



- ▶ Sponsored by LAMBERT LAW
- ▶ 407 6<sup>th</sup> Street, Suite A
- ▶ Rochester, MI 48307
- ▶ (248) 642-7774
- ▶ [Brad@lambertplc.com](mailto:Brad@lambertplc.com)

REBOOTING YOUR BUSINESS IN SAFE  
MODE VOL. 3 – MAY 26, 2020



- ▶ Four Risk Categories
- ▶ Implementing Response Plan
- ▶ Cautious Objector
- ▶ The Preparedness and Response Plan
- ▶ Close vs. Incidental Contact
- ▶ Return to Work Requirements
- ▶ Enhanced Enforcement Regimen

TOPICS REVIEWED MAY 12 & 19, 2020

- ▶ Operational Controls and Regulation; Staging
  - ▶ Restaurants and Bars
  - ▶ Offices and Retail
- ▶ Reporting Requirements
- ▶ Customer Objections and Concerns
- ▶ Employee Compliance Concerns



TOPICS FOR WEEK 3 – MAY 26, 2020

- ▶ Governor's Executive Orders
- ▶ EO 36 – Work Policies
- ▶ EO 96 – Health and Safety Measures
  - ▶ OSHA on Steroids
- ▶ EO 97 and 100 – Open/Close Order
  - ▶ Effective through June 12
  - ▶ Public gatherings; 6 Feet
- ▶ OSHA Guidance 3990-03 2020

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

## RELEVANT AUTHORITIES

- ▶ Fifty (50%) Percent Capacity
- ▶ Signage and Notices
- ▶ Waiting Protocols
- ▶ Staging Requirements
- ▶ PPE for Customers and Employees
- ▶ Employee Training
- ▶ No tracking requirement (yet)
- ▶ Response to Incident/Outbreak
  - ▶ Distinction b/w Customers and Employees



## RESTAURANTS AND BARS



- ▶ Capacity Limit – Four Customers per 1,000 sq. ft
  - ▶ Two hours for vulnerable populations
  - ▶ HHS may vary orders
- ▶ Signs and Notices
  - ▶ Wear Face Mask
  - ▶ Don't enter if ill
- ▶ Staging
- ▶ Enhanced Cleaning and Sanitizing Protocol
- ▶ Employee Training
- ▶ Response to Incident/Outbreak

# RETAIL REQUIREMENTS



- ▶ Dedicated Entry Points for Employees
  - ▶ Screening still in effect; staggered times
- ▶ Staging and Notices
- ▶ Shared Spaces concept
- ▶ Don't share office equipment
- ▶ Enhanced Cleaning and Disinfection
  - ▶ Require workstation wipe down 2X daily
- ▶ Suspend "non-essential" visitors
- ▶ Response to Incident/Outbreak

# OFFICE REQUIREMENTS

- ▶ Recalcitrant Customers
  - ▶ Warn and then proceed
  - ▶ Compliance on customer/suppliers/others, not you
  - ▶ Option to exclude
- ▶ Customer health testing not allowed
  - ▶ Need consent – electronic or paper
  - ▶ Cannot disclose findings – HIPAA and Privacy concerns
- ▶ Liability Waivers
  - ▶ Becoming the norm
  - ▶ Read and react

# CUSTOMER COMPLIANCE



- ▶ Revisions to Handbook are recommended
- ▶ Employee waivers/hold harmless are not prohibited
- ▶ Cautious objector
  - ▶ Protected under EO 36
  - ▶ Can be denied UE – Mnuchin and EO 76
  - ▶ Can be investigated
- ▶ Incidental or fleeting contact is permitted by omission
- ▶ Return to Work Regulations

## EMPLOYEE COMPLIANCE



- ▶ You will face an army of RQ's
- ▶ New ground; vague terms
  - ▶ Potential for after-the-fact rulings
- ▶ Records – EO 2020-97
  - ▶ Training, screening, reporting cases
- ▶ Enforcement Regimen
  - ▶ 2020-96: Police
  - ▶ 2020-97: Regulators

**BEWARE THE RED QUEEN**

- ▶ Updates and Ongoing Developments
- ▶ Employee Leave/FMLA and ADA applicability
- ▶ Employee Files and records
- ▶ HIPAA and Medical Records privacy
- ▶ Workers Compensation applicability
- ▶ Employee legal claims
- ▶ Expiration or phase-out of requirements

## PREVIEW OF COMING ATTRACTIONS

A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.

- ▶ 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