

EMPLOYEE AND EMPLOYER COVID-19 PROVISIONS

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House Bill 6032 as introduced
Sponsor: Rep. Graham Filler
Committee: Judiciary
Complete to 8-31-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6032 would create a new act to prohibit an employee from reporting to work under certain circumstances related to COVID-19, prohibit certain employer actions against certain employees, and provide remedies. The new act would be repealed effective March 31, 2021.

Employees with symptoms or positive test

The bill would prohibit an *employee* who tests positive for *COVID-19* or who displays one or more of the *principal symptoms of COVID-19* from reporting to work until he or she receives a negative COVID-19 test result or until both of the following conditions are met:

- Three days have passed since the employee's symptoms have ended.
- Seven days have passed since either of the following (whichever is later):
 - The date the employee's symptoms first appeared.
 - The date the employee received the test that yielded a positive result for COVID-19.

Employee would mean an individual employed by an *employer* and whose primary workplace is not his or her home.

Employer would mean an individual, partnership, corporation, association, or other legal entity, including a state or local governmental entity, that employs one or more individuals. (The bill specifies that the new act would apply to public employers and public employees to the extent consistent with section 5 of Article XI of the state constitution. That section establishes a framework for the classified state civil service and the Civil Service Commission.)

COVID-19 would mean the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.

Principal symptoms of COVID-19 would mean a fever, atypical cough, or atypical shortness of breath.

Employees with close contact

The bill would also prohibit an employee who has had *close contact* with an individual who tests positive for COVID-19 or with an individual displaying one or more of the principal symptoms of COVID-19 from reporting to work until one of the following conditions is met:

- 14 days have passed since the employee last had close contact with the individual.
- The individual the employee had close contact with tests negative for COVID-19.

Close contact would mean being within approximately six feet of an individual for a prolonged period of time.

However, this prohibition would not apply to the following employees:

- A health care professional. (The term is not defined in the bill. Under the Public Health Code, a *health care profession* means an occupation or employment performed by an individual licensed or registered under Article 15 of the code.)
- A worker at a health care facility, as that term is defined in the bill.
- A first responder, defined to mean a law enforcement officer, firefighter, or paramedic.
- A child protective service employee.
- A worker at a child caring institution, as defined in section 1 of 1973 PA 116.
- A worker at a correctional facility.

Adverse employment actions

The bill would prohibit an **employer** from taking an **adverse employment action** or otherwise discriminating or retaliating against an employee who complies with the prohibitions described above or who opposes an employer's violation of the bill.

Adverse employment action would include any of the following:

- Disciplinary action or termination of employment.
- A demotion or a failure to provide a promotion.
- An involuntary change in a work shift or involuntary reduction of work hours.
- A reduction of employment benefits.
- A reduction in salary or wage.
- Any other changes in the terms or conditions of employment.

This provision would not apply to an employee who reports to work before the end of the applicable period described above. It also would not apply to an employee who fails to be tested for COVID-19 within three days of displaying one or more of its principal symptoms.

An employer could discharge or discipline an employee if one or more of the following apply:

- The bill does not prohibit the employee from reporting to work, but the employee does not report to work, and the employee's failure to report to work is not otherwise protected by law.
- The employee consents to the discharge or discipline.
- There is any other lawful basis to discipline or discharge the employee.

Remedy for an aggrieved employee

An employee aggrieved by a violation of the new act could bring a civil action for appropriate injunctive relief or **damages**, or both. The lawsuit could be filed in the circuit court for the county where the alleged violation occurred or where the employer is located or has its principal place of business. If an employee prevailed in the action, the court would have to award him or her damages of at least \$5,000.

Damages would mean actual injury or loss, reasonable attorney fees, reasonable court costs, or any combination of these.

Employment contracts and agreements

If a collective bargaining agreement or other contract that is inconsistent with the new act is in effect for an employee on the act's effective date, the act would apply to the employee

beginning on the date the collective bargaining agreement or other contract expires or is amended, extended, or renewed.

Tie-bar

The bill is tie-barred to House Bills 6030 and 6031, which means that it could not take effect unless both of those bills were also enacted into law.¹

FISCAL IMPACT:

House Bill 6032 would have an indeterminate fiscal impact on local court funding units. Costs could be incurred depending on how the bill affects court caseloads, the complexity of lawsuits brought under the bill, and related administrative costs.

The bill would also create potential fiscal liabilities for state and local governments by providing a legal basis from which employees may bring a civil action against employers under circumstances related to COVID-19. However, it is not clear how the bill's clarification of employee and employer rights with regard to working during the pandemic would affect lawsuits against the state or what the extent of potential fiscal liabilities could be. According to one COVID-19 employment litigation tracker,² as of August 10, 2020, there have been 15 COVID-19-related employment lawsuits in Michigan since the start of the pandemic, seven of which were classified as employment discrimination.

If a court rules that a state employer violated the bill and a lawsuit settlement is owed, proceeds for the settlement would have to be taken from the department's existing appropriated state GF/GP or restricted revenue or the legislature would have to appropriate additional funds to support the ruling.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ House Bill 6030 would create a new act to provide requirements and standards for certain liability claims alleging COVID-19 exposure and certain product liability claims. House Bill 6031, together with House Bill 6101, would amend the Michigan Occupational Safety and Health Act to establish conditions for immunity from civil liability for an employer whose employee is exposed to COVID-19.

² <https://www.fisherphillips.com/covid-19-litigation>