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REBOOTING YOUR BUSINESS IN SAFE  
MODE VOL. 2 – MAY 19, 2020

- ▶ Updates – New E.O.'s 91 and 92
- ▶ The Preparedness and Response Plan
- ▶ The Contact Standard; moving target
- ▶ Return to Work Requirements
- ▶ Enforcement Protocol
  - ▶ Literally a New Sheriff in Town



TOPICS FOR MAY 19, 2020

- ▶ Governor's Executive Orders
- ▶ EO 36 – Work Policies
- ▶ EO 91 – Health and Safety Measures
  - ▶ Essentially a Trojan Horse - Legacy
- ▶ EO 92 – Open/Close Order
  - ▶ Supersedes 2020-21, -42, -59, -70, -77 and -90
  - ▶ Effective through May 28, 2020 or earlier revision
- ▶ OSHA Guidance 3990-03 2020

- ▶ General Legal Authorities
- ▶ Family Medical Leave Act
- ▶ HIPAA
- ▶ Michigan Paid Medical Leave Act

## RELEVANT AUTHORITIES



- ▶ MEDIUM EXPOSURE RISK PRP
- ▶ Plan Director – critical component
- ▶ Employee Work Site Requirements – 3 Choices
- ▶ Daily Screenings
- ▶ Work Site Controls; ground markings
- ▶ Employee Training
- ▶ Seven separate categories

HELLO, ALICE - WELCOME TO WONDERLAND  
THE PREPAREDNESS AND RESPONSE PLAN



- ▶ Masks are Unnecessary:
  - ▶ For outdoor work, w/o “Close Contact”
  - ▶ Indoor work not in a “public space”
- ▶ Masks are indicated when:
  - ▶ Cannot consistently maintain six feet of separation
  - ▶ Public space
  - ▶ Should be offered to everyone entering
- ▶ Barriers and Face Shields are indicated when:
  - ▶ Public space
  - ▶ Cannot avoid continued Close Contact
  - ▶ Consistent three-foot distance or less

CHOOSE YOUR RABBIT HOLE - PPE OR  
NO PPE

- ▶ Standard cleaning of workplace
  - ▶ Best practice is to follow CDC as closely as possible
  - ▶ Latest guidance provided
  - ▶ It's just guidance not black letter law
- ▶ Clean and sanitize workstations
- ▶ Clean high traffic areas twice daily
- ▶ Don't share office equipment
- ▶ Provide hand sanitizer

## PRP – CLEANING MEASURES

- ▶ No known symptoms
  - ▶ Avoid usage of other employees' equipment
  - ▶ No large gatherings or in-person staff meetings
- ▶ Positive Symptoms or Testing
  - ▶ Isolate or Quarantine
  - ▶ Enhanced Cleaning Measures
  - ▶ Notify persons who made contact
- ▶ Potentially Infected Employees are quarantined
- ▶ Employees must self-monitor
  - ▶ COVID-19 Symptoms and contact with infected persons

## PRP: EMPLOYEE SAFETY MEASURES

- ▶ Proximity within six feet is inevitable
- ▶ Six-foot distancing is not strictly prohibited
  - ▶ Significant chance of overreaction
  - ▶ Term has become misunderstood
- ▶ EO 2020-91 states varying standards
  - ▶ “To the maximum extent possible”
  - ▶ “Close contact”
  - ▶ “Consistently maintain six feet of separation”
- ▶ Incidental or fleeting contact is permitted by omission

## INCIDENTAL OR CLOSE CONTACT?



- ▶ Test-Based Strategy
  - ▶ Negative results from a COVID-19 Test
  - ▶ Resolution of fever and respiratory symptoms
- ▶ Non-Test-Based Strategy
  - ▶ 72 hours with resolved fever – no medications
  - ▶ Improvement in respiratory symptoms
  - ▶ At least 7 days have passed since symptoms first appeared
- ▶ Close Contact with Infested Person
  - ▶ 14 days have passed since last contact
  - ▶ Use of “close contact” term

# PRP: RETURN TO WORK REQUIREMENTS



- ▶ Vague terms – guidance only
- ▶ These are interpretations
- ▶ New ground; after-the-fact rulings
- ▶ Records – 2020-91
  - ▶ Training, screening, reporting cases
- ▶ Enforcement Regimen
  - ▶ 2020-92 is Criminal
  - ▶ 2020-91 is civil, regulatory

**BEWARE THE RED QUEEN**

- ▶ Cautious Objectors – Detailed Review
- ▶ Updates and Ongoing Developments
- ▶ Employee Leave/FMLA and ADA applicability
- ▶ Employee Files and records
- ▶ Workers Compensation applicability
- ▶ Employee legal claims
- ▶ Employee testing protocols
- ▶ Expiration or phase-out of requirements

## PREVIEW OF COMING ATTRACTIONS



- ▶ Employment Law
- ▶ Real Estate
- ▶ Business and Commercial
- ▶ Personal Injury (Dan)
- ▶ Estate Planning and Probate
- ▶ Intellectual property
- ▶ Litigation in these disciplines



LAMBERT LAW LEGAL SERVICES

- ▶ Governor Whitmer Executive Order Page
  - ▶ [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705---,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705---,00.html)
- ▶ OSHA Guidance <https://www.osha.gov/Publications/OSHA3990.pdf>
- ▶ HIPAA <https://www.cdc.gov/phlp/publications/topic/hipaa.html>
- ▶ EEOC Technical Guidance – COVID-19 May 7, 2020 Update
  - ▶ <https://www.eeoc.gov/newsroom/eeoc-updates-covid-19-technical-assistance-publication>
- ▶ Family and Medical Leave Act  
<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/>

## CITED AUTHORITIES