

HOUSE BILL NO. 4958

June 01, 2021, Introduced by Reps. Rabhi, Hope, Steckloff, Kuppa, Sowerby, Camilleri, Puri, Hammoud, Young, Pohutsky, Brabec, Aiyash, Weiss, Manoogian, Bolden and Brixie and referred to the Committee on Government Operations.

A bill to prohibit an employer from taking certain actions against employees for certain activities related to personal protective equipment; to prohibit discrimination and retaliation for engaging in certain activities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. As used in this act:
- 2 (a) "Adverse employment action" includes, but is not limited
- 3 to, any of the following:
- 4 (i) Disciplinary action.

- (ii) Termination of employment.
- (iii) A demotion or a failure to provide a promotion.
- (iv) An involuntary change in a work shift.
- (v) An involuntary reduction of work hours.
- (vi) A reduction of an employment benefit.
- (vii) A reduction in salary or wage.
- (viii) Any other change in a term or condition of employment.

(b) "Damages" means any of the following:

(i) Actual injury or loss.

(ii) Reasonable attorney fees.

(iii) Reasonable court costs.

(c) "Employee" means an individual employed by an employer.

(d) "Employer" means a person or a state or local governmental entity that employs 1 or more individuals.

(e) "Person" means an individual, partnership, corporation, association, or other legal entity.

(f) "Personal protective equipment" means equipment an employee wears to minimize exposure to a workplace hazard in the employee's workplace that could cause injury or illness.

(g) "Workplace hazard" includes, but is not limited to, all of the following types of hazards:

(i) Biological, including the spread of disease.

(ii) Chemical.

(iii) Electrical.

(iv) Mechanical.

(v) Physical.

(vi) Radiological.

Sec. 3. (1) An employer shall not prohibit an employee from

1 doing either of the following:

2 (a) Using his or her own personal protective equipment, if any
3 of the following apply:

4 (i) The employee's personal protective equipment gives the same
5 or more protection than the personal protective equipment provided
6 by the employer.

7 (ii) The employee's personal protective equipment gives the
8 same or more protection than what is required by applicable state
9 or federal standards.

10 (iii) The employer has not provided personal protective
11 equipment to the employee.

12 (b) Advocating, in the workplace or publicly, for the employer
13 to provide additional personal protective equipment, including
14 advocating for the employer to provide personal protective
15 equipment that exceeds what is required by applicable state or
16 federal standards.

17 (2) An employer shall not take an adverse employment action or
18 otherwise discriminate or retaliate against an employee because the
19 employee does any of the following:

20 (a) Uses his or her own personal protective equipment, if any
21 of the following apply:

22 (i) The employee's personal protective equipment gives the same
23 or more protection than the personal protective equipment provided
24 by the employer.

25 (ii) The employee's personal protective equipment gives the
26 same or more protection than what is required by applicable state
27 or federal standards.

28 (iii) The employer has not provided personal protective
29 equipment to the employee.

1 (b) Advocates, in the workplace or publicly, for the employer
2 to provide additional personal protective equipment, including
3 advocating for the employer to provide personal protective
4 equipment that exceeds what is required by applicable state or
5 federal standards.

6 (c) Opposes a violation of this act.

7 (d) Brings an action under this act.

8 (e) Testifies, assists, or participates in an action brought
9 under this act.

10 (3) This section applies whether or not an employer has
11 trained or fit-tested an employee to use personal protective
12 equipment.

13 Sec. 5. (1) An employee aggrieved by a violation of this act
14 may bring a civil action for appropriate injunctive relief or
15 damages, or both, in the circuit court for the county where the
16 alleged violation occurred or for the county where the employer
17 against whom the action is filed is located or has its principal
18 place of business.

19 (2) A court shall award damages of not less than \$5,000.00 to
20 a plaintiff who prevails in an action brought under this act.

21 (3) An employer that provides personal protective equipment
22 that meets or exceeds applicable state and federal standards is not
23 liable for an injury or illness suffered by an employee caused by
24 the employee using his or her own personal protective equipment.

25 Sec. 7. (1) This act does not limit an employer's
26 responsibility to provide personal protective equipment, fit
27 testing, and training as required by applicable state and federal
28 standards including, but not limited to, either of the following:

29 (a) State or federal law.

1 (b) Rules promulgated by the federal Occupational Safety and
2 Health Administration or the Michigan occupational safety and
3 health administration.

4 (2) This act does not limit the rights or responsibilities of
5 an employer or employee under the worker's disability compensation
6 act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

7 Sec. 9. (1) This act applies to public employers and public
8 employees, except to the extent that it is inconsistent with
9 section 5 of article XI of the state constitution of 1963.

10 (2) If a collective bargaining agreement or other contract
11 that is inconsistent with this act is in effect for an employee on
12 the effective date of this act, this act applies to that employee
13 beginning on the date the collective bargaining agreement or other
14 contract expires or is amended, extended, or renewed.

15 (3) This act does not limit an employee's right to bargain or
16 contract with an employer for protections against an adverse
17 employment action that are in addition to the employee's rights
18 under this act.

19 (4) An employer shall not require an employee to sign a waiver
20 of the employee's rights under this act. A waiver of an employee's
21 rights under this act is void.