

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

WORKERS' DISABILITY COMPENSATION AGENCY

GENERAL RULES

**EMERGENCY RULES**

Filed with the secretary of state on October 16, 2020

These rules take effect upon filing with the secretary of state and shall remain in effect until March 20, 2021.

(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, section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248, 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 Michigan Department of Labor and Economic Opportunity to establish requirements for employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees.

Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by a severe acute respiratory syndrome. COVID-19 is easily transmitted through the air from person-to-person through respiratory aerosols, and the aerosols can settle and deposit on environmental surfaces where they can remain viable for days. There is currently no approved vaccine or proven effective antiviral treatment for COVID-19. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of October 6, 2020, COVID-19 has killed 6,838 Michiganders in less than seven months.

Work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. It is highly likely that the Executive Orders governing workplace safety saved lives, kept more workers healthy, and kept more Michiganders at work.

COVID-19 outbreaks attributed to workplace exposures have been reported throughout the United States. A detailed study in Utah attributed about 76% of identified outbreaks to workplace exposure. In Michigan, about 32% of identified outbreaks to date have been attributed to workplace exposures. Of these outbreaks, about 86% are attributed to work that cannot feasibly be done from the safety of home including work in the Manufacturing, Construction, Healthcare, Food Services and Hospitality, Agriculture, Retail, and Personal Services sectors.

October 15, 2020

The cost of occupational exposure is too often borne by minorities. Nationally, 73% of outbreak cases were among minorities in Manufacturing, Retail, Food Services, and Offices. Incidence and mortality rates are 5.6 and 6.9 times higher in the African American population than the white population, respectively – and experts concluded that these disparities were likely driven by “variation in household, community, and workplace exposure rather than case-fatality rates.”

The Governor’s Safer at Home order was rescinded effective June 8, moving most of the state to Phase 4 and resuming non-critical work activity in numerous sectors. On that day, the rolling seven-day average number of cases was approximately 258 per day. By July 5, the rolling seven-day average had increased to 685 per day. Since then, the Governor’s Executive Order creating stricter mask use guidelines and enforcement of workplace safeguards have helped Michigan to flatten rising case counts. Continued vigilance to suppress spread of the virus is critical to both the safety of Michigan workers and to Michigan’s continued economic recovery.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” MCL 408.1011(a). The Michigan worker’s disability compensation act of 1969 (WDCA), 1969 PA 317, MCL 418.101 to 418.941, provides wage loss compensation, medical care, and rehabilitation for those injured and disabled because of workplace injury which can include exposure to deadly infections. Absent a special presumption as created herein, the burden of proving such a claim based on COVID-19 exposure can be difficult. Executive Order 2020-128 providing such a presumption for certain workers was struck down due to the Michigan Supreme Court’s interpretation of its basis in statute. Nonetheless, Michigan’s experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees deal directly with known infected individuals, pose a particular threat for COVID-19’s spread and for the infection of those who fight against it. These critical workers, defined in this rule as “COVID-19 first response employees,” who must work to save the lives of those infected Michiganders, need special protection under the WDCA. These special presumptions would facilitate COVID-19 first response employees’ receipt of wage replacement, medical, and rehabilitation benefits enabling them to rapidly recover and return to work. I further find that previous emergency rules that provided wage loss replacement and medical care under the WDCA need to be reinstated to mitigate and limit COVID-19’s spread in workplaces where the COVID-19 first response employees work. To continue that much needed protection, it is necessary to provide these presumptions.

Businesses must do their part to protect employees, their patrons, and their communities. Many businesses have already done so by implementing robust safeguards to prevent viral transmission. But we can and must do more: no one should feel unsafe at work. I find that these emergency rules are necessary to protect COVID-19 first response employees and other employees in those industries during the ongoing COVID-19 pandemic.

Based on the best available scientific evidence and public health guidance regarding the spread of COVID-19 in the workplace, I find that these emergency rules are necessary to protect all employees. If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules were followed, COVID-19 first response employees unable to afford time off from work across

Michigan may unnecessarily expose others to COVID-19 during the rule promulgation process. Further, existing WDCA rules do not directly address COVID-19's spread in the workplace and without these emergency rules, the COVID-19 first response employees will not receive financial and medical care support they need to enable their prompt return to work to protect and care for Michiganders. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan's emergency response to COVID-19, and expose Michigan workers to a higher risk of contracting the disease in their places of employment.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that promulgation of emergency rules without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242, is required.

#### Rule 1. Injuries to first response employees.

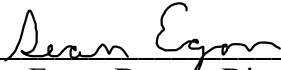
For purposes of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and subject to rebuttal by specific facts to the contrary, a COVID-19-first response employee who is confirmed as COVID-19 positive on or after March 18, 2020, either by physician or by test, shall be presumed to have suffered a "personal injury," as that term is defined by section 401(2)(b) of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.401.

#### Rule 2.

"COVID-19 first response employee" means an employee whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment. For purposes of these rules, the following individuals are COVID-19 first response employees:

- (a) A person who is required to report to work in one of the following workplaces:
  - (i) An ambulance operation, as that term is defined in section 20902(5) of the public health code, 1978 PA 368, MCL 333.20902, including advanced mobile emergency care services.
  - (ii) A county medical care facility, as that term is defined in section 20104(3) of the public health code, 1978 PA 368, MCL 333.20104.
  - (iii) An emergency response service, as that term is defined in section 102(m) of the emergency 9-1-1 service enabling act, 1986 PA 32, MCL 484.1102.
  - (iv) A home for the aged, as that term is defined in section 20106(3) of the public health code, 1978 PA 368, MCL 333.20106.
  - (v) A hospice, as that term is defined in section 20106(4) of the public health code, 1978 PA 368, MCL 333.20106.
  - (vi) A hospital, as that term is defined in section 20106(5) of the public health code, 1978 PA 368, MCL 333.20106.
  - (vii) A nursing home, as that term is defined in section 20109(1) of the public health code, 1978 PA 368, MCL 333.20109.
  - (viii) A home health agency, as that term is defined in section 20173a(15)(f) of the public health code, 1978 PA 368, MCL 333.20173a, or a visiting nurse association, who is required to provide in-person medical care to patients.
- (b) A person working as a physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, emergency medical technician specialist, paramedic, or respiratory therapist who is required to provide in-person medical care to patients.
- (c) A law enforcement officer, as that term is defined in section 2(f) of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.602, to the extent the law enforcement officer is required to report to work and interact with the general public.

- (d) A motor carrier officer within the Michigan Department of State Police as described in section 6d of 1935 PA 59, MCL 28.6d.
- (e) A firefighter, as that term is defined in section 1(n) of the fire prevention code, 1941 PA 207, MCL 29.1.
- (f) A member of an emergency rescue team, as described in section 161(1)(j) of the worker’s disability compensation act of 1969, 1969 PA 317,, MCL 418.161, to the extent that the member is required to report to work and interact with the general public.
- (g) A volunteer civil defense worker, as described in section 161(1)(g) of the worker’s disability compensation act of 1969, 1969 PA 317, MCL 418.161, to the extent that the worker is required to report to work.
- (h) An on-call member of a life support agency, as described in section 161(1)(h) and (i) of the worker’s disability compensation act of 1969, 1969 PA 317, MCL 418.161, to the extent the member is required to report to work.
- (i) A state or local government employee that is required to work within the secured perimeter of a penal institution, including but not limited to correctional facilities, jails, and detention centers.



Sean Egan, Deputy Director,  
Department of Labor and Economic Opportunity

10/15/2020

Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Department of Labor and Economic Opportunity that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



Gretchen Whitmer, Governor

10/15/20

Date

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 October 15, 2020, entitled "General Rules, Emergency Rules." I approve the rules as to form, classification, and arrangement.

Dated: October 15, 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 **emergency administrative rules**, dated October 15, 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: October 15, 2020

Michigan Office of Administrative Hearings and Rules

By:   
Katie Wienczewski,  
Attorney