



# CAN EMPLOYEES AVOID WORK, AVOID DISCIPLINE AND GET PAID?

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# WELCOME

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



# PART ONE

RECENT DEVELOPMENTS

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# WORKPLACE SAFETY AND PREPAREDNESS PLAN

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- On April 9, 2020, Governor Whitmer issued Executive Order 2020-42, which extends the stay-in-place mandate and requires that businesses continuing in-person work maintain a “COVID-19 preparedness and response plan” 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

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- Classify the workforce into categories 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.



# HEALTH INSURANCE BENEFITS

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- Are more benefits coming?
  - The Worker Health Coverage Protection Act
    - This Bill, sponsored by House Democrats, promises to subsidize COBRA coverage for 15 months or until workers enroll in another health insurance plan.
    - It also promises that workers will get access to the Affordable Care Act marketplace through a "special enrollment period" after their subsidized COBRA premiums run out.
    - The Bill is expected to be included in the next Coronavirus relief package after Congress' break ends May 4.
    - If the Bill becomes law, **the federal government would cover 15 months** of premiums for workers who stay on their employer's health plan after a layoff, furlough or reduction in hours that occurred on or after March 1.



# PART TWO

HOW ARE CRITICAL INFRASTRUCTURE WORKERS AVOIDING WORK?

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# EMPLOYEE LEAVE OPTIONS

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- Unemployment Compensation Benefits
  - Executive Order 2020-24 expands eligibility for benefits.
  - The CARES Act increases the amount and duration of benefits.
- Families First Coronavirus Response Act (“FFCRA”)
  - Paid leave is available under the EPSLA and EFMLA.
  - Payment via employer contributions to a multiemployer fund or plan in accordance with an existing collective bargaining agreement.
- Executive Order 2020-36
  - Anti-retaliation protections for those suffering COVID-19 symptoms or exposed to COVID-19 via **close contact**.
- Family and Medical Leave Act (“FMLA”) and Americans with Disabilities Act (“ADA”)
  - Traditional leave and accommodation rights.



# PART THREE

AVOID WORK, AVOID DISCIPLINE AND GET PAID?

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# AVOID WORK, AVOID DISCIPLINE AND GET PAID?

- When federal unemployment funds are released, many employees on leave or who are laid off will receive an influx of cash which exceeds what they normally make. 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



# AVOID WORK, AVOID DISCIPLINE AND GET PAID?

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- 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.
- Too many employees in the “Stay Home” category? Consider the following to jumpstart your workforce:
  - Notice of critical/essential status
  - Strong messaging regarding consequences
  - Denying unemployment
  - Application of attendance policies
  - Loss of health insurance
  - FFCRA leave only if satisfactory documentation is provided
  - Notify employees that EFMLA diminishes FMLA
  - Safety, security and financial benefits



# Q&A

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# FREQUENTLY ASKED QUESTIONS

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- What should I do if an employee refuses to report to work?
  - Step One: 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?
  - Step Two: Assess Comparators
  - Step Three: Modify Incentives
  - Step Four: Identify Decisionmaker – Employer or Employee?



# CONTACT INFORMATION

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