

CLIENT ALERT: Massachusetts Governor Issues Emergency Order Limiting On-Site Work to Essential Services and Restricting Gatherings to Maximum of 10

On March 23, 2020, Massachusetts Governor Charlie Baker issued an **Emergency Order** requiring all businesses that do not provide “**COVID-19 Essential Services**” to close their physical workplaces and facilities to workers, customers, and the public. The Order went into effect at noon on Tuesday, March 24th and operates for the next two weeks, until noon on Tuesday, April 7th. Governor Baker noted that this period could be extended.

This Order specifically designates the types of businesses and organizations that provide “essential services and workforces” and, therefore, may continue to operate brick and mortar facilities. Any work that can be performed remotely should be, while any “essential services” organizations or workers that are permitted to continue operating from physical workplaces and facilities should follow “social distancing” protocols in accordance with **guidance** from the Department of Public Health (DPH).

The Order classifies the following services as “essential”:

- Healthcare / Public Health / Human Services;
- Law Enforcement, Public Safety, First Responders;
- Food and Agriculture;
- Energy;
- Water and Wastewater;
- Transportation and Logistics;
- Public Works;
- Communications and Information Technology;
- Other Community-Based Essential Functions and Government Operations;
- Critical Manufacturing;
- Hazardous Materials;
- Financial Services;
- Chemical; and
- Defense Industrial Base.

Please refer to the above links to the Order and to “COVID-19 Essential Services” for more explanation, including a highly detailed list of the types of businesses contained in each of those general categories.

Organizations and their workers providing COVID-19 “essential services” are not required to obtain any specific designation or certification to continue their on-site operations.

Businesses that do *not* provide COVID-19 “essential services” may continue to operate exclusively through remote means that do not require workers, customers, or the public to enter or appear at their physical workplaces and facilities.

Some organizations may face uncertainty if they provide some “essential” and some non-essential services or if their workforce contains both “essential” and non-essential employees. The Order does not state expressly whether such businesses may continue their on-site operations, but the Governor’s Order can be reasonably interpreted to permit employers to do so as long as they are limiting the work to “essential” services and workers, in addition to ensuring continued compliance with DPH’s social distancing protocols.

The Order further restricts gatherings to 10 people, reduced from the 25-person limitation established in Governor Baker's **March 15th Order**. Gatherings of more than 10 people in unenclosed, outdoor spaces is not forbidden. However, athletic and recreational activities that bring participants into close, physical contact are prohibited regardless of location or the number of individuals involved.

The Order further instructs DPH to issue additional guidance, including a requirement for grocery stores and other retailers with substantial grocery sales, to establish exclusive, limited-access shopping hours for the elderly and other vulnerable populations.

Places of religious worship are not required to close their brick and mortar establishments to workers or the public as a result of the Order, but must conform to the 10-person limit on gatherings.

Failure to obey the Order may result in the imposition of criminal penalties as well as civil fines.

Please note that the above is an overview of the key provisions of the Emergency Order, which may be further altered or modified by future orders and further guidance from DPH. Employers with questions about whether their business operations are exempt COVID-19 "essential services" should consult with their MBJ attorney.

Danielle Jurema Lederman and **Tracy Thomas Boland** are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or at tboland@morganbrown.com and dlederman@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on March 24, 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.