

CLIENT ALERT: Massachusetts Continues to Reopen: Step 2 of Phase 2 Begins June 22nd

On June 19, 2020, Governor Baker announced that the Massachusetts economy will begin the second step of Phase 2 of its Four-Phase Reopening Plan (Plan) on Monday, June 22nd. For an overview of Plan, please refer to our [May 21st client alert](#). For more information regarding which businesses already have been permitted to reopen in Phase 1 and the first step of Phase 2, please also refer to our [June 4th](#) and [June 8th](#) client alerts. This client alert focuses on the most recent updates and guidance pertaining to the progressive reopening of the Massachusetts economy.

Step 2 of Phase 2

As we saw in Phase 1, Governor Barker similarly has staggered the reopening of particular businesses and services in Phase 2. While Phase 2, Step 1 began on June 8th, the Governor just announced that Step 2 of Phase 2 will begin two weeks later – on Monday, June 22nd. Step 2 permits the reopening or expansion of the following businesses and services:

1. Indoor table service at restaurants;
2. Close contact personal services, with restrictions;
3. Retail dressing rooms, by appointment only; and
4. Office occupancy limitations have increased from 25% up to 50%.

While the administration previously released Sector-Specific Protocols and Best Practices for these industries, updated guidance was issued on June 19th for Step 2 of Phase 2. These Step 2 businesses – [restaurants](#), [close contact personal services](#), [retail businesses](#), and [office spaces](#) – should rely upon these updated workplace safety standards in order to reopen and expand their business and services.

The June 19th Sector-Specific Protocols and Best Practices for close contact personal services require certain businesses authorized to reopen in Phase 1, to comply with the workplace safety standards for close contact personal services by June 22nd (including barbershops and hair salons). Close contact personal services include the following:

- Hair salons and barbershops
- Hair removal services; including laser services, depilatory salons, waxing services, threading, and electrolysis services
- Other hair services; including hair replacement services, scalp treating services
- Massage therapy; including, body treatments, eastern treatment, energy therapies and other body work therapies
- Nail care services; including nail salons
- Skin care services; including peels, facials, serums, Botox and filler
- Makeup salons
- Makeup application services
- Tanning salons; including other businesses that provide spray tanning and tanning beds

- Tattoo, piercing and body art services
- Personal trainers; provided that in Phase 2 any indoor personal training service is limited to appointment-only training with only one customer (or two from the same household) allowed in the facility at a time

Before any of these Step 2 businesses can resume operations, they must meet all applicable safety standards, create a COVID-19 control plan, and complete a self-certification.

Relaxed Gathering Restrictions

Governor Baker also issued a revised [Order](#) relaxing previous gathering restrictions put in place by the Governor's March 23rd order, which are detailed in our [March 24th client alert](#).

Gatherings that bring more than 10 people together in close physical proximity in any confined indoor or outdoor space remain prohibited. However, the Order clarifies that this limitation shall not apply to businesses permitted to reopen in Phases 1 and 2 where such businesses comply with all applicable COVID-19 safety rules.

The Order also relaxes gathering restrictions for unenclosed, outdoor spaces provided that individuals continue to comply with social distancing guidelines and the venue has not previously been designated for reopening only in Phases 3 or 4, such as amusement parks and concert venues. The Order also explicitly permits outdoor gatherings for the purpose of political expression. The requirement that individuals wear masks or face coverings when attending these outdoor gatherings remains in effect, where social distancing may not be possible.

Reopening Child and Youth Serving Programs

Child and youth-serving programs were permitted to begin reopening in Step 1 of Phase 2, and the Department of Early Education and Care (EEC) previously issued guidance for the reopening of child care programs and child and youth programs, as discussed in our previous client alerts [here](#) and [here](#).

On June 12th, the EEC further updated its guidance regarding the [Minimum Health and Safety Requirements](#) for the reopening of child and youth programs. These requirements apply to all child and youth-serving programs, including recreational summer programs and camps, home-based child care, and center-based child care. While the EEC expects that these requirements will be in effect through the summer, some elements may continue to change as new data emerges.

The EEC also has issued an [Overview](#) of the reopening process, which will require programs to submit a Reopening Plan that is compliant with the Minimum Health and Safety Requirements, an [Attestation Form](#) certifying that such requirements were adopted, and a Staff Checklist to verify that required health and safety training was completed. The EEC has created reopening plan templates for family child care programs and group and school age programs, which can be found [here](#). Beginning June 15th, the EEC invited providers to submit their reopening plans for review and approval.

All licensed and approved childcare programs, including Exempt Emergency Child Care Programs (EECCPs), are required to submit their Reopening Plans prior to reopening. For additional information regarding this process, please refer to the EEC's [FAQ](#).

Expectations for Phases 3 and 4

The Governor has yet to announce when Phase 3 will start (but with guidance mandating that each Phase will last at least three weeks, the earliest possible date for Phase 3 was June 29th). In his June 19th announcement, Governor Baker indicated, however, that Step 2 of Phase 2 will last at least two weeks, which would push the earliest possible start date for Phase 3 to July 6th.

At present, the administration has designated the following businesses to reopen or expand their operations in Phase 3, subject to certain restrictions:

- Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools
- Casino gaming floors
- Horse racing 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 of moderate capacity
- Indoor theaters, concert halls, and other performance venues of moderate capacity
- Sightseeing and other organized tours
- Fishing and hunting tournaments and other amateur or professional derbies
- Outdoor weddings, events, and gatherings in parks, reservations, and open spaces with allowances for moderate capacity
- Overnight camps
- Indoor non-athletic instructional classes in arts, education, and life skills for persons 18 years or older
- Indoor recreational businesses, including batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock climbing

In addition, Phase 4 - which will not begin until the development of COVID-19 vaccines and/or treatments - is expected to permit the reopening or expansion of the following businesses and services:

- Amusement parks, theme parks, and water parks
- Bars, nightclubs, and dance clubs, *i.e.* venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits
- Beer gardens, breweries, distilleries and wineries not providing seated food service prepared on-site and under retail food permits
- Saunas, hot tubs, and steam rooms at fitness centers, health clubs, and other facilities
- Large-capacity venues for group or spectator sports, including theaters, concert halls,

ballrooms, stadiums, dance floors, and exhibition and convention halls

- Private party rooms
- Street festivals, parades, and agricultural festivals
- Road races and other large, outdoor organized amateur or professional group athletic events

The above list of businesses scheduled to reopen in Phases 3 and 4 is based upon present guidance and is subject to change as reopening progresses. All businesses reopening in Phases 3 and 4 will be expected to comply with general mandatory safety rules and, where applicable, Sector-Specific Protocols and Best Practices.

This alert seeks to provide an overview of recent updates and guidance for Massachusetts businesses permitted to reopen, though such guidance may be altered or modified by future orders and guidance from the administration, the Department of Public Health, the Department of Labor Standards, and the EEC. As the economy continues to reopen and additional guidance is issued, we will keep you informed about all such developments. Employers with questions relating to reopening their business should consult with their M&J attorney.

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This alert was prepared on June 22, 2020.

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