



May 20, 2020

## COVID-19: Reopening Massachusetts Phase One

On Monday, May 18, 2020 Governor Baker released the four-phase reopening plan for the state, entitled *Reopening Massachusetts* (the "Plan"). The Plan provides the much-anticipated general guidelines that all non-essential Massachusetts businesses must follow in order to reopen during the COVID-19 pandemic. Phase One of the Plan, which began on May 18th, allows businesses in certain sectors to reopen provided that businesses eligible to reopen maintain strict compliance with the safety standards and guidance outlined in the Plan.

The purpose of this alert is to give a high-level summary of the takeaways and current action items resulting from the Plan. We expect that there may be modifications and updates as federal, state and local officials continue to shape policy and guidance in response to the COVID-19 pandemic. Mayor Walsh has already voiced concern over the Plan's permitting 25% of office workers to return to Boston during Phase One. We will track these updates and modifications closely.

### I. Phase One Businesses and Timeline for Re-Opening:

All businesses deemed essential by previous orders of the Governor, as well as banks, financial services offices, in house services (such as nannies or babysitters), businesses conducting real estate open houses, non-essential businesses in the manufacturing and construction industries, as well as places of worship, have been or became eligible to reopen on or before May 18. Beginning on Monday, May 25, 2020, non-essential businesses in the following industries will also be eligible to reopen:

- Laboratory facilities
- Office space with workforce presence restricted to 25% or less of occupancy, except in the City of Boston where offices may not open until June 1, 2020
- Hair salons
- Pet groomers
- Car washes
- All retail businesses with remote fulfillment and/or curbside pick-up

All Massachusetts businesses, both essential and non-essential, open during Phase One must adhere to the Phase One guidelines outlined in the Plan. Essential businesses that are already open and operating have until May 25, 2020 to comply with all applicable Phase One requirements.





Phase One will last a minimum of three weeks. If public health data trends are negative as Phase One or future phases are implemented, specific industries, regions, and/or the entire Commonwealth may be required to return to an earlier phase.

## II. Key Requirements for Phase One Businesses:

Businesses open during Phase One must comply with all Mandatory Workplace Safety Standards, any applicable Industry Specific Safety Protocols or Best Practices and complete a mandatory Self-Certification Process by May 25, 2020.

**Mandatory Workplace Safety Standards:** Mandatory Workplace Safety Standards applicable to all businesses, and which include protocols such as social distancing and certain hygiene requirements, can be found [here](#).

**Industry Specific Safety Protocol or Best Practices:** Industry specific safety protocols or best practices for each Phase One industry, organized by sector, can be found [here](#).

**Self-Certification Process:** the Phase One mandatory self-certification process requires that businesses:

1. Develop a written COVID-19 Control Plan: The COVID-19 Control Plan must outline how its workplace will prevent the spread of COVID-19. Businesses may complete a template control plan, available [here](#), to fulfill this requirement. The Control Plan does not need to be submitted to a state agency for approval, but must be retained on the premises of the business and be provided in the event of an inspection.
2. Sign a Compliance Attestation Poster: Once the COVID-19 Control Plan is in place, [businesses must display a poster](#), signed by a manager or the owner of the business, attesting that they have completed a COVID-19 Control Plan. The poster must be displayed in an area within the business premises that is visible to employees and visitors.
3. Post Additional Posters: Businesses are required to post "[Employer](#)" and "[Worker](#)" posters describing the rules for maintaining social distancing, hygiene protocols, cleaning, and disinfecting.

## III. Enforcement/Potential Liability:

During the May 18th press conference revealing the Plan, Lieutenant Governor Polito noted that enforcement responsibility will reside with "local boards of health, the Department of Public Health and the Department of Labor Standards". She recognized that most enforcement activity would likely result from an employee or customer filing a complaint. The Massachusetts Attorney General's Office has set up an online portal to report unsafe working conditions during COVID-19, a link to the form can be found [here](#).



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Businesses that do not comply with the mandatory health standards and protocols can expect first to receive a verbal consultation and then a written warning. If a business still fails to comply it may be assessed up to three \$300 fines before finally becoming subject to a cease and desist order. Local officials have suggested that they will give businesses twenty four hours between inspections to correct violations. At the May 18th press conference, Lieutenant Governor Polito emphasized that the goal is to educate business owners and promote compliance rather than to issue penalties or fines.

While the level of enforcement remains to be seen, employers should continue to be vigilant and carefully adhere to all requirements and guidelines to protect the public health and best protect against potential future liability related to COVID-19.

### Additional Resources

- [SBA Provides Limited Safe Harbor on Paycheck Protection Loan Certification](#) (May 14)
- [Emergency Legislation Authorizes Use of Remote Notaries in Massachusetts](#) (May 1)
- [New Attorney General Guidance on Access to Endowment Funds](#) (April 29)
- [Moratorium on Evictions and Foreclosures Offers Protection to Some Individuals, Small Businesses and Nonprofits](#) (April 21)
- [The CARES Act: Summary of Select Provisions Related to Small Businesses](#) (March 31)
- [The CARES Act and Nonprofits](#) (March 31)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

### Contact Us

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