

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

WORKERS' DISABILITY COMPENSATION AGENCY

GENERAL RULES

EMERGENCY RULES

Filed with the Secretary of State on March 30, 2020

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the director of the workers' disability compensation agency by sections 205 and 213 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.205 and 418.213, and Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, 2003-1, and 2019-3, MCL 445.2001, 418.3, 445.2004, 445.2011, and 125.1998)

FINDING OF EMERGENCY

These rules are promulgated by the Director of the Workers' Disability Compensation Agency, Department of Labor and Economic Opportunity, to establish emergency rules to declare that certain employees suffer a compensable personal injury under the Worker's Disability Compensation Act due to COVID-19.

On March 10, 2020, Governor Gretchen Whitmer declared a state of emergency in response to the COVID-19 pandemic. On March 13, 2020, the President of the United States declared a national emergency in response to the COVID-19 pandemic. Employees working in the health field, first responders, and those providing health services during this time are the most susceptible to exposure to this virus. There are no current administrative rules that provide guidance to employers, carriers, or employees on the treatment of exposure to COVID-19 with respect to workers' compensation coverage.

If the non-emergency process specified in the Administrative Procedures Act for the promulgation of rules were followed, employees most susceptible to exposure to COVID-19 would face uncertainty and financial hardship during the most critical period of response to this epidemic. Accordingly, following the non-emergency process would undermine the effectiveness of Michigan's emergency response to COVID-19.

The Director, therefore, finds that the preservation of the public health, safety, and welfare requires the promulgation of emergency rules as provided in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Injuries to first response employees.

Unless proven otherwise, a first response employee suffers a personal injury that arises out of and in the course of employment if the first response employee is diagnosed with COVID-19,

March 30, 2020

whether by a physician or as a result of a test. Denial of a claim by a first response employee diagnosed with COVID-19 violates the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and is subject to the penalties provided by section 631 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.631, unless the denial is based on specific facts demonstrating that the first response employee was not exposed to COVID-19 at work.

Rule 2. Definition.

(1) As used in these rules, "first response employee" means any of the following:

- (a) A person working in ambulance operations and advanced mobile emergency care services, county medical care facilities, emergency services, emergency medical services, homes for the aged, hospices, hospitals, or nursing homes.
- (b) A person working in a home health agency or visiting nurse association.
- (c) Any person working as a physician, physician assistant, nurse, emergency medical technician, paramedic, or respiratory therapist.
- (d) Any police officers, fire fighters, emergency medical technicians, on-call members of a fire department, volunteer civil defense workers, on-call members of a life support agency, or members of an emergency rescue team, as those terms are used in the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.
- (e) A member of the state police or an officer of the motor carrier enforcement division of the department of the state police.
- (f) A state correctional officer or local corrections officer.

Rule 3. Application of other rules.

These emergency rules supersede the entirety of the emergency rules filed March 18, 2020.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY



Jeff Donofrio, Director

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

3/20/2020 11:45 am



Date:

Honorable Gretchen Whitmer

Governor

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Labor and Economic Opportunity, Workers' Disability Compensation Agency dated March 30, 2020, entitled "General Rules." I approve the rules as to form, classification, and arrangement.

Dated: March 30, 2020

LEGISLATIVE SERVICE BUREAU

By



Elizabeth R. Edberg,
Legal Counsel



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated March 30, 2020, in which the Department of Labor and Economic Opportunity proposes to promulgate **emergency rules** entitled “**Workers’ Disability Compensation Agency, General Rules – Emergency Rules.**”

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: March 30, 2020

Michigan Office of Administrative Hearings and Rules

A handwritten signature in black ink that reads "Katie Wienczewski".

By: _____

Katie Wienczewski,
Attorney