

Massachusetts Announces Four Phase Plan to Reopen

Law and the Workplace Blog on **May 18, 2020**

On Monday May 18, 2020, Governor Baker announced the first phase of his administration's much-anticipated plan to reopen Massachusetts (the "Plan"), nearly eight weeks after [first ordering](#) non-essential businesses to close and advising residents to stay home in light of the COVID-19 pandemic. In describing the phased reopening, the Governor repeatedly emphasized that the coronavirus has hit Massachusetts particularly hard – both in terms of confirmed cases and confirmed cases per capita. The Plan to reopen accordingly presents a careful and deliberate phased approach with regards to which businesses can open and when, and what metrics those businesses must meet in order to resume. The Commonwealth has created a [new website](#) dedicated to Massachusetts' [reopening plan](#). A summary of key components of the Plan and considerations for employers are discussed below, but employers are encouraged to review the website and associated materials, and to consult with counsel regarding best practices.

I. Massachusetts Phased Reopening

The Plan presents four phases: (1) Start, (2) Cautious, (3) Vigilant, and (4) New Normal. Each phase will last a minimum of three weeks, and may last longer before transitioning to the next. Public health trends may also require the Commonwealth as a whole, specific regions, or specific industries to revert back to previous phases. Accordingly, the Plan also emphasizes the need for individuals to keep practicing measures that have become commonplace over the past months, such as washing hands, identifying and responding to symptoms appropriately, and wearing face-coverings. The Commonwealth also encourages, at each stage, priority consideration of workplace accommodations for high risk individuals, as defined by the Center for Disease Control. Furthermore, as businesses begin to reopen, employers must follow a set of Mandatory Workplace Safety Standards and certain sector-specific protocols in order to reopen. Phase 1 currently has the most detail and imposes the most requirements on employers. Details regarding Phases 2 through 4 are to be determined, and in some cases depend on trends seen along the progression through the Phases.

Phase 1 – Start

Phase 1 of the Plan, “Start,” begins reopening businesses in certain sectors, with restrictions. Phase 1 is divided further pursuant to three significant dates:

- May 18: Essential businesses may continue to operate, and the manufacturing and construction industries may begin to reopen. Hospitals and community health centers which provide high priority preventative care, pediatric care, and treatment for high risk patients may reopen, subject to attestation that they will only provide these specific services that they are following safety standards. Finally, places of worship may reopen, subject to additional guidelines.
- May 25: Offices located outside the City of Boston may reopen with a cap of 25% occupancy, though businesses are strongly encouraged to work from home. Labs and life sciences facilities may open. Hair salons, barbershops, and pet grooming may open, so long as they provide services by appointment only. Car washes (exterior only), recreation and outdoor services (such as beaches, parks, some athletic field and courts, and other outdoor activities), certain additional healthcare providers, and retail establishments for remote fulfillment and curbside pickup, may also re-open.
- June 1: Offices located in the City of Boston may open, following guidelines applicable to the rest of the Commonwealth, such as the 25% occupancy cap. During Phase 1, social/private gatherings are still limited to fewer than ten people, and the Governor’s “Safer at Home Advisory” will still be in place. (The

Governor re-styled his “Stay at Home Advisory” as a “Safer at Home Advisory” as part of his Plan, but the requirements are materially similar.)

Phase 2 – Cautious

During Phase 2, certain other industries may open with restrictions and capacity limitations. These industries include: retail establishments, restaurants, lodging, and additional personal services like nail salons and day spas. Notably, whereas Phase 1 limits gatherings to less than ten people, gathering size limitations, if any, during Phase 2 are yet to be determined.

At this time, the Safer at Home Advisory does not appear to continue into Phase 2, but the Commonwealth nonetheless discourages business and recreational travel during Phase 2, and travelers to Massachusetts will still be urged to self-quarantine for 14 days (as they are now).

Phase 3 – Vigilant

Phase 3 forecasts opening all other business except nightclubs and large venues, and opening, with restrictions and some capacity limitations, bars, art and entertainment establishments like gyms, museums and casinos. The Plan does not, at this time, define “large venues” nor does it detail exact capacity limitations during this Phase. Phase 3’s travel limitations, if any, are to be determined.

Phase 4 – New Normal

Phase 4 anticipates full resumption of workplaces and activities, though distancing, vigilant monitoring, and hygiene practices will be a part of our “New Normal.”

II. Key Requirements and Considerations for Massachusetts Employers

Mandatory Workplace Safety Standards and Mandatory Self-Certification

The Plan mandates that workplaces meet certain standards (and attest to satisfaction of those standard), designed to keep employees and customers safe as businesses resume operations. Most notably, the Commonwealth is requiring that businesses meet the following “self-certification” requirements:

1. Develop a written “control plan,” outlining how the business will prevent the spread of COVID-19 in the workplace;

2. Sign a “compliance attestation poster” and post it on their premises in a spot visible to employees and visitors. The template poster provided by the Commonwealth is a checklist detailing the employer’s compliance with social distancing, hygiene, cleaning, and training protocols, with a line for the employer’s signature at the bottom; and
3. Post other signs regarding social distancing, hygiene protocols, and disinfecting. The Commonwealth has provided templates on their [website](#) ([control plan template](#), [compliance attestation poster](#), [employer poster](#), [worker poster](#)) for each of the above requirements.

In addition, employers must meet minimum safety standards. These standards should now be mostly familiar, and include:

- Social Distancing: Ensure that employees, customers, and vendors remain at least six feet apart; establish protocols regarding social distancing; provide signage outlining safe social distance; and require face coverings or masks for all employees.
- Hygiene Protocols: Provide handwashing capabilities and supplies; and ensure frequent handwashing.
- Staffing and Operations: Provide training for employees regarding social distancing and hygiene; ensure employees with symptoms do not report to work; establish a plan for employees who are ill and for their eventual return to work.
- Cleaning and Disinfecting: Establish and maintain business-appropriate cleaning protocol; regularly disinfect common surfaces; and implement sanitization protocols for a COVID-19-positive employee’s workspace.

Industry-Specific Protocols

In addition to the above-mentioned safety standards, the Commonwealth has developed protocols and best practices for specific industries. In some instances, these protocols exceed the baseline safety standards. These protocols are available on the [reopening website](#). The website accordingly, at this time, contains sector-specific protocols for [construction](#), [manufacturing](#), [office spaces](#), [hospitals and community health centers](#), [places of worship](#), [outdoor recreation](#), [laboratories](#), [hair salons and barbershops](#), [car washes](#), and [pet grooming services](#) – all of which currently slated to reopen at various points during Phase 1, as detailed above. Employers slated to reopen in future Phases can expect protocols tailored to their own businesses closer to the Phase’s start date.

The Plan, and associated requirements and limitations will inevitably evolve as we continually learn about COVID-19 and as businesses begin to reopen. Employers with questions about the Plan, or the effects on their businesses, are encouraged to reach out to counsel for guidance.

Our team is closely monitoring the directives being issued by the Governor and will provide updates as they become available.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. [Visit our Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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