New Michigan Executive Order Clarifies Definition of Principal Symptoms of COVID-19 for Workers Who Stay Home

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- Coronavirus News
- Labor & Employment
- Health Law & Managed Care
- Michigan

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On August 27, 2020, Governor Whitmer signed a new executive order revising and clarifying a previously issued executive order. On August 7, 2020, Governor Whitmer signed Executive Order 2020-166 to update the protections for employees who remain home from work when they or one of their close contacts has symptoms of COVID-19 or tests positive for the disease. The only change between EO 2020-166, and its replacement, EO 2020-172, is the new definition of the "principal symptoms of COVID-19." EO 2020-172 will be applied prospectively and is effective as of August 27, 2020.

The purpose of EO 2020-166 and its predecessor order, EO 2020-36, was to allow employees to stay home from work when they were at particular risk of infecting others with COVID-19. The order was not intended to protect employees who stay home for unrelated reasons such as a cold, food poisoning, or allergies. However, the updated definition of the principal symptoms of COVID-19 contained in EO 2020-166 encouraged absenteeism and mistakenly protected workers who did not actually display symptoms of COVID-19.
Specifically, EO 2020-166 defined the principal symptoms as "fever, sore throat, a new uncontrollable cough that causes difficulty breathing, diarrhea, vomiting, abdominal pain, new onset of a severe headache, and new loss of taste or smell." Under this definition, medical professionals had the discretion to provide workers with written documentation excusing them from work when they had any of the symptoms listed under EO 2020-166, even if the symptoms were caused by existing conditions. Thus, under EO 2020-166, medical professionals could err on the side of caution, and provide doctor's slips for individuals who posed little to no risk of infecting others with COVID-19.

EO 2020-172 to clarifies this very issue. The order now states that the principal symptoms are:

- (i) any one of the following not explained by a known medical or physical condition:
  - fever,
  - an uncontrollable cough,
  - shortness of breath; or

- (ii) at least two of the following not explained by a known medical or physical condition:
  - loss of taste or smell
  - muscle aches ("myalgia")
  - sore throat
  - severe headache
  - diarrhea
  - vomiting; or
  - abdominal pain.

Moving forward, employees who remain home and wish to seek the benefits and protections provided under EO 2020-172 must meet the stricter definition of the "principal symptoms of COVID-19." Employers should carefully review doctor's slips and requests to stay home to ensure that an employee's absence is covered by EO 2020-172.

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