COVID-19 Alert: The Emergency Order

A Roadmap for the Re-Opening of the Massachusetts Economy is Offered – A Slow, Phased Re-Opening is Anticipated

By:Matthew L. Mitchell
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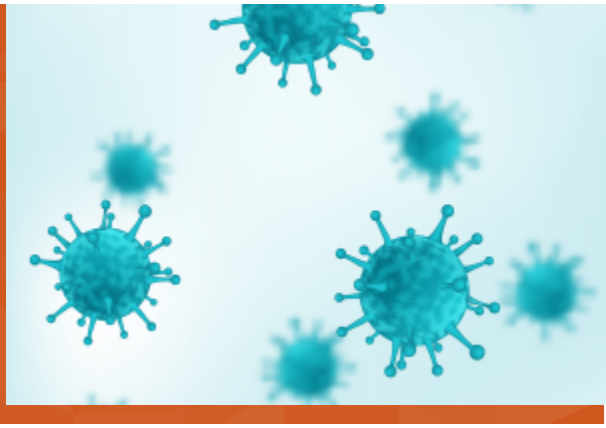

Massachusetts businesses are presently subject to Governor Baker's Emergency Order Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More Than 10 People (the "Emergency Order"). The Emergency Order requires all businesses and organizations that do not provide "COVID-19 Essential Services" to close their physical workplaces and facilities to workers, customers and the public. The Emergency Order is effective until May 18.

On May 1, 2020, the Massachusetts High Technology Council – the highly influential industry group for the Massachusetts research and technology community – released a 70-page "COVID-19 Back to Work Planning Briefing" (the "Briefing").

The Briefing is intended as a roadmap for the re-opening of businesses and worksites in the Commonwealth. Although the Massachusetts High Technology Council is not a government authority, it is anticipated that the Governor will incorporate elements of the Briefing into future executive orders.

The Briefing recommends a slow, 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.

Once this "gating criteria" is met, the Briefing recommends that Massachusetts adopt employer guidelines that:

- Authorize certain businesses to re-open worksites, in phases, based on criticality and ability to continue remote working, along the following lines:

Sector Description	Business Categories	Recommended Phasing
Critical industry sectors that cannot work from home	Social Services; Healthcare; Non-Discretionary Retail (*Food, Grocery, and Pharmacy*); Public Transportation	Although difficult to safeguard, the criticality of such industries requires re-opening during **initial phase**.

Critical industry sectors with some ability to work from home	Government; Utilities; Education	Given remote working opportunities, the re-opening of these critical industries may be reserved for **later phases in an initial wave**. However, with respect to education, there may be a practical reality: *The re-opening schools and childcare is, most likely, a precondition to returning many employees to work.*
Less critical industry sectors that cannot work from home	Agriculture; Mining; Construction; Manufacturing; Administrative Recreation; Restaurants and Hotels; Discretionary Retail; Private Transportation	The re-opening of these important, but less critical, industries might be reserved for **secondary phases**.
Less critical industry sectors able to work from home	Information; Finance; Real Estate; Professional Services; Management; Wholesale	These industries should be encouraged to continue remote working policies, with re-opening of workspaces reserved for **tertiary phases**.

- Exclude those aged 60+ from returning to work during initial phases, subject to anti-discrimination standards.
- Encourage employers to adopt "intermittent work phasing" – *such as assigning employees to staggered 4 days on, 10 days off work schedules* – in order to avoid infection cycles and to limit occasions when asymptomatic, but infected employees are contagious during assigned work times.
- Encourage employers to engage in temperature checks and other employee screening tools to identify potential infection risks.
- Encourage employers to engage in meticulous and accurate daily symptom surveying, including:
  - Mandating that employees certify, via smartphone application or other technology, that they are not experiencing COVID-19 symptoms.
  - Incentivizing adherence with paid sick leave policies benefits.
- Encourage employerstomodifyworkspaces and employee policiestofacilitateCOVID-19 infection reduction strategies, including encouraging employers to adopt policies that relate to:
  - **Use of PPE** – Mandated mask & PPE use.
  - **Personal Hygiene** – Mandated employee hygiene.
  - **Self-Diagnosis Protocols** – Adoption of comprehensive checklist of symptoms each worker considers before leaving home.
  - **Workplace Social Distancing** – Prohibition on large group meetings; Recommendations relating to staggered shifts and staggered lunch breaks.

- **Workplace Sanitation** – Frequent workplace deep cleaning; creation of "hygiene zones," and mandatory sanitization checkpoints.
- **Workplace Design** – Remodel workspaces to ensure greater social distances; improve air filtration and ventilation; and install touch-free handles and interfaces.
- **Telework Standards** – Encourage remote working when possible.
- **Commuting** – Discourage mass transportation, and encourage carpooling or deployment of smaller chartered transportation that is subject to easier sanitation.

- Encourage employers to coordinate with government to execute employee infection "tracing," *including use of digital tracing techniques*, in order to alert and remove from workplaces employees exposed to positive COVID-19 cases.
- Encourage employers to adopt policies and procedures related to returning employees to workplace after COVID-19 infections, including mandated "wait times."
- Adopt policies and regulations that recognize employee privacy and anti-discrimination rights.

These recommended guidelines are purposed to avoid a second COVID-19 surge that is anticipated if businesses re-open, under present circumstances, without restrictions.

Morse is focused on assisting our clients through these unprecedented and challenging times. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.

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