COVID-19 Alert: Four-Phase Re-Opening Plan

Massachusetts Governor Outlines Four-Phase Re-Opening Plan

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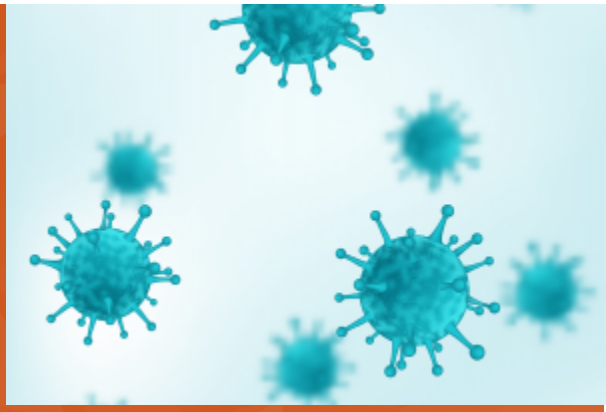

On May 11, 2020, Massachusetts Governor Charlie Baker announced a broad government strategy to mitigate continuing health risks and economic distress caused by COVID-19. The core elements of the strategy include:

- A four-phase approach to the re-opening of the Massachusetts economy; and
- Mandatory workplace safety standards.

Although the Governor's articulation of the strategy was more broad brush stroke than definitive plan, the announcement does provide a conceptual framework for the obligations and restrictions (and opportunities) that will challenge Massachusetts employers in the coming weeks.

The specifics of the Governor's strategy are discussed below.

A Deliberative, Four-Phased Reopening

Massachusetts businesses are presently subject to Governor Baker's Emergency Order Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More Than 10 People (the "Emergency Order"). The Emergency Order requires 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. The Emergency Order is effective until May 18, 2020.

As outlined during press conference remarks, the Governor intends to re-open the Massachusetts economy according to a phased approach that "*methodically allow[s] certain businesses, services, and activities to resume, while protecting public health and limiting a resurgence of new COVID-19 cases*:"

- Phase 1 "**Start**:" limited industries resume operations with severe restrictions;
- Phase 2 "**Cautious**:" additional industries resume operations with restrictions and capacity limits;
- Phase 3 "**Vigilant**:" additional industries resume operations with guidance;
- Phase 4 "**New Normal**:" development of vaccine and/or therapy enables resumption of new normal.

A schematic of this "Four-Phase Approach" is here, and a more detailed outline of the approach is here.

Under the Four-Phase Approach, businesses designated as "COVID-19 Essential Services," under the Governor's current *Emergency Order*, will remain authorized to conduct business. In addition, businesses designated as "Non-Essential Services" will be authorized to re-open, in phases, according to industry-specific safety profiles, with businesses that present lower risks for COVID-19 transition (such as non-customer facing businesses) authorized to re-open during earlier phases.

The Governor declined to establish a date certain for the commencement of Phase 1. Instead, the Governor emphasized that "public health metrics will determine when the first phase of reopening begins, as well as when it is safe to move into later phases. If public health metrics worsen, the state may need to return to an earlier phase."

New Workplace Safety Guidelines

In addition to the Four-Phase Approach, the Governor announced the publication of Mandatory Workplace Safety Standards applicable to all businesses authorized to conduct business in Phase I.

The *Mandatory Workplace Safety Standards – which the Governor indicated were being introduced now to assist employers in preparing for future re-opening authorizations* – create new workplace requirements for social distancing, hygiene, staffing and operations, and cleaning, and include:

For social distancing:

- All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces.
- Establish protocols to ensure that employees can practice adequate social distancing.
- Provide signage for safe social distancing.
- Require face coverings or masks for all employees.

For hygiene:

- Provide hand washing capabilities throughout the workplace.
- Ensure frequent hand washing by employees and adequate supplies to do so.
- Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site.

For staffing and operations:

- Provide training for employees regarding the social distancing and hygiene protocols.
- Employees who are displaying COVID19-like symptoms do not report to work.
- Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan.

For cleaning and disinfecting:

- Establish and maintain cleaning protocols specific to the business.
- When an active employee is diagnosed with COVID-19, cleaning and disinfecting must be performed.
- Disinfection of all common surfaces must take place at intervals appropriate to said

workplace.

In addition to these general standards, the Governor indicated that industry specific safety protocols and best practices will be established in the coming weeks. These industry-specific guidelines will detail how particular industries – *such as retail, restaurants, manufacturing, research labs, and professional service providers* – must operate upon re-opening.

An Anticipated Time Frame

The Governor's Four-Phase Approach and *Mandatory Workplace Safety Standards* closely track several key provisions of the COVID-19 Back to Work Planning Briefing (the "Briefing") – a set of recommendations released by the highly influential Massachusetts High Technology Council.

As previously reported, consistent with the Governor's re-opening announcements, the Briefing recommends a slow, extended phased re-opening of Massachusetts businesses, to commence only after the Commonwealth determines that local hospital capacity is sufficient to manage projected Commonwealth-wide COVID-19 infection rates. The Briefing cautions that such a determination is only possible through increased COVID-19 testing and infection tracing, that are well beyond present levels.

If the sobering recommendations of the Briefing continue to have relevance for the Governor, it is unlikely that Massachusetts government will return businesses to normal operations in any near term. As the Governor concluded: "*This is going to put almost everybody in a somewhat different position than they have ever been in before.*"

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