no paid leave is available, unpaid leave. There is no limit. An employer cannot require the employee return to work sooner than:

- Three days after symptoms have resolved;
- Seven days after symptoms first appeared or since they were swabbed for the test yielding the positive result; and
- Fourteen days after the last close contact with the sick or symptomatic individual, or the symptomatic individual receives a negative COVID-19 test.

This Order, along with enhanced unemployment that pays many employees more to remain unemployed, may be a significant challenge for many critical employers who are already struggling with staffing issues. We are working with clients on solutions. Please contact any member of the COVID-19 response team or Bodman’s Workplace Law Group for assistance.

Please contact your Bodman attorney or Katherine Cser at (248) 743-6031 kcser@bodmanlaw.com or Aaron Graves at (313) 392-1075 or agraves@bodmanlaw.com for more information. 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.

¹ The Order does not apply to certain employees, such as health care professionals and first responders.