

## CLIENT ALERT: Massachusetts Began Phase 3 on July 6th; Gatherings and Other Restrictions Loosened

The Massachusetts economy began Phase 3 of its Four-Phase Reopening Plan on Monday, July 6th. For more information regarding which businesses were permitted to reopen in Phases 1 and 2, please refer to our [June 4th](#), [June 8th](#), and [June 22nd](#) client alerts. This client alert focuses on the most recent updates and guidance pertaining to the Phase 3 reopening of the Massachusetts economy and the Governor's revised gatherings restrictions.

### **Phase 3**

On July 2nd, Governor Baker issued an [Executive Order](#) authorizing Phase 3 of the Reopening Plan to begin on July 6th (Phase 3 Order). As we saw in Phases 1 and 2, the administration similarly has staggered the reopening of particular businesses and services in Phase 3. While Step 1 of Phase 3 began on July 6th, the Governor announced that, in the City of Boston, Step 1 of Phase 3 will begin one week later - on Monday, July 13th. The City of Somerville also has announced that it will enter Phase 3 on July 13th at the earliest.

Phase 3 updates have been made to the Sector-Specific Protocols and Best Practices for the following businesses and services permitted to reopen in earlier phases:

- [Close Contact Personal Services](#)
- [Drive-In Movie Theaters](#)
- [Golf Facilities](#)
- [Laboratories](#)
- [Libraries](#)
- [Operators of Lodgings](#)
- [Manufacturing](#)
- [Office Spaces](#)
- [Places of Worship](#)
- [Restaurants](#)
- [Retail Businesses](#)
- [Sectors Not Otherwise Addressed](#)

Importantly, Phase 3 guidance for office spaces and laboratories significantly relaxes previous restrictions and no longer requires an employer to permit employees to telework, where telework is a feasible option. Rather, the Phase 3 guidance simply encourages employers to allow employees to telework if feasible.

The Phase 3 Order specifically permits the reopening or expansion of the following businesses and services in Step 1 of Phase 3:

- [Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools](#)

- Casino gaming floors
- Horse racing tracks and simulcast facilities
- Indoor recreation and athletic facilities for general use
- Fitness centers and health clubs, excluding saunas, hot tubs, and steam rooms
- Museums
- Indoor historic spaces and sites
- Aquariums
- Outdoor theaters and performance venues not designated as Phase 4 enterprises
- Movie theaters
- Sightseeing and other organized tours
- Motion picture, television, and video streaming production
- Fishing and hunting tournaments and other amateur or professional derbies
- Outdoor event spaces used for gatherings and celebrations including those in parks, reservations, and other outdoor spaces not designated as Phase 4 enterprises
- Indoor non-athletic instructional classes in arts, education, and life skills for persons 18 years or older
- Indoor recreational activities with low potential for contact including batting cages, driving ranges, go karts, bowling alleys, rock climbing walls

Step 2 of Phase 3 will allow the following additional businesses and services to reopen or expand operations:

- Indoor performance venues used for live performances such as concert halls, theaters, and other indoor performance spaces not designated as Phase 4 enterprises
- Indoor recreational activities with greater potential for contact including laser tag, roller skating, trampolines, obstacle courses

In addition, the administration has released Sector-Specific Protocols and Best Practices for the following industries eligible to reopen in Step 1 of Phase 3:

- **Fitness centers and health clubs**
- **Indoor and outdoor events**
- **Indoor recreation**
- **Museums, cultural and historical facilities, and guided tours**
- **Theatres and performance venues**

As in earlier phases, the guidance issued to these Phase 3 businesses imposes occupancy restrictions and additional limitations. For instance, fitness centers and health clubs permitted to reopen in Step 1 of Phase 3 are required to keep occupancy at less than 40%, require the use of face masks, and sanitize equipment after use. Museums, cultural and historical facilities, and guided tours are similarly subject to occupancy limitations (50%) and are required to make social distancing signage clearly visible.

The Massachusetts Gaming Commission also has issued **minimum requirements** which must be met in order for gaming establishments to reopen during Phase 3. In addition, Phase 3 permits professional

sports teams to hold games without spectators.

It is important for Phase 3 businesses to keep in mind, before resuming or expanding operations, they must meet all applicable safety standards, create a COVID-19 control plan, and complete a self-certification.

### **Additional Public Health Guidance**

Transitioning to Phase 3 for the health care system is contingent on Massachusetts maintaining sufficient statewide hospital bed capacity at newly revised thresholds.

To aid in such transition, the Department of Public Health (DPH) issued an **Order** effective July 6<sup>th</sup> permitting health care providers to continue to provide in-person procedures and services as authorized in Phase 2, with the addition of certain group treatment programs and day programs (Health Care Order). These programs include adult day health, day habilitation programs, and substance abuse services day treatment and outpatient services. Certain human services programs may also reopen including community based day services for adults with intellectual and cognitive disabilities and psychosocial rehabilitation clubhouses.

All health care providers are required to comply with mandatory safety standards and must continue to use prioritization policies established in Phase 2 for care delivery and scheduling, in addition to monitoring patient volume for non-essential, elective procedures and services. Updated visitation guidance has also been issued for health care facilities in Phase 3.

### **Updated Gatherings Order**

On July 2, 2020, Governor Baker also announced an updated **Order** further loosening restrictions on social gatherings to allow more people to gather both indoors and outdoors (Gatherings Order). The Gatherings Order is effective beginning Monday, July 6th throughout the Commonwealth, except the City of Boston, and effective on Monday, July 13th in the City of Boston. This Gatherings Order further relaxes previous gathering limitations put in place by the Governor's March 23rd and June 6th orders, which are detailed in our **March 24th** and **June 22nd** client alerts, but does not supersede previously issued sector-specific guidance.

In the Gatherings Order, indoor gatherings are limited to eight people per 1,000 square feet, but should not exceed 25 people in a single enclosed, indoor space. Outdoor gatherings in enclosed spaces are limited to 25 percent of the facility's maximum permitted occupancy, with a maximum of 100 people in a single enclosed outdoor space. This Order pertains to community events, civic events, sporting events, concerts, conventions, and others. The Gatherings Order does not apply to outdoor, unenclosed gatherings if proper social distancing measures are possible.

### **Phase 4**

Phase 4, the final phase of the Reopening Plan, will only be possible when a vaccine or effective treatment is ready. According to the Phase 3 Order, the following businesses and services will remain

closed until Phase 4:

- Amusement parks, theme parks, gaming arcades, indoor and outdoor gaming arcades, indoor or outdoor water parks, and indoor and outdoor ball pits
- Saunas, hot-tubs, and steam rooms at health clubs, gyms, or other facilities
- Large capacity venues used for group or spectator sports, entertainment, business, and cultural events, including stadiums, arenas, ballparks, dance floors, and exhibition and convention halls
- Beer gardens, breweries, wineries, and distilleries, if not providing seated food service under retail food permits issued by municipal authorities
- Bars, dance clubs, and nightclubs, and venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities
- Street festivals, parades, and agricultural festivals
- Road races and other large, outdoor organized amateur or professional group athletic events
- Overnight camps (Summer 2021)

The administration continues to indicate that additional sector guidance for future phases will be forthcoming.

Constantly expanded and revised reopening guidance on both the state and local level make compliance a significant challenge for businesses trying to reopen or expand their operations. This alert seeks to provide an overview of recent updates and guidance for Phase 3 businesses permitted to reopen, though such guidance may be altered or modified by future orders and guidance from the administration, the DPH, and the Department of Labor Standards. Employers with questions about how to comply with reopening requirements should consult with their MBJ attorney.

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