



Massachusetts Issues Shutdown Order During COVID-19 Outbreak (UPDATED)

Insights

4.28.20

Governor Charlie Baker just issued COVID-19 Order No. 13, an emergency order requiring all businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public beginning March 24 at noon through April 7 at noon. Businesses that provide essential goods and services, designated as “COVID-19 Essential Services,” are excluded from the order and will be allowed to remain open.

[Ed. Note: On March 31, 2020, Governor Baker issued COVID-19 Order No. 21, extending the operation of COVID-19 Order No. 13 and ordering all non-essential businesses and organizations to keep their facilities closed to workers, customers, and the public until May 4, 2020. Further, the Order expanded the “COVID-19 Essential Services List” to more closely align with the Cyber and Infrastructure Security Agency (“CISA”) Guidance on the Essential Critical Infrastructure Workforce, Version 2.0. Specifically, each section of the original MA COVID-19 Essential Services List has been modified and expanded to align with CISA Guidance. The new essential service list will go into effect on April 1, 2020.]

[Ed. Note: On April 28, 2020, Governor Baker issued COVID-19 Order No. 30, extending the operation of COVID-19 Order No. 21, and ordering non-essential businesses and organizations to remain closed for in-person operations until May 18, 2020. The Order also extends the prohibition on gatherings of 10 or more people until May 18, 2020. The Department of Public Health’s stay-at-home advisory remains in effect.

The Governor also announced the creation of the Reopening Advisory Board, led by Lt. Governor Karyn Polito and Housing and Economic Development Secretary Mike Kennealy. The Advisory Board, which is made up of public health professionals, municipal officials, and business leaders, is responsible for advising the administration on a strategy for safely reopening the Commonwealth’s economy in phases. More information about the Advisory Board can be found here.]

[Ed. Note: In addition to the updates to the COVID-19 Essential Services List based on the CISA Guidance, Massachusetts has also designated additional services and workers as essential, as noted in the editor’s notes below.]

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Massachusetts "Essential" Services, Defined

The following are deemed essential services:

Healthcare, Public Health, And Human Services

- Essential healthcare and human service operations, including but not limited to hospitals, medical facilities, mental health facilities, physical and occupational therapy services, dentists, optometrists, laboratories, blood donation facilities, community and public health facilities, nursing and assisted living facilities, rehabilitation facilities, residential treatment facilities, pharmacies, laboratories, in-home health care, and mortuary services;
- **[Ed. Note: On March 31, peer support and recovery coach workers were added];**
- Operations relating to COVID-19 testing, treatment, and/or research;
- Workers performing personnel, billing, security, or cybersecurity functions for healthcare and public health facilities who cannot practically work remotely; and
- Licensed medical marijuana retailers.

Law Enforcement, Public Safety, And First Responders

- Emergency management operations and personnel.

Food, Retail, And Agriculture

- Essential retail, including grocery stores, pharmacies, liquor stores, convenience stores, pet supply stores, auto supply stores, hardware and home improvement stores, home appliance retailers, laundromats and laundry services;
- Restaurants, bars, and other establishments that sell food and beverage products to the public, provided that they only provide carry-out or delivery operations;
- Food and beverage manufacturers and distributors;
- Workers and facilities supporting farming, forestry, agriculture, veterinary health, livestock, seafood and fishing industries; and
- Workers in food testing labs in private industries and in institutions of higher education.

Critical Infrastructure

- Energy operations related to electricity, petroleum, natural and propane gas, and steam energy;

- Water and waste water operations necessary to maintain public and private drinking water and wastewater/drainage infrastructure;
- Transportation and logistics operations necessary to support or enable transportation functions;
- Public Works operations necessary to support the operation, inspection, and maintenance of essential public works facilities;
- Communications operations necessary to support communication infrastructure and communication systems; and
- Information Technology operations necessary to support command centers, data center operators, client service centers, cyber incident response, and law enforcement operations.

Other Community Based Essential Functions And Government Operations

- **[Ed. Note: On March 31, scientific researchers in higher education completing in-process research to ensure health and safety and to prevent the loss of essential data were added];**
- **[Ed. Note: On March 31, workers who support the design, production and distribution of educational materials or technologies for the use of educators or students in distance learning during the state of emergency as essential workers were added];**
- Workers to maintain building access control, security, and continuity of building functions;
- Critical government workers and operations;
- Educators and staff supporting public and private emergency childcare programs, residential schools for students with disabilities, K-12 schools, colleges, and universities for purposes of facilitating distance learning, provision of school meals, or performing other essential student support functions, if operating under rules for social distancing COVID-19 Essential Services;
- Hotel workers;
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for news gathering and reporting;
- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects;
- Professional services (such as legal and accounting services) and payroll and employee benefit services, when necessary to assist in compliance with legally mandated activities and critical sector services or where failure to provide such services during the time of the order would result in significant prejudice;
- Workers and instructors supporting academies and training facilities and courses for the purpose of graduating students and cadets that comprise the essential workforce for all identified critical sectors; and
- Workers at places of worship.

Critical Manufacturing

- Workers necessary for the manufacturing of materials and products needed for medical supply chains including personal protective equipment and hygiene products, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

Hazardous Materials

- Workers at nuclear facilities, workers managing medical or waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits;
- Workers who support hazardous materials response and cleanup; and
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations.

Financial Services

- Workers who are needed to process and maintain systems for processing financial transactions and services, for providing consumer access to banking and lending services, and for otherwise supporting financial operations.

Chemical Industry

- Workers supporting the chemical and industrial gas supply chains;
- Workers who transport basic raw chemical materials to the producers of industrial and consumer goods;
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items;
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products;
- Workers supporting the operation of facilities whose work cannot be done remotely; and
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing.

Defense Industrial Base

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military; and

- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities.

[Ed. Note: On March 31, a new section of *Construction- Related Activities* was added, including:

- **Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, inspectors and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings such as hospitals, health care facilities, senior living facilities, and any temporary construction required to support COVID-19 response;**
- **Workers – including contracted vendors - who support the operation, inspection, maintenance and repair of essential public works facilities and operations;**
- **Workers who support infrastructure to ensure the availability of and access to needed facilities, transportation, energy and communications;**
- **Workers performing housing construction related activities to ensure additional units can be made available to combat the Commonwealth’s existing housing supply shortage; and,**
- **Workers supporting the construction of housing, including those supporting government functions related to the building and development process.]**

Businesses Can Request Designation

Businesses and or services that do not fall into the above categories can submit an “Essential Service Designation Request.”

[Ed. Note: Submissions through the Essential Service Designation Request are reviewed by Executive Office of Housing and Economic Development (“EOHED”). The Commonwealth has issued a list of FAQs (“COVID-19 Essential Services FAQs”) to address questions received by EOHED related to the Commonwealth’s COVID-19 Essential Services guidance. The FAQs will be updated regularly.]

Prohibition on Gathering

The Order further prohibits gatherings of more than 10 people throughout the Commonwealth. The Order does not prohibit gatherings in unenclosed, outdoor locations or gatherings for purposes of the “COVID-19 Essential Services” outlined above.

Exceptions To The Order

The order does not apply to the following:

- Municipal legislative bodies, the General Court, or the Judiciary;
- Residential schools for special needs students;

- Public and Private K-12 schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools; **[Ed. Note: On April 21, 2020, Gov. Baker issued COVID-19 Order. No. 28, closing all Public and Private K-12 schools in the Commonwealth for the remainder of the 2019/2020 school year.]**
- Child care programs which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Program and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs. **[Ed. Note: On April 21, 2020, Gov. Baker issued COVID-19 Order. No. 27, closing all licensed, approved, and exempt child care programs in the Commonwealth until June 29, 2020. Only programs specifically authorized by the Department of Early Education and Care may continue operations as emergency programs.]**

The Order supersedes and makes inoperative any rule or order issued by a municipality that may interfere with its objectives.

Conclusion

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Boston office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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