



Impact of Executive Orders on Reduction and Termination of Benefits

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Foster Swift Workers' Compensation Update

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Jack Nolish, the recently appointed Director of the Michigan Workers' Disability Compensation Agency, issued a directive this week limiting employers' ability to terminate or reduce benefits during the period the Stay Home, Stay Safe Executive Order (EO 2020-21) and Executive Order 2020-20 are in effect. The Stay Home, Stay Safe Executive Order directs all Michigan businesses to suspend in-person operations that are not necessary to sustain or protect life and directs citizens to stay in their homes with limited exceptions. Executive Order 2020-20 imposes temporary restrictions on the use of places of public accommodation. The Stay Home, Stay Safe order is in effect from March 24, 2020 through at least April 13, 2020.

Director Nolish indicated the Executive Orders will impact an injured employee's ability to attend medical evaluations and conduct job searches. He noted any potential employers identified during a job search are shut down or severely restricted as a result of the Executive Orders. Therefore, the jobs are not actually available. Director Nolish recommended any evaluations scheduled throughout the duration of the Executive Orders be canceled or delayed given medical evaluations require the examiner to be in close proximity to the injured worker and are, by definition, not for the purpose of treatment.

Director Nolish stated an injured employee's failure to attend a medical evaluation or conduct a job search **"should not adversely impact on the entitlement to benefits."** This directive will remain in effect throughout the duration of the Executive Orders and any extensions. Demands or threats made to injured employees related to attending medical evaluations and conducting job searches while the Executive Orders remain in effect could be considered a violation. Director Nolish cautioned penalties for violations could be imposed, including fines, and that a willful violation could be considered a misdemeanor.

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Considering the directive, benefits should not be terminated or reduced based on residual wage earning capacity, failure to conduct a job search, or missed medical evaluations during the period Executive Orders 2020-21 and 2020-20 remain in effect.

If you have questions related to this communication, please contact a member of Foster Swift's Workers' Comp practice group:

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