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REBOOTING YOUR BUSINESS IN  
SAFE MODE – MAY 12, 2020

- ▶ Relevant Authorities
- ▶ Classifying Worker Risk
- ▶ Employee Daily Screening
- ▶ Employer Disclaimer
- ▶ Elements of the Preparedness Plan
- ▶ Cautious Objectors (Lite)



TOPICS FOR MAY 12, 2020

- ▶ Governor's Executive Orders
- ▶ EO 36 – Work Policies
  - ▶ Health care workers, others excluded
- ▶ EO 77 – Latest Stay at Home Order
  - ▶ Supersedes 2020-21, -42, -59 and -70
  - ▶ Effective through May 28, 2020 or earlier revision
- ▶ OSHA Guidance 3990-03 2020
  - ▶ Preparing Workplaces for COVID-19

- ▶ General Legal Authorities
- ▶ Family Medical Leave Act
- ▶ Families First Coronavirus Response Act
  - ▶ Emergency Paid Sick Leave Act
- ▶ HIPAA
- ▶ Michigan Paid Medical Leave Act

## RELEVANT AUTHORITIES

## ▶ LOWER EXPOSURE RISK

- ▶ Infrequent contact with Public
- ▶ Engineering Controls not recommended
- ▶ Consider face masks or shields
- ▶ Communicate COVID-19 Information
- ▶ PPE for COVID-19 not recommended
- ▶ EO 2020-77 ¶15 face masks in “public places”

## ▶ MEDIUM EXPOSURE RISK

- ▶ Frequent contact with Public
- ▶ Physical barriers
- ▶ Consider face masks or shields
- ▶ Limit public access to worksite if possible
- ▶ Minimize Face to Face contact
- ▶ PPE – vary by work task
  - ▶ May need face masks, gown, gloves or goggles
  - ▶ Employer’s Hazard Assessment

# CLASSIFYING WORKER RISK

## ▶ HIGH OR VERY HIGH RISK

- ▶ High potential for exposure to known sources of COVID-19
- ▶ Install appropriate air-handling systems
- ▶ Isolation Rooms
- ▶ Group COVID-19 Patients
- ▶ Enhanced Medical Monitoring
- ▶ PPE –face masks, gown, gloves or even respirators

▶ NEXT UP: Employee Screening

# CLASSIFYING WORKER RISK

- ▶ 1. Are you currently suffering from any of the following symptoms – fever, cough, shortness of breath, sore throat, new loss of smell or taste, and/or gastrointestinal problems, including nausea, diarrhea, and vomiting)?
  - ▶ EO 2020-36 Principal symptoms: Fever, atypical cough, atypical shortness of breath
  - ▶ EEOC Guidance allows the other symptoms to be considered
- ▶ 2. Have you lived with, or had close contact with, someone in the last 14 days diagnosed with or displaying the symptoms of COVID-19?
- ▶ 3. Have you travelled via airplane internationally or domestically in the last 14 days?
  - ▶ a. Use touchless thermometer if available.
  - ▶ b. If yes to any question, access is denied

## EMPLOYEE DAILY SCREENING

- ▶ I acknowledge that COVID-19 represents a serious health threat to persons exposed to it.
- ▶ I acknowledge that my employer is employing precautions recommended by the CDC and OSHA to reduce exposure to COVID-19 and does not guarantee that I will not be exposed to COVID-19.
- ▶ While on site, I will comply with the employer's rules and procedures for reducing employee exposure to COVID-19.
- ▶ This form is neither mandated or prohibited by EO's
- ▶ Derived from house showing and at will disclaimers

## EMPLOYEE DISCLAIMER

- ▶ Promote Remote Work
- ▶ Restrict Number of workers – “strictly necessary”
- ▶ Continual monitoring of government guidance
- ▶ Encourage employee use of designated representative
- ▶ Distribute Preparedness and Response Plan
- ▶ Severity of elements depends upon Risk Classification
- ▶ Governed by EO 2020-77, §§ 11, 12 and 15

## COVID-19 PREPAREDNESS AND RESPONSE PLAN - PRINCIPLES



- ▶ Six feet social distancing to maximum extent possible
  - ▶ Prohibit large gatherings – probably 11+ people
- ▶ Increase standards of facility cleaning and disinfectant
- ▶ Must provide PPE in accordance with CDC classifications
- ▶ Masks under ¶11e: cannot consistently be 6 ft apart
- ▶ Protocols for sharing tools and equipment
- ▶ Special rules for Construction (¶11i) and Stores (¶12)

## COVID-19 PREPAREDNESS AND RESPONSE PLAN - ELEMENTS

- ▶ Governed by EO 2020-36
- ▶ Public Policy exception to “at will” is triggered ¶1
- ▶ Applies regardless of # of employees ¶7
- ▶ Employee can't be required to work if -
  - ▶ Tests positive for COVID-19 or shows symptoms
  - ▶ Close contact with person who tests positive for COVID-19 or shows defined symptoms
- ▶ Inapplicable to Health care workers, first responders, others ¶3
- ▶ Pending case example – worker who could telecommute

## CAUTIOUS OBJECTOR – OVERVIEW

- ▶ Cautious Objectors – Detailed Review
- ▶ Updates and Ongoing Developments
- ▶ Return to Work requirements for COVID-19 Positive employees
- ▶ 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

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- ▶ 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