

CLIENT ALERT: Massachusetts Removes Most COVID-19 Business Restrictions, Ends State of Emergency and Revises Face Covering Guidelines to Align with CDC Guidance

In a significant move ending pandemic-era regulations in Massachusetts, Governor Baker announced on Monday that effective May 29, 2021, all industries will be permitted to operate at full capacity and that most COVID-19 restrictions will be lifted. The announcement fast tracks the previously announced reopening plans detailed in our previous [Client Alert](#) by more than two months and ends the state of emergency in Massachusetts on June 15, 2021.

Governor Baker also announced that effective May 29, 2021, the state's face covering order will be rescinded in favor of the Massachusetts Department of Public Health's ("DPH") new face covering advisory tracking updated guidance from the Centers for Disease Control and Prevention ("CDC") for vaccinated individuals. Mayor Kim Janey stated that Boston will align with the state in lifting all business restrictions on May 29, 2021, a reversal of the city's prior position of lagging behind the state's reopening plan by approximately three weeks. The Occupational Safety and Health Administration ("OSHA") has also briefly weighed in, temporarily adopting the CDC's guidance while signaling that further information will be forthcoming.

CDC Updates Face Covering and Social Distancing Guidelines for Vaccinated Individuals

Governor Baker's announcement comes on the heels of the CDC's [surprise update](#) to its face covering and social distancing guidelines. On May 13, 2021, the CDC announced that fully vaccinated people, with a few notable exceptions, can resume activities in all settings, both indoor and outdoor, "without wearing a mask or staying six feet apart, except where required by federal, state, local, tribal, or territorial rules, and regulations, including local business and workplace guidance." Individuals are considered fully vaccinated two weeks after their second dose in a two-dose series, such as the Pfizer or Moderna vaccines, or two weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine. The CDC recommends that fully vaccinated individuals continue to wear a face covering while in correctional facilities and homeless shelters.

The CDC's update only applies in "non-healthcare" settings. Additionally, all travelers are still required to follow the [CDC's Order](#) requiring individuals to wear masks on all airplanes, ships, ferries, taxis, ride-shares, buses, trains, and other forms of public transportation, and in transportation hubs such as airports, bus or ferry terminals, train or subway stations, seaports and ports of entry. Fully vaccinated individuals also no longer need to get tested for COVID-19, self-quarantine before or after traveling domestically, or get tested, quarantine, or be restricted from work following a known exposure, if asymptomatic. However, the CDC still recommends that fully vaccinated individuals get tested within three to five days upon returning to the United States following international travel, or if they are a resident or employee of a correctional facility, detention facility or a homeless shelter and have been exposed to COVID-19.

The updated guidance states that individuals must continue to follow state and local guidelines relating to face coverings and social distancing, including local business and workplace guidance.

Massachusetts Lifts Most COVID-19 Restrictions and Updates Face Covering Requirements

Following the abrupt changes announced by the CDC, Massachusetts businesses were left wondering how the new guidance would impact the state's plan to not fully reopen until August. Four days later, however, Governor Baker [announced](#) that effective May 29, 2021, most restrictions would be lifted on

businesses in Massachusetts. All businesses, including those that have been forced to remain closed throughout the pandemic, will be allowed to reopen at 100% capacity, including bars, beer gardens, breweries, wineries, distilleries, dance clubs, street festivals, parades, and agricultural festivals. In addition to shedding capacity restrictions, restaurants will no longer be required to impose time limits, table seating caps, or social distancing requirements. The indoor and outdoor gathering limit will also be rescinded.

The state's new **face covering advisory**, also effective May 29, 2021, will rescind and replace the state's current face covering order. In adopting the CDC's guidance for vaccinated individuals, the advisory states that fully vaccinated individuals will now be able to participate in all activities (with several exceptions noted below), both indoors and outdoors, without wearing a face covering or social distancing. Individuals who are not fully vaccinated are advised to continue avoiding crowds and poorly ventilated spaces, wear face coverings and stay six feet apart from others that do not live in an individual's household.

In certain locations, both vaccinated and unvaccinated individuals will still be required to wear face coverings at all times, including:

- While riding public and private transportation including the MBTA, commuter rail, buses, ferries, and airplanes, and while in ride-shares, taxis, and livery vehicles, as well as in transportation hubs such as train stations, ferries, bus stops and airports.
- Inside K-12 public schools, collaboratives and approved special education schools.
- Inside childcare programs licensed or authorized by the Department of Early Education and Care ("EEC") and as otherwise required by EEC or DPH.
- Inside Health Care Facilities and Provider Offices.
- Inside Congregate Care Settings.
- Inside Health Care and Rehabilitative Day Services and Programs.

The current face covering order and business restrictions will remain in effect until May 29, 2021. It is important to note, however, that employers and businesses may still elect to implement and enforce their own safety guidelines, including social distancing and face covering requirements in the workplace, even after all restrictions are lifted on May 29, 2021.

OSHA and EEOC Express that Updated Guidance is Forthcoming

Given the CDC's drastic shift, other federal agencies are considering revisions to their COVID-19 guidance. OSHA provided a **short update** on its website recognizing and temporarily adopting the CDC's position, stating that it is "reviewing the recent CDC guidance and will update our materials on this website accordingly. Until those updates are complete, please refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers." OSHA's prior directive had been for employers to protect their workforces by mandating face coverings in the workplace. The Equal Employment Opportunity Commission ("EEOC") is also likely to issue updates, posting on its website that its **previously issued guidance** was prepared prior to the CDC's guidance, and that it is "considering any impact of these developments on COVID-19 technical assistance provided to date."

MBJ will continue monitoring any additional developments in the Massachusetts reopening plans, as well as further guidance from the CDC, OSHA, the EEOC and other agencies. Employers with questions regarding these significant changes should consult with their MBJ attorney.

Ryan Jaziri and Jack Thaler are attorneys with Morgan, Brown & Joy, LLP and may be reached at (617) 523-6666 or at rjaziri@morganbrown.com and jthaler@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on May 19, 2021.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.