

April 10, 2020

COVID-19 and Michigan's Executive Orders

Public Act 302 of 1945, called the "Emergency Powers of Governor," was enacted near the end of World War II. It authorizes the governor to declare a state of emergency and exercise certain powers for that period.

Public Act 390 of 1976, called the "Emergency Management Act," is meant for "planning, mitigation, response, and recovery from natural and human-made disaster." Under PA 390, the governor may declare a "state of disaster" or a "state of emergency." A disaster is "an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from a natural or human-made cause" and names epidemics as such a disaster. In both cases, the statute says the emergency may only last 28 days. After this, the governor may request an extension, but only for a specified period, and the extension is subject to legislative approval.

Thankfully, the state rarely needs to use these emergency powers. Michigan law provides the governor with broad, yet temporary, powers to set policies aimed at mitigating and preventing harm to the public health in an emergency.

Governor Whitmer issued an executive order on March 10th declaring a state of emergency across the entire state. On Tuesday, April 7th, the Michigan State Senate and House voted to approve an extension on the governor's state of emergency declaration for another 23 days. Governor Whitmer had originally called for a 70-day extension, however the senate opted for a shorter timeframe. The state of emergency, originally scheduled to end on April 7th, will now end on April 30th.

The declaration enables state emergency response teams working with municipalities to respond more quickly to local needs if the virus spreads. Under an emergency, the state can provide communities access to resources like protective equipment or personnel.

If the resources of the state and local government are unable to cope with the emergency or disaster, the Governor may request assistance through the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), Region V Office.

[Executive Order 2020-42 "Stay Home, Stay Safe"](#)

On April 9, 2020, Governor Whitmer ordered an extension to Michigan's Stay Home, Stay Safe Executive Order through April 30, 2020. The original order was set to expire on April 13, 2020.

In general, while the extended order made some modifications to the original order, it will not result in significant alterations to the day-to-day operations of businesses that are permitted to continue in-person work:

- The extended order includes the same categories of "critical infrastructure workers" that were identified in the original order, and adds some additional categories for certain retail stores, laundromats and dry cleaners, and (to a limited extent) hotels, motels, and motor vehicle dealerships.
- The extended order requires businesses that remain open to develop a "COVID-19 preparedness and response plan."
- The extended order adds new restrictions on retail stores to limit public access and restrict the sales of non-essential goods.

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The extended order, like the original order, requires a business to make written designations of its critical infrastructure workers. Businesses that already made these designations will not need to do so again.

New Requirement of COVID-19 Preparedness and Response Plan

The extended order requires businesses that maintain in-person operations to develop a COVID-19 preparedness and response plan, consistent with the recommendations in the Occupational Safety and Health Administration's [Guidance on Preparing Workplaces for COVID-19](#).

New Restrictions on Retail Stores Open to Public to Reduce Crowds

Under the extended order, retail stores that remain open for in-person sales must take certain measures to limit public access. These measures include establishing lines to regulate entry and marking off areas where patrons can stand 6 feet apart. Stores with less than 50,000 square feet of customer floor space must limit the number of people (including employees) in the store to 25% of the total occupancy limit. Larger stores must limit the number of customers to 4 people per 1,000 square feet.

Larger stores must also comply with measures to restrict sales of non-essential goods. Under the extended order, they must close areas of the store that are dedicated to the sale of carpet, flooring, furniture, garden centers, plant nurseries, and paint, and they must refrain from advertising goods that are not groceries, medical supplies, or items necessary to maintain the safety, sanitation, and basic operation of residences. The order also requires these larger stores to establish at least two hours of dedicated shopping time for vulnerable populations.

Executive Order 2020-36 Protecting Workers

On Friday, April 3, 2020, Governor Whitmer signed Executive Order 2020-36 that takes effect immediately for all Michigan residents in order to help mitigate community spread.

- People who test positive or who are experiencing symptoms must wait to leave their homes until three days have passed since their symptoms have resolved and seven days have passed since symptoms first appeared, or since they were swabbed for the test that yielded the positive result.
- In addition, any and all close contacts of a symptomatic individual or of someone who has tested positive for COVID-19 should remain in their home until 14 days have passed or the symptomatic individual receives a negative COVID-19 test.
- Individuals and household members who test positive for COVID-19 or who display one or more of the principal symptoms may leave their home or place of residence when necessary to obtain food, medicine, or supplies that are needed to sustain or protect life and when those items cannot be obtained via delivery. People may also engage in outdoor activities, including walking, hiking, running, cycling, or any other recreational activity consistent while remaining at least six feet from people from outside the individual's household.
- Health-care professionals, workers at a health-care facility, first responders (e.g., police officers, fire fighters, paramedics), child protective service employees, workers at child caring institutions and correctional officers are **exempt** from staying at home if a member of their household tests positive for COVID-19 or displays one or more of the principal symptoms provided that their employers' rules governing occupational health allow them to go to work.
- Prohibits all employers from discharging, disciplining, or otherwise retaliating against an employee for staying home from work if they or one of their close contacts tests positive for COVID-19 or has symptoms of the disease.

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The order does two general things:

1. Directs individuals “at particular risk” of spreading COVID-19 to stay home, even if they could work (as an essential worker) under Michigan’s prior stay-at-home order 2020-21
2. Creates employment protections for employees who are “at particular risk” when they stay home

Q. How long must individuals stay home under this order?

1. Directly impacted individuals that test positive or are experiencing symptoms must stay home until:
 - a. 3 days after their symptoms have resolved AND
 - b. 7 days after their symptoms first appeared or since they were swabbed and received a positive result, or
 - c. They receive a negative test result
2. Individuals in “close contact”, must stay home:
 - a. 14 days have passed since their last contact with an “at risk” person, or
 - b. They receive a negative test result

Q. What are the principal symptoms?

- Fever
 - The Centers for Disease Control and Prevention considers a reading of 100.4 degrees Fahrenheit a fever. A person whose temperature is normally lower than the average temperature, may have a fever when their temperature is less than 100.4.

While an actual temperature reading is the best diagnostic tool for fevers, the CDC also says it considers a fever to be present when a person feels hot to the touch, has previously reported feeling feverish (possibly with chills), or looks flushed or glassy-eyed.
- Atypical Cough
- Atypical shortness of breath

Q. What is “Close Contact”?

Close Contact means “being within approximately six feet of an individual for a prolonged period of time”. Prolonged period of time is not defined.

Q. What Employment Protections are included in the order?

Think of the EEOC statement in your handbook of who you do not discriminate against, this executive order is another exception to the at will employment. The protection is employee controlled and they have the control as to whether or not they should be staying home.

- Employers cannot discharge, discipline, or retaliate against an “at risk” employee for staying home for the periods described
 - You can for failure to return after the Executive Order period ends
- Employers cannot take adverse action for an employee’s failure to comply with a requirement to document that the employee or the individual with whom the employee has had close contact or has one or more of the principal symptoms of COVID-19
 - You can ask, but not take action if the employee refuses to supply documentation
- Employees “at risk” must be treated as taking a medical leave under Michigan’s Paid Medical Leave Act, MCL 408.961 et seq.

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- If the employee has exhausted paid leave under MPMLA, or it does not apply, the leave can be unpaid
- Employers are permitted, but not required, to reduce hours from employee’s accrued leave
- Leave continues for duration of stay home periods under the EO (even when any paid leave is exhausted)

Q. What Employers are subject to the order?

All employers are subject to the order. There are no exceptions for small employers.

Q. Are any individuals excluded from the order?

Directly impacted individuals: No Exclusions

Individuals in “close contact”:

- Health care professionals
- Workers at health care facility, as defined by the EO
- First Responders (e.g. police officers, fire fighters, paramedics)
- Child protective service employees
- Workers at child caring institutions, as defined in MCL 722.111
- Workers at correctional facilities

If you are a healthcare or other institution that is excluded under other orders, you are still subject to this order for employees that test positive or who display at least one principal symptom.

Q. How long is the leave under this order?

It will be determined on a case by case basis. There is a potential for consecutive periods. An employee could have symptoms and ordered to self-quarantine without a test. Their condition might get worse and then are given a test that comes back positive. They must stay out a minimum of 3 days after their symptoms resolve or 7 days after the positive test result. Then if their spouse starts experiencing symptoms, they must wait 14 days as they were in close contact. Then if their child(ren) start experiencing symptoms, it will be additional time and so on and so on.

Q. How does this order interact with the Unemployment [Executive Order 2020-24](#)?

If there is a COVID-19 reason, then able, available and seeking work requirements do not apply under EO24. The Unemployment Insurance Agency is going to make the decision and they will most likely be approved under EO36.

EO 36 – Stay Home / Leave Reasons	EO 24 – Unemployment Reasons
Stay Home if:	Eligible for unemployment if:
<ul style="list-style-type: none"> • Tested positive for COVID-19 	<ul style="list-style-type: none"> • On a leave because of self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised
<ul style="list-style-type: none"> • Display at least one principal symptom 	<ul style="list-style-type: none"> • Displaying the symptoms of COVID-19
<ul style="list-style-type: none"> • Has had close contact with person who tested positive or who displays symptoms 	<ul style="list-style-type: none"> • Having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19
	<ul style="list-style-type: none"> • Need to care for someone with a confirmed diagnosis of COVID-19 or a family care responsibility as a result of a government directive

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- If an employee tests positive, there isn't a matching reason under EO 24, but they are most likely unable to work and will probably receive unemployment.
- If an employee has at least one principal symptom, then there is a direct correlation with a reason under EO24, so that employee would be eligible for unemployment.
- If an employee is in close contact with a person has a confirmed diagnosis, then they would be eligible for unemployment.
- If an employee is in close contact with a person who displays symptoms (without a confirmed diagnosis), there isn't a direct correlation with EO24 and they would not be eligible for unemployment. But, it is decided by the unemployment agency and they are likely going to get the benefits.

Q. How does Executive Order 2020-36 interact with the FFCRA?

Under the FFCRA, the reasons for emergency paid sick leave is unable to work (or telework) and leave is needed because an employee:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19
- Has been advised by a health care provider to self-quarantine related to COVID-19
- Is experiencing COVID-19 symptoms and is seeking a medical diagnosis
- Is caring for an individual subject to quarantine or isolation order or who was advised by a health provider to self-quarantine

The FFCRA is medical driven, not employee driven. The employee has to have been advised or is seeking a medical diagnosis. Under EO 2020-36, the employer can ask for documentation, but cannot retaliate for the employee failing to provide documentation. If the employee is seeking payment under the FFCRA, the employer will want to require documentation in order to receive the tax credit under the FFCRA.

Executive Order 2020-36 **is** a state "quarantined or isolation order" that may trigger paid emergency sick leave under the first bullet and documentation is likely going to be Executive Order 2020-36 itself.

Q. What are the most trusted information resources?

[44North Covid-19 Resources Page](#)
[Coronavirus.gov](https://www.cdc.gov)
[Centers for Disease Control and Prevention \(CDC\)](https://www.cdc.gov)
[World Health Organization \(WHO\)](https://www.who.int)
[Michigan.gov/coronavirus](https://www.michigan.gov/coronavirus)
[Michigan.gov/Whitmer News](https://www.michigan.gov/Whitmer)
[Occupational Safety and Health Administration \(OSHA\)](https://www.osha-slc.gov)
[U.S. Department of Labor](https://www.dol.gov)