



Phase 1: Massachusetts Employers To Begin Limited Reopening

Insights

5.18.20

Massachusetts Governor Charlie Baker just announced the details of a four-phase plan that will slowly allow Bay State employers to reopen over the next 12 weeks. Under today's order, Phase 1 will permit houses of worship, construction, and manufacturing facilities to reopen on May 18 — with strict industry-specific safety standards in place. On May 25, office space (June 1 in Boston), personal services such as hair salons, pet grooming, carwashes, and curbside retail pickup will begin.

According to the governor's remarks, each phase is anticipated to last three weeks, but may last longer if various public health metrics are not met. This limited reopening comes nearly two months after Governor Baker shut down all "non-essential" businesses on March 23 and is the first step down the long road to restarting the Massachusetts economy.

What Can Open Today?

Under the order, places of worship, construction, and manufacturing may resume operations today provided they adhere to robust Work Place Safety Standards. These standards impose strict social distancing and mask-wearing requirements, impact staffing and operations, and impose varying hygiene and reporting requirements on employers who elect to resume operations. Each set of industry-specific guidance also comes with a check list to assist with employer compliance.

While the majority of the safety standards will be familiar to most (remaining six feet apart, mandatory masks, reduced staffing), the standards also include a few "best practices" worth highlighting:

Manufacturing

- Employees should be designated to working areas to limit movement throughout facilities;
- Ventilation should be improved where possible, including opening windows and doors;
- Staffing and operations should be reduced or staggered to reduce the number of employees in facilities at the same time; and
- Complete shipping and delivery operations outside the facility if possible.

Construction

- Limit or eliminate in-person meetings; if necessary, hold crew meetings outside;
- Employees should drive to/from job site alone;
- Designate site-specific COVID-19 officer;
- Notify Board of Health if site shutdown due to positive COVID-19 diagnosis; and
- Require employees to self-certify before each shift that they are not exhibiting COVID-19 symptoms, or a temperature above 100.3 degrees.

What Will Open Next?

The most promising news is that Phase 1 will also permit the gradual reopening of lab space, office space, limited personal services such as hair salons and barbers (by appointment only), pet grooming, car washes, recreational marijuana dispensaries, and expanded retail operations via remote fulfillment and curbside pickup as of May 25, with the exception of Boston office space, which may reopen on June 1.

Hospitals and community health centers may begin offering high priority preventative care, pediatric care, and treatments for high risk patients as of May 18, with other health care providers resuming these operations on May 25. And, just in time for the summer weather, beaches, parks, drive-in theaters, athletic fields, and most outdoor activities may resume on May 25.

For other industries, the state has compiled a detailed industry-by-industry list of anticipated reopening phase. Those employers reopening under any phase will be required to adhere to strict workplace safety standards as well as maintain a COVID-19 Control Plan, a template of which is available on the state's reopening page. All businesses will also be required to sign and post a notice attesting that they have completed the control plan and post the notice in a place visible to both employees and visitors.

What About Phases 2, 3, and 4?

Though speculative, today's announcement was the first mention of reopening for many of the Commonwealth's hardest-hit industries, including non-essential retail, restaurants, and lodging. Under the current plan, these industries would be permitted to reopen (with restriction) in late June in Phase 2.

Three weeks later — assuming downward trends in public health metrics remain steady — Phase 3 would permit bars, casinos, fitness centers, museums, and most other businesses (outside of nightclubs and large venues) to reopen with capacity limitations. Finally, Phase 4, dubbed the “new normal” will permit the “full resumption of activity” including nightclubs and large event venues. This could be as early as mid-August.

What Should Employers Do Now?

Employers in Phase 1 industries should begin reaching out to any furloughed or temporarily laid off employees to prepare for their return to the workplace. In light of the availability of the \$600 Federal

Pandemic Unemployment Compensation supplement to unemployment, employers are likely to face resistance to returning from employees who may be taking home more money while on unemployment. To assist employers in this situation, the Massachusetts Department of Unemployment Assistance has answered a number of FAQs in its [Unemployment Insurance Benefits and Returning to Work: Guide for Employers](#). Generally speaking, an employee who refuses an offer of suitable work should lose eligibility for unemployment.

To best position your business from frivolous unemployment claims, all offers of reinstatement/rehire should be communicated in writing, and include start date, full-time/part-time designation, the wage, type of work, hours, general location, and conditions of the job. Employers may report employees who refuse to return to work via [email](#) to the Department of Unemployment Assistance.

Employers are also cautioned that the state's reopening plan strongly urges employers to permit high-risk populations to work from home and provide priority consideration for work place accommodations through Phase 3. You should treat any potential accommodation request just as you would have prior to the pandemic, making sure you participate fully in the interactive process to reach a reasonable accommodation, unless doing so constitutes an undue hardship.

All employers, whether they are slated to reopen in Phase 1 or later, should familiarize themselves with the state's mandatory Work Place Safety Standards and review any industry-specific standards as they are released and updated. You should also assess what existing policies such as work-from-home, attendance, and sick leave policies should be revised to accommodate the needed operational changes. Finally, employers should re-familiarize themselves with the leave entitlements under the [Families First Coronavirus Response Act](#), as we anticipate more claims for leave as additional industries begin to reopen.

As you begin the process of reopening, you should also familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Conclusion

Fisher Phillips 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, the [author](#), any attorney in our [Boston](#) office, or any member of our [Post-Pandemic Strategy Group Roster](#).

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