CLIENT ALERT: Governor Baker Issues Strict Travel Order Effective August 1, 2020

This past Friday, Governor Charlie Baker announced a new Executive Order that will impose strict rules governing travel to Massachusetts ("Order"). Effective August 1, all visitors entering Massachusetts (including returning residents, students, and international travelers) will be required to complete a Travel Form, and quarantine for 14 days upon arrival unless they produce a negative COVID-19 result that was administered no earlier than 72 hours prior to their arrival. The Order, which will be enforced by the Massachusetts Department of Public Health ("DPH"), contains a number of exemptions, but carries a hefty fine of up to $500 per day for non-compliance, and requires proof upon request if an individual is not quarantining. The following is an overview of the exemptions.

Lower Risk State. Travelers arriving from a COVID-19 lower-risk state (as identified by the DPH) are not required to fill out the Travel Form and are not required to quarantine. Currently, the lower-risk states are Connecticut, Maine, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Hawaii. Massachusetts residents are urged to limit any out-of-state travel to states designated as COVID-19 lower-risk states. The list of lower-risk states is subject to change based on health data metrics.

72-hour Testing Rule. If the traveler can produce, upon request, proof of a negative COVID-19 test result from a test administered on a sample taken no earlier than 72 hours prior to arrival in Massachusetts, they will not be required to quarantine. The test must be by a method approved by the DPH. Travelers who have taken a COVID-19 test but have not yet received results will be required to quarantine until the negative test result is received, and visitors are strongly urged to obtain a negative result before traveling to Massachusetts. More information on testing can be found here.

Transitory Travel. Travelers who are passing through, or connecting to an airplane, bus or train, or who are stopping at a highway rest stop, are also exempted from the Order, but only for so long as is reasonably required for the traveler to complete their transit, make any necessary airplane, bus, or train connection, or make use of a rest stop.

Persons Commuting for Work or School. Individuals who regularly commute, at least weekly, either outside of Massachusetts, or inside of Massachusetts to a fixed place to attend school or work, are exempt from the Order. In either case, however, the exemption applies only to and from the individual's residence and place of work or school. Workers or students who travel to any place that is not their home state for personal or leisure reasons cannot rely on this exemption.

Patients Seeking or Receiving Medical Treatment. Patients who are traveling to Massachusetts to seek or receive specialized medical care from a physician located in the Commonwealth and persons accompanying and providing needed support to the patient are

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exempt from the Order.

Military Personnel. Any person who is required to travel to Massachusetts at the order or directive of a Federal or State military authority will be exempt from the Order.

Workers Providing Critical Infrastructure Services. Workers who perform "critical infrastructure functions" (as set forth in more detail here) are exempt from the quarantine requirement while they are commuting to or from or while they are at work. Notably, however, *workers who travel to or from Massachusetts for personal or leisure reasons cannot rely on this exemption*. This is a change from the Governor's prior order, which simply exempted "essential critical infrastructure workers" altogether. The list of "essential critical infrastructure workers" is expansive, but identifies specific workers in many categories, such as healthcare, law enforcement, first responders, transportation and logistics, and public works and infrastructure support services. Employers should review the list carefully to determine whether any of its employees are deemed "essential critical infrastructure workers."

Under this new Order, employers are discouraged from sending employees on business travel to locations other than the lower-risk states, and should take steps to ensure that employees are complying with these travel rules (to start, employers may consider sharing the binding DPH Guidance with their employees).

Employers also are urged to *strongly discourage* their employees from taking leisure travel to non-lower risk destinations. In light of this Order, employers are advised to implement a process by which employees traveling outside of the lower-risks states for personal or leisure travel inform the employer in advance to discuss the potential impact of such travel (i.e., whether the employee will be required to quarantine for 14 days before they may return to work, and if so, whether it is feasible for the employee to be out for this extended time; whether the employer will be requiring the employee to undergo COVID-19 testing before returning to work, which could then shorten the required quarantine, presuming a negative result; whether telework may be available during the employee's quarantine, etc.). If an employee is required to quarantine, the employer will need to assess what leave, if any, is available to the employee for this time. Available leave may include Emergency Paid Sick Leave under the Families First Coronavirus Response Act ("FFCRA") (up to 80 hours, discussed in greater detail here), Massachusetts Earned Sick Time (up to 40 hours), employer-provided paid time off, or unpaid leave.

Employers should also be aware that the Mandatory Workplace Safety Standards, as well as the following sector-specific protocols have been updated to reflect the new travel rules:

Construction;

Indoor and Outdoor Events;

Laboratories;

Lodging;

Manufacturing;

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Office Space; and

Theater & Performance Venues.

More information on the Mandatory Workplace Safety Standards and sector-specific protocols may be found here, here and here.

Please note that the above is based on information currently available as of the date of this publication. Employers should continue to follow Mass.gov for the most up-to-date information on travel and other COVID-19 related issues. Employers with questions about travel, quarantine or isolation orders, or employee leave should consult with their MBJ attorney.

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This alert was prepared on July 28, 2020.

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