

SUBSTITUTE FOR
SENATE BILL NO. 1258

A bill to amend 2020 PA 238, entitled
"An act to prohibit an employer from taking certain actions against
an employee who does not report to work under certain circumstances
related to COVID-19; to prohibit an employee from reporting to work
under certain circumstances related to COVID-19; to prohibit
discrimination and retaliation for engaging in certain activities;
and to provide remedies,"
by amending sections 1, 5, and 12 (MCL 419.401, 419.405, and
419.412), and by adding section 13.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. As used in this act:
- 2 (a) "Close contact" means ~~being within approximately 6 feet of~~
3 ~~an individual for 15 minutes or longer.~~ **that term as defined in the**
4 **United States Centers for Disease Control and Prevention's**

1 **guidelines regarding COVID-19 at the time the contact occurred.**

2 (b) "COVID-19" means the novel coronavirus identified as SARS-
3 CoV-2 or a virus mutating from SARS-CoV-2.

4 (c) "Employee" means an individual employed by an employer and
5 whose primary workplace is not the individual's residence.

6 (d) "Employer" means a person or a state or local governmental
7 entity that employs 1 or more individuals.

8 (e) "First responder" means any of the following:

9 (i) A law enforcement officer.

10 (ii) A firefighter.

11 (iii) A paramedic.

12 (f) "Health care facility" means any of the following
13 facilities, including those that may operate under shared or joint
14 ownership, and a facility used as surge capacity by any of the
15 following facilities:

16 (i) An entity listed in section 20106(1) of the public health
17 code, 1978 PA 368, MCL 333.20106.

18 (ii) A state-owned hospital or surgical center.

19 (iii) A state-operated outpatient facility.

20 (iv) A state-operated veterans' facility.

21 (g) "Infected with COVID-19" means displaying the principal
22 symptoms of COVID-19 or having tested positive for COVID-19 prior
23 to the end of the isolation period.

24 (h) "Isolation period" means the recommended number of days
25 that an individual be in isolation after the individual first
26 displays the principal symptoms of COVID-19 as prescribed in the
27 United States Centers for Disease Control and Prevention's
28 guidelines regarding COVID-19.

29 (i) ~~(g)~~"Person" means an individual, partnership,

1 corporation, association, or other legal entity.

2 (j) ~~(h)~~ "Principal symptoms of COVID-19" **has the definition**
 3 **provided by order of the director or chief medical executive of the**
 4 **Michigan department of health and human services. In the event that**
 5 **the term is not defined by the director or chief medical executive**
 6 **of the Michigan department of health and human services at the time**
 7 **of an action taken under section 5, principal symptoms of COVID-19**
 8 ~~has the definition provided by order of the director or chief~~
 9 ~~medical executive of the Michigan department of health and human~~
 10 ~~services. In the event that the term is not defined by the director~~
 11 ~~or chief medical executive of the Michigan department of health and~~
 12 ~~human services at the time of an action taken under section 5,~~
 13 ~~principal symptoms of COVID-19 means either or both of the~~
 14 following:

15 (i) One or more of the following not explained by a known
 16 medical or physical condition:

- 17 (A) Fever.
- 18 (B) Shortness of breath.
- 19 (C) Uncontrolled cough.

20 (ii) Two or more of the following not explained by a known
 21 medical or physical condition:

- 22 (A) Abdominal pain.
- 23 (B) Diarrhea.
- 24 (C) Loss of taste or smell.
- 25 (D) Muscle aches.
- 26 (E) Severe headache.
- 27 (F) Sore throat.
- 28 (G) Vomiting.

29 (k) "Quarantine period" means the recommended number of days

1 that an individual be in quarantine after the individual is in
 2 close contact as prescribed in the United States Centers for
 3 Disease Control and Prevention's guidelines regarding COVID-19.

4 Sec. 5. (1) An employee who tests positive for COVID-19 ~~or~~
 5 ~~displays the principal symptoms of COVID-19 shall~~ **must** not report
 6 to work until **they are advised by a health care provider or public**
 7 **health professional that they have completed their isolation**
 8 **period, or** all of the following conditions are met:

9 (a) If the employee has a fever, 24 hours have passed since
 10 the fever has stopped without the use of fever-reducing
 11 medications.

12 (b) ~~Ten days have~~ **The isolation period has** passed. ~~since~~
 13 ~~either of the following, whichever is later:~~

14 ~~(i) The date the employee's symptoms first appeared.~~

15 ~~(ii) The date the employee received the test that yielded a~~
 16 ~~positive result for COVID-19.~~

17 (c) The employee's principal symptoms of COVID-19 have
 18 improved.

19 (d) If the employee has been advised by a health care provider
 20 or public health professional to remain isolated, the employee is
 21 no longer subject to such advisement.

22 (2) An employee who displays the principal symptoms of COVID-
 23 19 but has not yet tested positive shall not report to work until 1
 24 of the following conditions are met:

25 (a) A negative diagnostic test result has been received.

26 (b) All of the following apply:

27 (i) The isolation period has passed since the principal
 28 symptoms of COVID-19 started.

29 (ii) The employee's principal symptoms of COVID-19 have

1 improved.

2 (iii) If the employee had a fever, 24 hours have passed since
3 the fever subsided without the use of fever reducing medication.

4 (3) ~~(2)~~ Except as provided in subsection ~~(3)~~, **(4)**, an employee
5 who has close contact with an individual who tests positive for
6 COVID-19 ~~or with an individual who displays the principal symptoms~~
7 ~~of COVID-19~~ shall not report to work until 1 of the following
8 conditions is met:

9 (a) ~~Fourteen days have~~ **The quarantine period has** passed since
10 the employee last had close contact with the individual.

11 (b) ~~The individual with whom the employee had close contact~~
12 ~~receives a medical determination that they did not have COVID-19 at~~
13 ~~the time of the close contact with the employee.~~ **The employee is**
14 **advised by a health care provider or public health professional**
15 **that they have completed their period of quarantine.**

16 (4) ~~(3)~~ Subsection ~~(2)~~ does not apply to an **An** employee who is
17 any of the following, **is otherwise subject to quarantine, is not**
18 **experiencing any symptoms, and has not tested positive for COVID-19**
19 **may be allowed to participate in onsite operations when strictly**
20 **necessary to preserve the function of a facility where cessation of**
21 **operation of the facility would cause serious harm or danger to**
22 **public health or safety:**

23 (a) A health care professional.

24 (b) A worker at a health care facility.

25 (c) A first responder.

26 (d) A child protective service employee.

27 (e) A worker at a child caring institution, as that term is
28 defined in section 1 of 1973 PA 116, MCL 722.111.

29 (f) A worker at an adult foster care facility, as that term is

1 defined in section 3 of the adult foster care facility licensing
2 act, 1979 PA 218, MCL 400.703.

3 (g) A worker at a correctional facility.

4 (h) A worker in the energy industry who performs essential
5 energy services as described in the United States Cybersecurity and
6 Infrastructure Security Agency's Guidance on the Essential Critical
7 Infrastructure Workforce: Ensuring Community and National
8 Resilience in COVID-19 Response, Version 2.0, March 28, 2020.

9 (i) A worker identified by the director of the department of
10 health and human services as necessary to ensure continuation of
11 essential public health services and enforcement of health laws, or
12 to avoid serious harm or danger to public health or public safety.
13 The director of the department of health and human services shall
14 designate categories of critical employees at facilities where
15 cessation of operations would cause serious harm or danger to
16 public health or safety.

17 Sec. 12. This act does not ~~affect~~ **do either of the following:**

18 (a) **Affect** rights, remedies, or protections under the worker's
19 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to
20 418.941, including the exclusive application of that act.

21 (b) **Affect** rights, remedies, or protections under the
22 whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

23 Sec. 13. Notwithstanding any other provision of this act, for
24 a claim brought under section 7 relating to violations of section
25 3(1)(a) to (b) and section 5 arising after February 29, 2020 and
26 before October 22, 2020, an employer may demonstrate, as an
27 affirmative defense to liability under section 7, that it was
28 operating in compliance with all of the following related to
29 quarantine and isolation of employees:

1 (a) United States Centers for Disease Control and Prevention
2 guidance.

3 (b) All federal, state, and local statutes, rules, and
4 regulations that had not been denied legal effect at the time of
5 the conduct that allegedly violated section 7.

6 (c) All executive orders and agency orders that had not been
7 denied legal effect at the time of the conduct that allegedly
8 violated section 7.