Legislative Analysis

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EMPLOYEES AND COVID-19

Senate Bill 1258 (S-1) as passed by the Senate
Sponsor: Sen. Peter MacGregor
House Committee: [Placed on second reading]
Senate Committee: Committee of the Whole
Complete to 12-21-20

(Enacted as Public Act 339 of 2020)

SUMMARY:

Senate Bill 1258 would amend 2020 PA 238[1] to revise requirements for employees who are diagnosed with COVID-19, who display the principal symptoms of the disease, or who have had close contact with someone else who tests positive. The bill would eliminate current requirements for employees who have had close contact with someone who is symptomatic. The bill would also provide for an affirmative defense in certain civil actions.

Employees who test positive or are symptomatic (current law)

Currently, the act prohibits an employee who tests positive for COVID-19 or displays the ***principal symptoms of COVID-19*** from reporting to work until all of the following conditions are met:

- If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications.
- Ten days have passed since the later of the following:
  - The date the employee's symptoms first appeared.
  - The date the employee received the test that showed positive for COVID-19.
- The employee's principal symptoms of COVID-19 have improved.

Principal symptoms of COVID-19 has the definition provided by order of the director or chief medical executive of the Department of Health and Human Services (DHHS). If the term is not defined by either official at the time of a relevant action under the act, it means either or both of the following:

- One or more of the following not explained by a known medical or physical condition:
  - Fever.
  - Shortness of breath.
  - Uncontrolled cough.
- Two or more of the following not explained by a known medical or physical condition:
  - Abdominal pain.
  - Diarrhea.
  - Loss of taste or smell.
  - Muscle aches.
  - Severe headache.
  - Sore throat.
  - Vomiting.

[1] 2020 PA 238 (HB 6032): http://legislature.mi.gov/doc.aspx?2020-HB-6032

Employees who test positive or are symptomatic (SB 1258)

The bill would change the above requirements, additionally providing different protocols for employees who have tested positive for COVID-19 and those who are symptomatic but have not yet tested positive.

The bill would prohibit an employee who tests positive for COVID-19 from reporting to work until either of the following conditions is met:

- The employee is advised by a health care provider or public health professional that he or she has completed his or her ***isolation period***.
- All of the following:
  - If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications.
  - If the employee displays the principal symptoms of COVID-19, those symptoms have improved.
  - If the employee has been advised by a health care provider or public health professional to remain isolated, he or she is no longer subject to that advisement.
  - The isolation period has passed.

Isolation period would mean the recommended number of days for an individual to be in isolation after he or she first displays the principal symptoms of COVID-19 as prescribed in the COVID-19 guidelines of the federal Centers for Disease Control and Prevention (CDC).[2]

The bill would prohibit an employee who displays the principal symptoms of COVID-19 but has not tested positive from reporting to work until either of the following conditions is met:

- The employee receives a negative diagnostic test result.
- All of the following:
  - If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medication.
  - The symptoms have improved.
  - The isolation period has passed since the symptoms began.

Close contact with someone who tests positive or is symptomatic (current law)

The act prohibits an employee who has had ***close contact*** with an individual who tests positive for COVID-19 or displays the principal symptoms of COVID-19 from reporting to work until one of the following conditions is met:

- Fourteen 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 means being within approximately six feet of an individual for 15 minutes or longer.

[2] See https://www.cdc.gov/coronavirus/2019-ncov/index.html
Note that the definition in SB 1258 refers only to the display of principal symptoms, and not to a positive test result. CDC guidance for the isolation of symptomatic individuals and of those who test positive but are asymptomatic can be found here: https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html

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

- A health care professional.
- A worker at a health care facility.
- A law enforcement officer, firefighter, or paramedic.
- A child protective services employee.
- A worker at a child caring institution.
- A worker at an adult foster care facility.
- A worker at a correctional facility.

Close contact with someone who tests positive (SB 1258)

The bill would eliminate requirements for a person who has close contact with an individual who displays the principal symptoms of COVID-19.

The bill would instead prohibit an employee who has had ***close contact*** with an individual who tests positive for COVID-19 from reporting to work until either of the following conditions is met:

- The ***quarantine period*** has passed since the employee last had close contact with the individual.
- The employee is advised by a health care provider or public health professional that he or she has completed his or her period of quarantine (i.e., quarantine period).

Close contact would be amended to mean that term as defined in CDC COVID-19 guidelines at the time the contact occurred.

Quarantine period would mean the recommended number of days for an individual to be in quarantine after he or she is in close contact as prescribed in CDC COVID-19 guidelines.[3]

However, under the bill, any of the following employees who is otherwise subject to quarantine, who is not experiencing any symptoms, and who has not tested positive for COVID-19 could be allowed to participate in onsite operations when strictly necessary to preserve the function of a facility whose cessation of operations would cause serious harm or danger to public health or safety:

- A health care professional.
- A worker at a health care facility.
- A law enforcement officer, firefighter, or paramedic.
- A child protective services employee.
- A worker at a child caring institution.
- A worker at an adult foster care facility.
- A worker at a correctional facility.
- A worker in the energy industry who performs essential energy services as described in the U.S. Cybersecurity and Infrastructure Security Agency document "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response," Version 2.0, March 28, 2020.[4]

[3] https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html

[4] https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_1.pdf

- A worker identified by the DHHS director as necessary to ensure continuation of essential public health services and enforcement of health laws and necessary to avoid serious harm or danger to public health or public safety. The DHHS director would have to designate categories of critical employees at facilities that qualify for this exception (i.e., cessation of operations would cause serious harm or danger to public health or safety).

Claims against employers (current law)

The act prohibits an employer from discharging, disciplining, or otherwise retaliating against an employee who does any of the following:

- Complies with its prohibitions against an employee reporting to work under certain circumstances (as described above), including when an employee who displays the principal symptoms of COVID-19 does not report to work and later tests negative for the disease.
- Opposes a violation of the act.
- Reports health violations related to COVID-19.

However, this provision does not apply to an employee who, after displaying the principal symptoms of COVID-19, fails to make reasonable efforts to schedule a COVID-19 test within three days after receiving a request from his or her employer to get tested for COVID-19.

An employee aggrieved by a violation of the act can bring a civil action for appropriate injunctive relief or damages, or both. The lawsuit can 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 the employee prevails in the action, the court must award him or her damages of at least $5,000.

Affirmative defense (SB 1258)

Under the bill, for an employee action brought as described above concerning a violation alleged to have occurred from March 1 through October 21, 2020, an employer could demonstrate that it was operating in compliance with all of the following related to quarantine and isolation of employees as an affirmative defense to liability in that action:

- CDC guidance.
- All federal, state, and local statutes, rules, and regulations in effect at the time of the alleged violation.
- All executive orders and agency orders in effect at the time of the alleged violation.

However, the above defense would not apply in an action alleging a violation involving discipline or retaliation for an employee's report of COVID-19 health violations.

Scope of act

The act currently provides that it does not affect rights, remedies, or protections under the Worker's Disability Compensation Act, including the exclusive application of that act.

The bill would add that the act also does not affect rights, remedies, or protections under the Whistleblowers' Protection Act.

MCL 419.401, 419.405, and 419.412 and proposed MCL 419.413

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and on local units of government. Any fiscal impact would be directly related to how provisions of the bill affect court caseloads and related administrative costs. To the extent that there are fewer court filings, this would result in reduced costs for the courts and the state.

The bill would have no fiscal impact on the Department of Health and Human Services.

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Legislative Analyst: Rick Yuille
Fiscal Analysts: Robin Risko
Kevin Koorstra

■ 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.