

Governor Signs EO-172 Tightening the Symptomology Necessary for Employees to Stay Home From Work Without Repercussions

By: John T. Below, Member, Workplace Law Practice Group

Gov. Gretchen Whitmer signed [Executive Order 2020-172](#) on Thursday, Aug. 27, replacing [Executive Order 2020-166](#).

EO-172, the intent of which is to protect employees from retaliation for missing work due to COVID-19 symptoms, diagnosis or exposure, tightens the restrictions on the symptoms necessary for an employee to stay home without facing repercussions from their employer. The former order, EO-166, allowed people to stay home, barring their employer from disciplining them if they had any of the following symptoms: Sore throat, fever, a new uncontrolled cough that causes difficulty breathing, diarrhea, vomiting, abdominal pain, new onset of a severe headache or a new loss of taste or smell. EO-172 is more restrictive, stating that employees must have a fever, uncontrolled cough or shortness of breath to stay home from work – or at least *two* of the following symptoms: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting or abdominal pain. More importantly, under EO-172, an employee cannot miss work/stay home without employer repercussions if any of their symptoms *can be explained by a known medical or physical condition*. This is a new qualifier and should work to reduce the number of employees staying home from their places of employment. Employees with the approved symptoms, which cannot be explained by a known medical or physical condition, can stay home from work without penalty and should be treated like any employee on paid leave, per EO-172. If the employee has no paid leave time left, their employer can count it against the worker's accrued leave or not pay the worker for the missed time.

To understand how EO No. 2020-172 impacts your business, contact any member of Bodman's Workplace Law Group. 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.

WORKPLACE LAW PRACTICE GROUP	AARON D. GRAVES <i>Chair</i> 313.392.1075 agraves@bodmanlaw.com	JOHN T. BELOW 248-743-6035 jbelow@bodmanlaw.com	JOHN C. CASHEN 248.743.6077 jcashen@bodmanlaw.com
	GARY S. FEALK 248-743-6060 gfealk@bodmanlaw.com	STEVEN J. FISHMAN 248.743.6070 sfishman@bodmanlaw.com	JOHN DAVID GARDINER 616.205.3123 jgardiner@bodmanlaw.com
	MELISSA M. TETREAU 248.743.6078 mtetreau@bodmanlaw.com	BRENT R. SCOTT 616.205.3317 bscott@bodmanlaw.com	REBECCA C. SEGUIN-SKRABUCHA 313.393.7594 rseguin-skrabucha@bodmanlaw.com
	KATHERINE F. CSER 248.743.6031 kcser@bodmanlaw.com	MICHELLE L. KOLKMEYER 248.743.6031 mkolkmeier@bodmanlaw.com	DAVID B. WALTERS 248.743.6052 dwalters@bodmanlaw.com
			KAREN L. PIPER <i>Of Counsel</i> 248.743.6025 kpiper@bodmanlaw.com