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REBOOTING YOUR BUSINESS IN SAFE
MODE VOL. 4 – JUNE 2, 2020



- ▶ Four Risk Categories
- ▶ Preparedness Response Plan
- ▶ Cautious Objector
- ▶ Close vs. Incidental Contact
- ▶ Operational Controls
- ▶ Enhanced Enforcement

TOPICS REVIEWED MAY 12 - 26, 2020

- ▶ Updates – New Reopening Order
- ▶ Employee Files
- ▶ Employee Leave
- ▶ Common Misconceptions
- ▶ Legal Challenges to Come



TOPICS FOR WEEK 4 – JUNE 2, 2020

- ▶ Governor's Executive Orders
 - ▶ EO 36 – Work Policies
 - ▶ EO 97 – Health and Safety Measures
 - ▶ OSHA on Steroids
 - ▶ EO 110– Open/Close Order
 - ▶ Latest Edition
 - ▶ OSHA Guidance 3990-03 2020

▶ General Legal Authorities

- ▶ Family Medical Leave Act
- ▶ Families First Coronavirus Relief Act
- ▶ Michigan Paid Medical Leave Act

RELEVANT AUTHORITIES

- ▶ Increased Emphasis on Reopening
- ▶ Retail normal operations – June 4
- ▶ Restaurants, Bars, Pools, etc. – June 8
- ▶ Social Gatherings
 - ▶ 10 people indoors
 - ▶ 100 people outdoors
- ▶ Day Care, Swimming Pools, Parks Open
- ▶ Libraries, Museums



NEW REOPENING ORDER – EO 110



FUN POLICE
THE GOOD TIMES STOP HERE!

- ▶ Still work remotely, even office
- ▶ Wear Masks Indoors – public/shared spaces
- ▶ New term: “maintain” 6 feet of distance
- ▶ Capacity restrictions apply
- ▶ OSHA on Steroids – EO 97
- ▶ Still closed: Theatres, Gyms, Salons/Personal care, Casinos, indoor entertainment centers
- ▶ Certain exceptions in ¶14

WHAT YOU CAN'T DO



- ▶ Required to Track Leave
- ▶ Applies to less than 50 employees
- ▶ Leave may be unpaid
- ▶ Leave may be deducted from accrual
- ▶ Return only on meeting 3/7/14 day standards
- ▶ Employee must have valid reason for refusing return

EMPLOYEE LEAVE – EO 36

- ▶ Leave must be granted for COVID-19 Reasons
- ▶ Get the Employee Rights Poster
- ▶ Up to 80 hours fully or partially paid leave
- ▶ Small Business Exemptions (50 or fewer)
 - ▶ “Jeopardizes business as a going concern”
 - ▶ Expenses exceed revenues; ceases operations
 - ▶ Employee specialization
 - ▶ Business shut down or inoperable
- ▶ Unpaid leave for duration of COVID-19 Reasons

EMPLOYEE LEAVE - FFCRA

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; 2. has been advised by a health care provider to self-quarantine related to COVID-19; 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none"> 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|--|--|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd





- ▶ Used for Employment, Promotion, Discipline
- ▶ Daily Screenings Don't Fit Definition
- ▶ Employee Leave a closer question
- ▶ Keep Screening records separate
- ▶ Disciplinary Action can be added
- ▶ No Known Guidance so far
 - ▶ Watch for Future Guidance

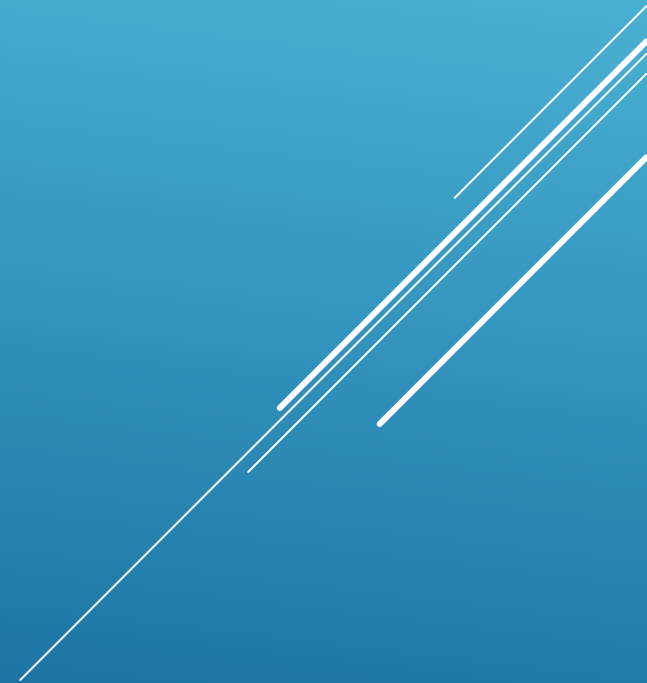
PERSONNEL FILES



- ▶ You Can't Go to Work
 - ▶ Critical Infrastructure
 - ▶ Minimum Basic Operations
 - ▶ Don't need "your papers"
- ▶ Must Wear Face Mask Indoors
 - ▶ Only public places and shared spaces
- ▶ Must File Preparedness Response Plan
- ▶ Must Require Customer Face Masks
- ▶ Employees' Refusal Return to Work
- ▶ Business Must Track Sick Customers

MYTHS AND LEGENDS – COMMON MISCONCEPTIONS

- ▶ The end of “Mean Girls” – Salons, personal care reopen
- ▶ The Fate of Masks and Face Coverings
- ▶ Legacy regulations – Super OSHA continues
- ▶ Employee and infection legal cases
- ▶ HIPAA and Privacy Concerns
- ▶ Standards for full reopening



- ▶ 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
- ▶ OSHA Guidance <https://www.osha.gov/Publications/OSHA3990.pdf>
- ▶ HIPAA <https://www.cdc.gov/phlp/publications/topic/hipaa.html>
- ▶ MI OSHA https://www.michigan.gov/leo/0,5863,7-336-78421_11407---,00.html
- ▶ Family and Medical Leave Act

<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/>

CITED AUTHORITIES