

# CLIENT ALERT: MA Reopening Transitions to Step 2 of Phase 3, Except for Higher Risk Communities

Governor Baker issued an [Executive Order](#), effective October 5th, permitting “lower risk” communities to enter Step 2 of Phase 3 of the Massachusetts Four-Phase Reopening Plan, while other “high priority” communities will remain in Step 1 of Phase 3. For more information regarding which businesses were permitted to reopen in Step 1 of Phase 3, please refer to our [previous client alert](#). This client alert focuses on the most recent updates and guidance pertaining to reopening the Massachusetts economy and the revised gatherings order.

## **Step 2 of Phase 3**

Determining whether a business is eligible to enter Step 2 of Phase 3 depends on whether the business operates in a “lower risk” or “higher priority” community. “Higher priority” communities are defined as cities or towns that were coded “red” in any of the last three weekly reports on COVID-19 by the Department of Public Health (DPH), published every Wednesday.

“Red” communities are those that report an average of 8 or more cases per day per 100,000 residents over the last 14 days. All other communities are considered “lower risk” and include communities that have average of less than 8 cases per day per 100,000 residents in the past 14 days.

As of September 30, 2020, the following communities were designated as “red” in any of the last three weekly DPH reports:

Attleboro	Lawrence	North Andover
Avon	Lowell	Plainville
Boston	Lynn	Revere
Chelsea	Lynnfield	Saugus
Dedham	Marlborough	Springfield
Dracut	Methuen	Tyngsborough
Everett	Middleton	Winthrop
Framingham	Monson	Worcester
Haverhill	Nantucket	Wrentham
Holliston	New Bedford	

Accordingly, the above-listed “higher priority” communities cannot transition into Step 2 of Phase 3 until designated as “lower risk.” For the most up-to-date information regarding whether a particular community is “higher priority” or “lower risk,” click [here](#).

For “lower risk” communities, Step 2 of Phase 3 permits the reopening or expansion of the following businesses and services:

- Indoor performance venues may reopen with 50% capacity (with a maximum of 250 people)
- Outdoor performance venues may increase capacity up to 50% (again, with a maximum of 250 people)
- Arcades and indoor and outdoor recreation businesses may increase capacity up to 50% and commence activities with greater potential for contact including trampolines, obstacle courses, roller rinks and laser tag
- Fitting rooms may open in all types of retail stores
- Gyms, museums, libraries and driving and flight schools may increase their capacity up to 50%

If a community regresses from its “lower risk” designation, businesses operating in that community

must revert to compliance with the rules and guidance for Step 1 of Phase 3.

This is the first time Governor Baker has initiated community-level reopening guidance across the Commonwealth, which comes just under two months after the administration released **enhanced community-level data** on the spread of COVID-19.

Governor Baker also recently **extended free testing** in 18 communities through to October 31st: Brockton, Chelsea, Everett, Fall River, Framingham, Holyoke, Lawrence, Lynn, Marlborough, Methuen, New Bedford, Randolph, Revere, Salem, Saugus, Springfield, Winthrop and Worcester.

Step 2 is the final step in Phase 3 of the Reopening Plan. The next phase, Phase 4, will only be possible when a vaccine or effective treatment is ready.

### **Updated Sector-Specific Protocols**

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:

- **Arcades & Other Indoor & Outdoor Game & Recreation Businesses**
- **Close Contact Personal Services**
- **Fitness Centers and Health Clubs**
- **Golf Facilities**
- **Indoor and Outdoor Events**
- **Libraries**
- **Operators of Lodgings**
- **Places of Worship**
- **Restaurants**
- **Retail Businesses**
- **Theaters and Performance Venues**

Many of these updates are set to go into effect on October 5th and address the increased capacity allowances in Step 2 of Phase 3 for “lower risk” communities. As with previous guidance, Phase 3 businesses should keep in mind, before resuming or expanding operations in Step 2 of Phase 3, they must meet all applicable safety standards, create a COVID-19 control plan, and complete a self-certification.

### **Revised Gatherings Order**

Governor Baker issued a **Revised Gatherings Order**, also effective October 5th, limiting outdoor gatherings at event venues and in public settings to 100 people in “lower risk” communities, and 50 people in all other communities. However, limits on indoor and outdoor gatherings remain the same in all communities: 25 people for indoor gatherings and 50 people for outdoor gatherings, including those at private residences and in private backyards.

The Revised Gatherings Order also requires all participants (over the age of 5) to wear face coverings in gatherings of more than 10 people – whether indoor or outdoor – where participants other than those in the same household will be in attendance.

New 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 Step 2 of Phase 3, 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.

*Tracy Thomas Boland and Danielle Jurema Lederman are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or at [tboland@morganbrown.com](mailto:tboland@morganbrown.com) and [dlederman@morganbrown.com](mailto:dlederman@morganbrown.com) and Rohan Vakil is a student at Northeastern University School of Law and is a clerk with the firm. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.*

This alert was prepared on October 2, 2020.

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.