

Guidance on MI Supreme Court Decision Conducted by Greater Rochester Chamber of Commerce

LAMBERT LAW - Presenter

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The Decision - Essentials



- ▶ EMA (1976 law) - 7-0: Whitmer had no authority to issue EO's after 4.30.2020
- ▶ EPGA (1945 law) – 4-3: Unconstitutional delegation of legislative authority to Executive
- ▶ Viviano Concurrence: EPGA inapplicable to Public Health
- ▶ McCormack Dissent (3 justices): EPGA gives sufficient guidance to Executive
- ▶ Bernstein Dissent: EPGA does not offend separation of powers
- ▶ 71-page Opinion; referred from Federal Court

Critical EPGA Factors

- ▶ Intelligible principle to guide use of discretion
- ▶ Scope of the delegation important
 - ▶ Greater the impact, more guidance required
- ▶ Specificity of standards governing decisions
- ▶ Duration of the Delegation
 - ▶ Court finds it was indefinite
- ▶ Standard of Reasonableness illusory
- ▶ Standard of Necessity meaningless
 - ▶ Governor could order people to quit driving due to risks



Where Does the Case go From Here

- ▶ No 21 day stay
- ▶ Governor petitions for delay
 - ▶ UE beneficiaries
 - ▶ Needs transition
- ▶ Reconsideration Motion – 21 days
- ▶ Federal Sixth Circuit
- ▶ Right to Appeal



Alternative Implementation Strategy

- ▶ State Agencies
 - ▶ MIOSHA
- ▶ Local Health Authorities
 - ▶ Oakland County Health Dep't
- ▶ Police Departments
- ▶ Public Pronouncements
- ▶ Buy time – these measures take time
- ▶ Business Owners Must be Vigilant



Oakland County Local Health Order 2020-12

- ▶ Issued October 3
- ▶ Imposes Masks ala Whitmer EO 153
- ▶ Standard Exceptions
- ▶ Challenges to Legality
 - ▶ 1978 Act much like invalide 1945 Act
 - ▶ Vague standards of “necessity”
 - ▶ Control of epidemic required
 - ▶ Could be read to require impact on continued health care delivery
- ▶ The Order is law until struck down



EO 2020-161 Workplace Safeguards Offices

- ▶ 12 familiar distinct requirements
- ▶ Increases distance protocols
- ▶ Post Personal Hygiene Signs
- ▶ Suspend Non-essential visitors
- ▶ Restrict Non-Essential Travel



EO 2020-161 Workplace Safeguards Restaurants and Bars

- ▶ A Whopping 20 distinct rules
- ▶ Still 50% Capacity
- ▶ Six feet between tables
- ▶ Sell alcohol via table service
 - ▶ Or to patrons seated at bar
- ▶ Information Pamphlets
- ▶ Familiar safety protocols



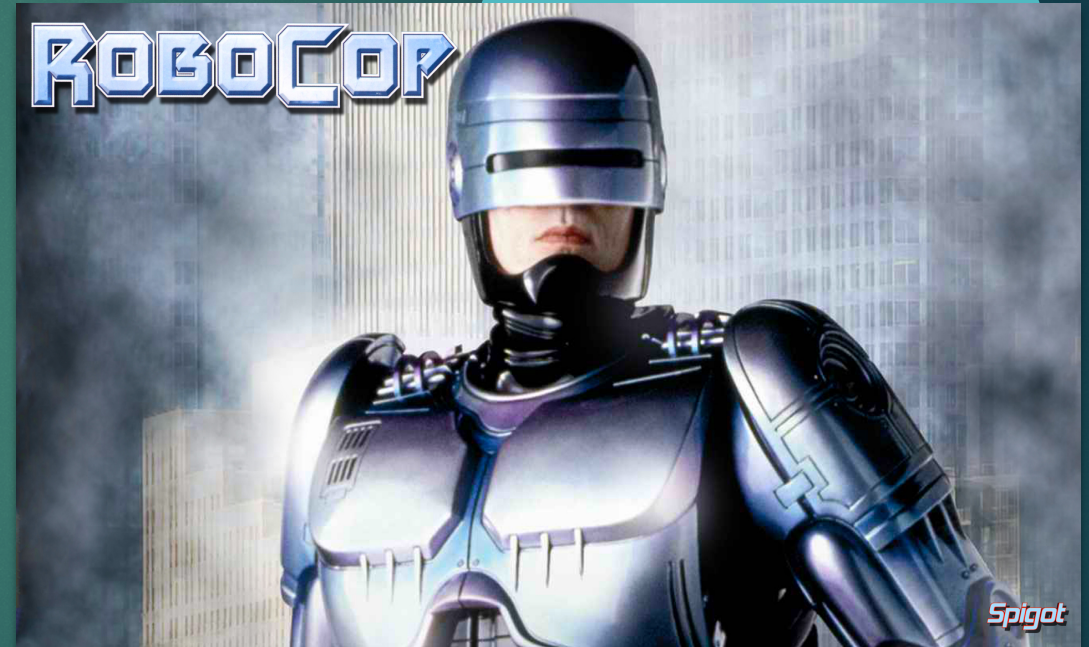
EO 2020-161 Workplace Safeguards In-House Services



- ▶ Daily Health Screening before work
- ▶ Accurate Appointment Record
- ▶ COVID-19 Inquiry
- ▶ Wear gloves where practical



Ongoing Compliance Protocols

- ▶ Right Now –
 - ▶ No special occupancy limits
 - ▶ No check-in protocols
 - ▶
- ▶ Avoid Physical Force
 - ▶ Common law (breach the peace)
 - ▶ Comparable to Landlord/Tenant
 - ▶ Call Police/Keep Distance
- ▶ Violations are a Misdemeanor



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- ▶ EO 156: Extends no Nursing Home Visits to 8.31.2020
 - ▶ EO 158: Remote Notaries and Witnesses extended to 8.31.2020
 - ▶ EO 159: Change of Use from Business to Educational
 - ▶ No review or inspection required (fire code)
 - ▶ Accommodate new instruction spaces
 - ▶ EO 162: Amends EO 160: remote work in Regions 6 & 8
 - ▶ Exec Directive 8: Prioritize Enforcement

Updates on Other New Orders



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THANK YOU!

► We appreciate this opportunity to explore the legal challenges of meeting the reopening requirements in real time. Thank you for your attention to our presentations. We thank Alaina, Maggie and the Greater Rochester Chamber of Commerce for this opportunity.

