CLIENT ALERT: Phase 2: Additional Guidance on How the Massachusetts Economy Will Continue to Reopen

On June 1, 2020, Governor Baker issued an Executive Order providing further guidance on the next steps to reopening the Massachusetts economy (Phase 2 Order). The Order provides that public health data metrics in the Commonwealth continue to show progress and that these trends of sustained improvement will permit a continuing, carefully phased relaxation of present restrictions on business operations.

The Phase 2 Order does not provide a specific date for the start of Phase 2 (but with guidance mandating that each Phase will last at least three weeks, the earliest possible date for Phase 2 to begin is June 8th). Rather, the Phase 2 Order addresses how the Commonwealth should begin to prepare for Phase 2, the next phase of reopening pursuant to the Governor's May 18th Four-Phase Plan (Plan). For further details on the Plan, please refer to the overview from our recent client alert.

Beginning on June 1, 2020, the Phase 2 Order permits the types of businesses identified therein (Phase 2 Businesses) to open their physical workplaces and facilities for the sole purpose of beginning to prepare for reopening. The 10-person limitation on gatherings will not be applicable to Phase 2 Businesses preparing for reopening provided that they comply at all times with applicable COVID-19 workplace safety rules, including the Mandatory Safety Standards and relevant Sector-Specific Protocols and Best Practices. For further discussion of these safety rules, please reference our recent client alert.

During these preparations, Phase 2 Businesses are not allowed to open their premises to customers or the public generally; they must await a subsequent order to provide the permissible reopening date before that can happen.

In anticipation of Phase 2 reopening, additional "previews" of Sector-Specific Protocols and Best Practices for the following industries, which will be allowed to reopen during Phase 2, have been released:

- Restaurants
- Retail Businesses
- Operators of Lodgings
- Golf Facilities

For Retail Businesses that have been operating with more severe restrictions throughout the pandemic as COVID-19 Essential Services, such businesses must comply with the new sector-specific safety protocols, as applicable, within one week from the date that such businesses are authorized to reopen pursuant to a Phase 2 reopening order from the Governor.

The Phase 2 Order and recent guidance from the Baker-Polito administration also provides a more

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comprehensive list of the industries and services that will be permitted to resume operations or expand their current operations during Phase 2, albeit with limitations and restrictions:

- Restaurants, if providing seated food service prepared on-site and under retail food permits issued by municipal authorities, including beer gardens, breweries, wineries, and distilleries that meet these criteria;
- Retail Stores, including stores in enclosed shopping malls;
- Lodging, including hotels, motels, inns, and other short-term lodging;
- Casino hotels and restaurants, subject to applicable restaurant and lodging restrictions;
- Personal Services, including both services which do not involve close personal contact as well as those which do;
- In-Home Installations, including those that are not construction related, such as carpet installation, home theaters, and security systems;
- Auto Dealer and Wholesaler Services, to include showroom browsing;
- Public Libraries;
- Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools, for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services;
- Driving Schools, permitted to resume behind-the-wheel training and observation of a student driver;
- Flight Schools;
- Funeral Homes;
- Warehouses and Distribution Centers;
- Golf Facilities, including outdoor driving ranges;
- Professional Sports, practice and training programs;
- Recreational day camps, including sports and art camps;
- Limited organized youth and adult sports programs and activities, outdoor only for adults, indoor for supervised youth programs and activities;
- Non-athletic instructional classes in arts, education, and life skills for youths under 18 years of age, in groups of fewer than 10;
- Outdoor Historical Spaces and Sites; and
- Other Outdoor Recreational Facilities, including pools, playgrounds, spray decks, mini golf, go karts, batting cages, climbing walls, and ropes courses.

The reopening of Phase 2 Businesses will also require safety-based restrictions similar to those implemented during Phase 1, including occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.

In addition, as we saw in Phase 1, each progressive phase may contain multiple steps that stagger the reopening dates for each of the types of businesses and activities permitted to reopen within that phase. For instance, at the outset of Phase 2, outdoor seating will be permitted at restaurants, while

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indoor seating will not be permitted until later in Phase 2.

Similarly, the reopening of additional personal services will be staggered throughout Phase 2 with services that do not require close personal contact (such as photography, window washing, individual tutoring, home cleaning, and career coaching) to resume before those that do require close contact (including massage therapy, nail salons, tattoo parlors, electrolysis studios, and personal training).

Also on June 1, 2020, Governor Baker issued a second Executive Order providing specific guidance on reopening preparations for child care programs (Child Care Order). This Child Care Order similarly permitted such programs to begin preparations for reopening on June 1st. During this preparation period, child care programs are required to comply with all applicable COVID-19 workplace safety rules and may not open their premises to children or the public. The Department of Early Education and Care (EEC) will be issuing further guidance and procedures to implement COVID-19 health and safety rules for the operation of licensed, approved, or exempt child care programs. The Child Care Order does not apply to emergency child care or emergency residential programs created by and operating under prior orders.

Further guidance regarding the various industries and services that will be permitted to reopen during Phase 2, and later phases, can be found here and here. Additional Sector-Specific Protocols and Best Practices for more Phase 2 Businesses will be forthcoming.

This alert strives to provide an overview of the key guidance and updates to the Plan in preparation for Phase 2, though such guidance may be further altered or modified by future orders and guidance from the administration, the Department of Public Health, the Department of Labor Standards, and the EEC.

We expect the administration will provide further guidance as Massachusetts continues to progress through the Four-Phase Reopening Plan and will keep you informed about all such developments. Specifically, please be sure to check our website for any updates to this alert as they continue to come down from the administration this week, and we will send out by email additional client alerts about any significant updates on the Phase 2 Order and/or the Plan.

Employers with questions about when and how to prepare for reopening their business should consult with their MBJ attorney.

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