

CLIENT ALERT: Massachusetts Implements Additional Safety Restrictions to Address Rising COVID-19 Case Numbers

On November 2, 2020, Governor Baker announced several targeted measures to curb mounting COVID-19 cases and hospitalizations including early closings for certain businesses, an updated mask order, revised gatherings limits, and a stay-at-home advisory. This client alert focuses on the administration's recent efforts to slow the spread of COVID-19 transmission in order to avoid rolling back to an earlier phase of reopening the Massachusetts economy.

Curfew for Businesses

Governor Baker signed an [Executive Order](#), effective November 6, 2020, requiring certain businesses to close early, limiting the hours for alcohol and cannabis sales, and modifying liquor license renewal requirements. The Executive Order mandates that specified businesses must close their premises to the public each day no later than 9:30pm and may not re-open to the public before 5:00am the following day. The businesses subject to this mandatory closing period are as follows:

- Restaurants, provided however that restaurants may offer food and non-alcoholic beverages for take-out and delivery during the mandatory closing period
- Arcades and Other Indoor and Outdoor Recreation
- Indoor and Outdoor Events
- Indoor and Outdoor Theaters, Movie Theaters, and Performance Venues
- Drive-In Movie Theaters
- Youth and Adult Amateur Sports Activities
- Golf Facilities
- Recreational Boating and Boating Business
- Outdoor Recreational Experiences and Educational Activities
- Casinos, Horse Racing Tracks, and Simulcast Facilities
- Driving and Flight Schools
- Zoos, Botanical Gardens, Wildlife Reserves, and Nature Centers
- Close Contact Personal Services
- Fitness Centers and Health Clubs
- Indoor and Outdoor Pools (Public and Semi-Public Swimming Pools)
- Museums/Cultural & Historical Facilities/Guided Tours

During this mandatory closing period, businesses and services may not allow customers or the public on their premises, but employees and other workers can still perform business activities or operations. For further guidance pertaining to the impact of the Executive Order on the above-listed businesses and services, please refer to the applicable [Sector-Specific Protocols and Best Practices](#).

In connection with the Executive Order, the Sector-Specific Protocols and Best Practices for the

following businesses and services also were updated:

- [Arcades and Other Indoor and Outdoor Game and Recreation Businesses](#)
- [Close Contact Personal Services](#)
- [Museums / Cultural and Historical Facilities / Guided Tours](#)
- [Places of Worship](#)
- [Retail Businesses](#)
- [Theaters and Performance Venues](#)

As with earlier guidance, businesses and services previously permitted to reopen must continue to meet all applicable safety standards, have a COVID-19 control plan in place, and complete a self-certification.

The Executive Order also prohibits the service and sale of alcohol and adult-use cannabis during the same mandatory closing period set forth above, *i.e.* between 9:30pm and 5:00am.

Violating the Executive Order may result in a civil fine of up to \$500 per violation or an injunction. Each individual instance of non-compliance and each day of a continuing violation may be fined as a separate violation.

Updated Mask Order

Effective on November 6th, Governor Baker also issued an updated [Mask Order](#) requiring the use of face coverings in public places for all persons over the age of 5, whether indoors or outdoors. The Mask Order no longer permits an exception to face coverings when social distancing can be maintained. Further, the Mask Order defines public places to include any place open to the public such as grocery stores, pharmacies, and other retail stores; public transit, taxis, and other ride-sharing vehicles; public streets and ways; and any location that hosts indoor or outdoor events or performances.

The Mask Order continues to permit an exemption where an individual is unable or declines to wear a face covering due to a medical or disabling condition. Generally, an individual is not required to provide documentation verifying the condition. However, the Mask Order does create exceptions for employers and schools. Specifically, where an employee required to wear a face covering requests an accommodation not to wear one at the workplace due to a medical or disabling condition, an employer may require documentation to verify the condition. Similarly, where a student engaged in in-person learning is unable to wear a face covering due to a medical or disabling condition, the school may require documentation verifying the condition.

In addition, the Mask Order allows a business to decline entry to a customer that refuses to wear a face covering for non-medical reasons.

Revised Gatherings Order

Governor Baker issued a revised [Gatherings Order](#), also effective November 6th, limiting indoor and

outdoor gatherings at event venues or in public settings to a maximum of 25 people for indoor gatherings, 100 people for outdoor gatherings in “lower risk” communities, and 50 people for outdoor gatherings in communities that do not qualify as “lower risk.” For more information on whether a community qualifies as a “lower risk” community, please refer to our [October 2nd client alert](#) and the administration’s regularly updated [list of communities not designated “lower risk.”](#)

A gathering at an “event venue or public setting” is broadly defined and includes any setting open to the public and any event venue, club, park, or other venue or space, public or private, that is used or available for gatherings through lease, license, permit, contract, reservation, or similar agreement.

For outdoor gatherings in “lower risk” communities where more than 50 attendees are anticipated, the operator of the event venue is required to provide notice to the Local Board of Health at least one week in advance, or otherwise as soon as possible where one week’s notice is not possible due to the nature of the event.

With the exception of indoor and outdoor events, for businesses and services previously permitted to reopen during Phases 1, 2, and 3, such businesses are not subject to the limitations of the Gatherings Order so long as they comply with all applicable Sector-Specific Protocols and Best Practices as well as any relevant capacity limitations. Indoor and outdoor events, unless exempt, must comply with both the Gatherings Order and the [Indoor and Outdoor Events](#) Sector-Specific Protocols and Best Practices.

At private residences, and in other places not falling within the definition of an event venue or public setting, the limits are 10 people for indoor gatherings and 25 people for outdoor gatherings, regardless of whether a community is designated as “lower risk.”

Irrespective of the size or location of a gathering, the gathering must end and participants must disperse by 9:30pm, with the exception of religious gatherings and political gatherings.

Stay-At-Home Advisory

On November 2, 2020, the Department of Public Health (DPH) issued a [Stay-at-Home Advisory](#) taking effect on Friday, November 6th. Utilizing the same approach that Governor Baker has taken towards businesses, DPH is advising all Massachusetts residents to stay home between the hours of 10:00pm and 5:00am.

In order to comply with DPH’s advisory, between 10:00pm and 5:00am, an individual must:

- Only leave home to go to work or school, or for essential needs such as seeking emergency medical care, going to the grocery store or pharmacy, picking up take-out food, or receiving deliveries
- Not have gatherings at home with anybody outside of the individual’s household
- Comply with all Governor Baker’s orders, including orders requiring face coverings, limiting gatherings, and mandating early closure of businesses
- Practice social distancing and avoid touching surfaces frequently touched by others

- Use remote modes of communication like phone or video chat instead of visiting friends or family

These targeted measures, in addition to other guidance issued on the state and local level, make compliance a significant challenge for businesses trying to remain open. This alert seeks to provide an overview of Massachusetts' recent updates and guidance relating to mandatory business closing hours, updated mask mandates, revised gathering restrictions, and the safe-at-home advisory, 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 M&J 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 and 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 November 5, 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.