

March 23, 2020 | Number 2635

Massachusetts' Stay-at-Home Order: What Businesses Need to Know

The Order requires many businesses to close, but allows essential industries to continue operating, and permits employees to work remotely, as applicable.

On March 23, 2020, Massachusetts Governor Charles D. Baker issued the Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More Than 10 People (COVID-19 Order No. 13) (the Order), pursuant to which (1) certain COVID-19 Essential Workforces are urged to continue operations during the state of emergency and do so with allowance for social distancing protocols, (2) all businesses and other organizations that do not provide COVID-19 Essential Services in Massachusetts shall close their physical workplaces and facilities to workers, customers and the public, but are encouraged to continue operations where they are able to operate through remote means, and (3) gatherings of more than 10 people are prohibited throughout Massachusetts except for operations of any business in the provision of COVID-19 Essential Services. Violations of the terms of the Order may result in a criminal fine in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to \$300 per violation. The Order is effective beginning March 24, 2020, at 12:00 p.m. ET, through April 7, 2020.

This *Client Alert* provides guidance to Latham clients affected by the Order, which will have significant implications for businesses with operations in Massachusetts. The Order was accompanied by a lengthy list of businesses and organizations that provide essential services and may therefore continue operation; that list is detailed below, but in short, the categories of essential services include: Healthcare/Public Health/Human Services; Law Enforcement, Public Safety, First Responders; Food and Agriculture; Energy; Waste and Wastewater; Transportation and Logistics; Public Works; Communications and Information Technology; Other Community-Based Essential Functions and Government Operations; Critical Manufacturing; Hazardous Materials; Financial Services; Chemical; and Defense Industrial Base.

However, the situation remains fluid, and government agencies will continue to provide further guidance as to the specific contours of the Order. Further, businesses not covered by the initial list of essential services have the ability to apply to be designated as an essential function, if necessary. Accordingly, clients should discuss their particular circumstances with their Latham contacts in order to determine the best path forward as Latham continues to monitor this rapidly developing situation.

Massachusetts Essential Business and Operations

The Order requires all Massachusetts businesses and operations, except essential businesses and operations, to close their brick-and-mortar premises to workers, customers, and the public within the state. Those businesses are encouraged to continue operations remotely.

Businesses providing COVID-19 Essential Services include, but are not limited to:

Healthcare, Public Health, Human Services

- Medical professionals and caregivers
- Hospital and laboratory personnel
- Manufacturers, technicians, logistics and warehouse operators, and distributors of or necessary to the supply chain of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely

Law Enforcement, Public Safety, First Responders

Food and Agriculture

- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Workers supporting the seafood and fishing industry

- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Workers in food testing labs in private industries and in institutions of higher education
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

Energy

- Electric industry
- Petroleum workers
- Natural and propane gas workers
- Steam workers

Water and Wastewater

- Employees needed to operate and maintain public and private drinking water and wastewater/drainage infrastructure

Transportation and Logistics

- Employees of firms providing services that enable logistics operations
- Workers critical to operating rental car companies and Transportation Network Companies (TNCs) that facilitate continuity of operations for essential workforces, and other essential travel
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services

- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies

Public Works

- Workers – including contracted vendors – involved in the construction of critical or strategic infrastructure including public works construction, airport operations, water, sewer, gas, electrical, nuclear, oil refining and other critical energy services, roads and highways, public transportation, solid waste collection and removal, and internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services)
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste
- Licensed site clean-up professionals and other workers addressing hazardous spills, waste sites, and remediation.

Communications and Information Technology

Communications:

- Maintenance of communications infrastructure including privately owned and maintained communication systems supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables

Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing

- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries

Other Community-Based Essential Functions and Government Operations

- Workers to ensure continuity of building functions, including local and state inspectors and administrative support of inspection services who are responsible for the inspection of elevators, escalators, lifts, buildings, plumbing and gas fitting, electrical work, and other safety related professional work
- Hotel workers
- Professional services (such as legal and accounting services) and payroll and employee benefit services, when necessary to assist in compliance with legally mandated activities and critical sector services or where failure to provide such services during the time of the order would result in significant prejudice
- Commercial retail stores that supply essential sectors, including convenience stores, pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers

Critical Manufacturing

- Workers necessary for the manufacturing of materials and products needed for medical supply chains including personal protective equipment and hygiene products, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

Hazardous Materials

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits

Financial Services

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

Chemical

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.

Defense Industrial Base**Not Listed Businesses**

The Order allows businesses to request “essential” designation at the following link:

<https://www.mass.gov/forms/essential-service-designation-request>

Direct potential questions to: covid.19.biz@mass.gov

Massachusetts Prohibition on Gatherings of More Than 10 People

The Order prohibits gatherings of over 10 people.

The order *does not* apply to:

- Public gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot (though this type of gathering is not advised, individuals must still follow social distancing protocols by remaining at least six feet apart),
- Normal operations at airports, bus and train stations, ferries, polling locations, grocery stores, farmers’ markets, food pantries, banks and pharmacies,
- COVID-19 Essential Services listed above,
- Healthcare facilities,
- Dental or orthodontic offices performing emergency procedures; provided, that to the extent practicable employees and patients must implement social distancing protocols,
- Shelters (e.g., homeless shelters and domestic violence shelters) or organizations providing services and supports to a shelter,
- Temporary or permanent locations used for isolation and/or quarantine,
- Residential treatment programs or after-school programs,
- Residential schools for special needs students,
- Public and private elementary and secondary (K-12) schools in Massachusetts, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, and
- Operation of child care programs in Massachusetts, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs

Any restaurant, bar, or establishment that offers food or beverages shall not permit on-premises consumption of food or beverages; however, such establishments are encouraged to continue to offer food for take-out and by delivery, provided, that they follow social distancing protocols that require individuals to stay at least six feet apart. Food service establishments may have more than 10 employees on premises to provide these take-out and delivery services, provided, that they follow social distancing

protocols. This guidance applies to all food service establishments, including, but not limited to, food services establishments in hospitals, hotels, office buildings, and higher education institutions.

Massachusetts Social Distancing Requirements

The Order further sets forth the following social distancing requirements that must be followed as much as reasonably possible: maintaining at least six-foot social distancing from other individuals; washing hands with soap and water, utilizing hand sanitizer and practicing proper respiratory etiquette.

The Order suggests that all higher risk individuals avoid close contact with other individuals. Higher risk individuals include older adults, anyone with underlying health conditions, such as heart or lung disease or diabetes, anyone with weakened immune systems, and anyone who is pregnant.

Impact on Local County and Municipal Orders

The Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of the Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of the Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within Massachusetts of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

The Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

At this time, clients are recommended to comply with the terms of the most restrictive order — whether the statewide Order or any local order that exists or becomes implemented.

Enforcement

Violations of the Order are handled in the following manner: (a) the first offense shall result in a warning; (b) the second offense may result in a civil citation and a fine of up to \$300; and (c) further offenses which are repeated and willful may be subject to criminal penalties including a fine up to \$500 or term of imprisonment or both.

Additional Information

Please see the following links for additional information:

- <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>
- <https://www.mass.gov/doc/covid-19-essential-services/download>
- <https://www.wbur.org/commonhealth/2020/03/23/baker-closes-businesses-coronavirus>

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Gwyn Williams

gwyn.williams@lw.com
+1 (617) 880-4512
Boston

Nicholas J. Siciliano

nicholas.siciliano@lw.com
+1.312.777.7021
Chicago

You Might Also Be Interested In

[COVID-19: Resources for Responding to Business and Legal Issues](#)

[California's Stay-at-Home Order: What Businesses Need to Know](#)

[US Emergency Paid Leave Act: New Relief to Mitigate COVID-19's Economic Impact](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <https://www.sites.lwcommunicate.com/5/178/forms-english/subscribe.asp> to subscribe to the firm's global client mailings program.