



# GETTING BACK TO WORK: ADDRESSING POST-COVID-19 WORKPLACE CHALLENGES

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# AGENDA

- Welcome; Introductions
- Presentation
  - Employment 101 and how to handle COVID-19 issues with your employee base, including leave and unemployment topics.
  - Considerations when bringing employees back to work/safety in the workplace
  - How Governor Whitmer's Executive Order is impacting the workplace and what we might see in the upcoming weeks
  - Loan programs that may be available, as well as tax benefits of the CARES Act
- Questions & Answers

No confidential or privileged information can be shared during the Q&A but please reach out to us with questions by emailing [info@BodmanLaw.com](mailto:info@BodmanLaw.com) and we will connect you with an attorney that can assist. Answers will be limited to guidance available and does not constitute legal advice.

# WELCOME

- Welcome
- COVID-19 Response Team Introduction
- Bodman's COVID-19 Resources Webpage  
(<http://www.bodmanlaw.com/practices/covid-19-response-team>)
- Bodman is endeavoring to stay on top of the fast moving developments associated with the COVID-19 pandemic, related government action and the impacts on our clients.

# BUSINESSES REOPENING

- On April 24, 2020, Governor Whitmer issued Executive Order 2020-59, which extends the stay-in-place mandate through May 15, 2020 although it allows some businesses to reopen.
- Talk of allowing construction industry to resume on May 7, 2020.
- Other industries should prepare to resume operations.

# FINANCIAL INCENTIVE TO STAY HOME

- With the release of federal unemployment funds, employees on leave or who are laid off may receive an influx of cash which exceeds what they normally make.
- Consider: State benefits (\$362/week) + Federal benefits (\$600/week) = \$962/week.
- Any employee who normally receives \$15/hour and works 40 hours/week normally receives \$600/week.

# OVERCOMING FINANCIAL INCENTIVE TO STAY HOME

- Even if the math does not support a return to work, for those employees, a plea for the future of the Company may be insufficient. Consider:

	Return to Work	Stay Home	Work Part Time
Pay	\$15 x 40 = <u>\$600</u>	<u>\$962</u> unemployment likely, even if an employee is just “afraid” to work	Up to \$542 in wages per week + \$1 state unemployment + \$600 in federal unemployment = up to <u>\$1,143</u> per week
Healthcare	Receives	Receives for ???	Receives
Retirement, etc.	Receives	None	Receives
Other	Long-term security	No long-term security	Long-term security

# OVERCOMING FINANCIAL INCENTIVE TO STAY HOME

- Long-term security concerns – some will return to work, despite making \$300 less than on unemployment.
- Money and risk of exposure – will outweigh job security for others.
- **Highlight safety measures Company is taking.**

# WORKPLACE SAFETY AND PREPAREDNESS PLAN

- Executive Order 2020-59 obligates employers to provide face coverings, and affirms the requirement that businesses continuing in-person work maintain a “COVID-19 preparedness and response plan” based on OSHA guidance addressing:
  - Prevention efforts and workplace controls, including cleanliness and social distancing techniques;
  - Procedures to identify and isolate sick and/or exposed employees, including self-monitoring, daily screenings, and return-to-work processes; and
  - Summary of workplace flexibilities and potential benefits available to affected employees.



# WORKPLACE SAFETY AND PREPAREDNESS PLAN

- Classify the workforce into categories designated by OSHA depending on exposure risk, which may necessitate additional protective and/or preventative measures. Employees are:
  - **Low Risk** - workers do not frequently and/or closely interact with general public and maintain social distancing (six feet) from coworkers;
  - **Medium Risk** - workers frequently and/or closely interact with general public or coworkers in confined spaces;
  - **High Risk** - workers have a high potential for exposure to known or suspected sources of COVID-19; or
  - **Very High Risk** - workers have a high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures.

# WORKPLACE SAFETY AND PREPAREDNESS PLAN HIGHLIGHTS

- Encourage social distancing
  - Stagger schedules
  - Continue to allow telework
  - Space out workers and visitors
- Clean workspaces and encourage good hygiene
  - Allow for more frequent breaks to wash hands
  - Provide hand sanitizer
  - Regularly clean and disinfect frequently touched surfaces like doorknobs

# WORKPLACE SAFETY AND PREPAREDNESS PLAN HIGHLIGHTS

- Personal Protective Equipment
  - Current Executive Order requires employers to provide non-medical grade face coverings to employees
  - Can be Company-branded coverings like bandanas
  - You can allow employees to use their own coverings
  - Depending on workforce risk (see OSHA guidance), you may be required to provide additional PPE

# WORKPLACE SAFETY AND PREPAREDNESS PLAN HIGHLIGHTS

- Screening
  - Local County Orders that may expire soon require daily screenings
  - Continue to screen employees each day for symptoms:
    - Fever, cough, shortness of breath, new loss of smell or taste as well as gastrointestinal problems (nausea, diarrhea, and vomiting)
  - Do not allow self-reporting

# WHAT IF AN EMPLOYEE IS SYMPTOMATIC?

- Notify Employees Who Had Close Contact and Send Home
- Executive Order 2020-36 requires an employee who has had “close contact” with someone to stay home until either 14 days have passed since the last close contact or until the symptomatic individual receives a negative COVID-19 test.

# WHAT IF AN EMPLOYEE HAS COVID-19?

- Clean and Disinfect After Employee is Diagnosed
  - In the event an employee is diagnosed with COVID-19, make it very clear to employees that the Company is taking additional measures to ensure the workplace is safe
  - Close off the area visited by the ill person but open outside doors and windows and use ventilating fans to increase the air circulation.
  - If possible, wait 24 hours or as long as practical before cleaning and disinfecting.
  - Pay special attention to offices, bathrooms, common areas, shared electronic equipment used by the ill person, focusing on frequently touched surfaces.

# EMPLOYEE LEAVE OPTIONS

- Families First Coronavirus Response Act (“FFCRA”)
  - Paid leave is available under the EPSLA and EFMLA.
- Executive Order 2020-36
  - Anti-retaliation protections for those suffering COVID-19 symptoms or exposed to COVID-19 via **close contact**.
- Unemployment Compensation Benefits
  - Executive Order 2020-57 expands eligibility for benefits.
  - The CARES Act increases the amount and duration of benefits.
- Family and Medical Leave Act (“FMLA”) and Americans with Disabilities Act (“ADA”)
  - Traditional leave and accommodation rights.

# FREQUENTLY ASKED QUESTIONS

- What should I do if an employee refuses to report to work?
  - Request a Written Statement
    - What reason does the employee cite for his/her refusal?
      - Reason protected under the FFCRA, FMLA, and/or ADA?
      - Reason which entails NLRA, OSHA considerations?
      - Reason which creates eligibility for unemployment compensation benefits?
      - General fear to continue in-person work?
  - Consider Comparators – Who is similarly situated?
  - Consider Incentives



# RESOURCES FOR BUSINESSES: FEDERAL LOAN PROGRAMS -- PPP

- SBA 7(a) Loans – Paycheck Protection Program
  - Bank originated loans backed by SBA guarantees
  - For small businesses (up to 500 employees)
  - Loan amount up to 2.5 months of payroll up to \$10M
  - Low interest rate (.5%) with 6 month payment deferral
  - Loan term of 2 years but 100% forgivable

# RESOURCES FOR MICHIGAN BUSINESS: WHAT IS THE DISASTER LOAN PROGRAM?

- COVID-19 determined to be a qualifying event for Economic Injury Disaster Loans (EIDL) for businesses and private non-profits in declared zones
- The EIDL will provide up to \$2 million in financial assistance if a small business suffers *substantial economic injury* as a *direct result* of the declared disaster
- **Substantial Economic Injury/Direct Result:**
  - The business is unable to meet its obligations and to pay its ordinary and necessary operating expenses as a direct result of COVID-19
- Loan amount limited to the amount of economic injury (less business interruption insurance) from COVID-19

# REFUNDABLE PAYROLL TAX CREDITS

- Dollar for dollar reimbursement from payroll taxes
- Apply for accelerated reimbursement – 2 weeks
- IRS Guidance
  - Limited documentation required:
    - Substantiate need for leave
    - Forms 941, Employer's Quarterly Federal Tax Return
    - 7200, Advance of Employer Credits Due To COVID-19
    - Any other applicable filings made to the IRS requesting the credit.

# MICHIGAN EXECUTIVE ORDER 2020-24: TEMPORARY EXPANSIONS TO UNEMPLOYMENT ELIGIBILITY

Allows an employee to receive unemployment benefits if the employee:

- ❖ leaves work involuntarily for medical reasons if they leave to self-isolate or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised, displaying the symptoms of COVID-19, having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19;
- ❖ needs to care for someone with a confirmed diagnosis of COVID-19; or
- ❖ has a family care responsibility as a result of a government directive.

# CONTACT INFORMATION

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