

## CLIENT ALERT: Massachusetts Governor Issues Four-Phase Plan to Reopen Economy

On May 18, 2020, Massachusetts Governor Charlie Baker issued an **Executive Order** and comprehensive **Four-Phase Plan** ("Plan") to reopen the Massachusetts economy, get people back to work, and ease social restrictions while minimizing the health impacts of COVID-19. On the same day, the Department of Public Health (DPH) also replaced its Stay at Home Advisory with a **Safer-at-Home Advisory** providing additional guidance on safe practices during Phase 1 of the Plan, including instructing residents to stay home unless they are headed to a newly opened facility or activity. This Client Alert focuses on addressing when and how the Plan will permit employers to reopen their businesses.

### The Timing of the Four-Phase Plan

During **Phase 1 (Start)**, which began on May 18, 2020, limited industries will be permitted to resume operations with severe restrictions in place to minimize new COVID-19 transmission. Phase 1 will permit reopening of the following industries, subject to restrictions and capacity limitations:

- On May 18<sup>th</sup>
  - **COVID-19 Essential Services** stay open and continue to operate
  - Construction
  - Manufacturing
  - Places of Worship
  - Hospitals and Community Health Centers
  - Firearms Retailers and Shooting Ranges
- On May 25<sup>th</sup>
  - Laboratory and Life Sciences Facilities
  - Office space (except Boston)
  - Limited Personal Services (Hair Salons, Barbershops, Car Washes, and Pet Grooming)
  - Drive-In Movie Theaters
  - Certain Recreation and Outdoor Facilities and Activities
  - Other Health Care Providers
  - Retail (remote fulfillment and curbside pickup)
- On June 1<sup>st</sup>
  - Office space (Boston)

During Phase 2 (Cautious), the following additional industries will be permitted to resume business operations with restrictions and capacity limitations:

- Retail
- Restaurants

- Lodging
- Additional Personal Services (Nail Salons and Day Spas)

During Phase 3 (Vigilant), these additional industries will be permitted to resume business operations with restrictions and capacity limitations:

- Bars
- Arts & Entertainment (Casinos, Fitness, Gyms, and Museums)
- All Other Business Activities (**EXCEPT** Nightclubs and Large Venues)

Phase 4 (New Normal) will not begin until the development of vaccines and/or treatments that will enable the resumption of the “new normal,” *i.e.* full resumption of all business activities, including nightclubs and large venues.

Each Phase will last at least three weeks and may last longer, subject to public health data trends. For instance, if public health data trends are negative, specific industries, regions, and/or the entire state may be required return to an earlier Phase.

For additional information and guidance on when your business may be able to reopen, please click [here](#).

### **What Businesses and Organizations Must Do to Reopen**

For businesses to reopen, they must comply with the following new requirements: (1) Mandatory Workplace Safety Standards, (2) a self-certification process, and (3) Sector-Specific Protocols and Best Practices.

#### **1) Mandatory Workplace Safety Standards**

As part of reopening the economy, the DPH and the COVID-19 Command Center have developed **Mandatory Workplace Safety Standards**. These are new standards for all workplaces designed to reduce the risk of new COVID-19 transmission to employees and customers. The following are summaries of these new requirements and links to more detail.

Among other requirements, these standards set forth that a business must:

- Require face masks and coverings for all employees;
- Provide handwashing supplies and capabilities;
- Establish and maintain cleaning protocols specific to the business;
- Sanitize high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site;
- Ensure and implement social distancing protocols as much as possible between workers as well as customers;
- Ensure employees who are displaying COVID-19-like symptoms do not report to work; and
- Establish a plan for employees getting ill from COVID-19 at work and a return-to-work plan.

These standards apply to all workplaces that are open or reopen. However, please note that some of these standards are modified by the Sector-Specific Protocols so it is important to review those closely where applicable (to offer one example, masks and face coverings must only be worn in an office setting when employees cannot keep a distance of six feet apart).

## 2) Self-Certification

Businesses are also required to comply with the following self-certification process before reopening:

- Develop a written COVID-19 Control Plan outlining how its workplace will prevent the spread of COVID-19. A template can be found [here](#).
- Print, sign and post a **Compliance Attestation Poster** in a location visible to employees and customers.
- Post **employer** and **worker** signs and posters in the workplace describing the rules for maintaining social distancing, hygiene protocols, and cleaning and disinfecting.

## 3) Industry-Specific Rules

To date, the administration also has issued the following Sector-Specific Protocols and Best Practices with which businesses must also comply, as applicable, in order to reopen:

- **Construction**
- **Manufacturing**
- **Office Spaces**
- **Laboratories**
- **Hair Salons and Barbershops**
- **Car Washes**
- **Pet Grooming**
- **Places of Worship**
- **Recreation and Outdoor Facilities and Activities**

Healthcare providers will also be required to attest to meeting specific capacity criteria and public health and safety standards in order to resume a limited set of in-person preventative, diagnostic and treatment services. Additional guidance on these criteria and standards can be found [here](#).

COVID-19 Essential Services have until May 25, 2020 to comply with the Mandatory Workplace Safety Standards, self-certification process and any Sector-Specific Protocols, as applicable. Despite the delayed compliance deadline, such businesses are required to undertake immediately their best efforts to comply with the Mandatory Workplace Safety Standards.

Please also note that in some instances the May 25<sup>th</sup> compliance deadline may be modified by the relevant Sector-Specific Protocols, making careful review of all applicable rules even more crucial (for instance, the Office Space protocol provides until July 1<sup>st</sup> for an “essential” business to comply with its occupancy limitations).

The administration has indicated that further guidance for additional industries will be forthcoming.

### **Open Questions**

As employers dig into these new requirements, there will be questions about how to apply them to specific workplaces. To offer just a few examples:

- The Control Plan requires employers to ensure that employees with symptoms do not report to work. However, there is no guidance on how to accomplish that. Employers should consult with counsel about temperature checks, wellness certifications and policies by which to implement these steps.
- The Sector-Specific protocols indicate that workers who are particularly vulnerable to COVID-19 are encouraged to stay home. Employers should be mindful of the legal implications relating to either forbidding such employees to report to work or denying employee requests to stay home for this reason.
- The Sector-Specific protocols provide that workers do not have to wear a face covering if they have a medical condition or disability (and note the DPH takes the same position with respect to the public for public-facing employers). Before doing so, employers should consider when and whether they can require documentation to support an objection to face coverings.

These are just a few examples of issues that might arise as employers dig into these new requirements. MBJ is here to support you and your organization as you wade through it all.

Please keep in mind that this phased reopening Plan permits certain businesses to reopen but, with the exception of businesses designated as “essential,” does not require reopening and businesses will not be allowed to reopen if they are unable to comply with the aforementioned safety protocols.

The alert provides an overview of the key provisions of the Plan, which may be further altered or modified by future orders and further guidance from the administration and DPH. Employers with questions about when and how to approach reopening their business operations should consult with their MBJ attorney.

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This alert was prepared on May 21, 2020.

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