

Massachusetts Orders New Targeted COVID-19 Interventions Effective November 6, 2020

By Michael R. Bertoncini

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New Massachusetts Executive Orders going into effect at 12:01 a.m. on November 6, 2020, contain “targeted interventions” designed at slowing the spread of COVID-19. The interventions are aimed mainly at reducing the number of people at public and private gatherings and limiting the times when people can gather.

The Executive Orders note household transmission and social gatherings represent 88 percent of all new and ongoing COVID-19 clusters identified as of September 27, 2020. Consistent with that, most of the new interventions are aimed at personal behavior, rather than changes in business operations. However, restaurants and other entertainment venues will be affected.

Early Closings for Certain Businesses

One Executive Order includes a [mandatory night-time closing period](#) for certain businesses. These businesses will have to be closed to the public each day from 9:30 p.m. until 5:00 a.m. This applies to:

1. Restaurants (however, restaurants may offer food and non-alcoholic beverages for take-out and by delivery during the mandatory closing period)
2. Arcades and Other Indoor and Outdoor Recreation
3. Indoor and Outdoor Events
4. Indoor and Outdoor Theaters, Movie Theaters, and Performance Venues
5. Drive-In Movie Theaters
6. Youth and Adult Amateur Sports Activities
7. Golf Facilities
8. Recreational Boating and Boating Businesses
9. Outdoor Recreational Experiences and Educational Activities
10. Casinos, Horse Racing Tracks, and Simulcast Facilities
11. Driving and Flight Schools
12. Zoos, Botanical Gardens, Wildlife Reserves, and Nature Centers
13. Close Contact Personal Services
14. Fitness Centers and Health Clubs
15. Indoor and Outdoor Pools (Public and Semi-Public Swimming Pools)
16. Museums/Cultural & Historical Facilities/Guided Tours

During the mandatory closing period, there can be no sale or service of alcohol or sale of adult-use cannabis. The alcohol restriction applies to all retailers, restaurants, private clubs, catering halls, events, and delivery services licensed under Chapters 138 and 23K of Massachusetts General Laws.

Indoor and Outdoor Gathering Limits

The new [Executive Order on gatherings](#) sets social distancing requirements, capacity limits, and notification requirements. These requirements do not apply to any Phase I, II, or III enterprises operating pursuant to applicable sector-specific COVID-19 safety rules and applicable capacity limitations issued by a regulating agency. However, those enterprises subject to the [Indoor and Outdoor Events Guidance](#) issued by the Department of Labor Standards must comply with that guidance and this new Executive Order. Gatherings for religious activities are not subject to the new Executive Order on gatherings, but they must follow the [Places of Worship sector-specific rules](#). Outdoor gatherings for the purpose of political expression are not subject to the new Executive Order, but indoor gatherings for the purpose of political expression must follow these rules.

Social Distancing

The Executive Order requires all participants at indoor and outdoor gatherings to maintain at least six feet of physical distance from every other participant, except where participants are members of the same household. A gathering violates this order when, regardless of the number of participants present,

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conditions or activities are such that it is not reasonably possible for all participants to maintain this degree of separation.

Gatherings at Private Residences

Indoor gatherings at private residences and in any other place not falling within the definition of an event venue or public setting are limited to a maximum of 10 people. Outdoor gatherings in these settings are limited to a maximum of 25 people.

Gatherings at Event Venues and Public Settings

Indoor gatherings at event venues or public settings are limited to a maximum of 25 people. Outdoor events are limited to a maximum of 100 people in [Lower Risk Communities](#) and 50 people in communities that do not qualify as Lower Risk Communities.

Notifications to Local Boards of Health

For outdoor gatherings in Lower Risk Communities where more than 50 attendees are anticipated, the operator of the venue must notify the Local Board of Health in the municipality where the event will be held at least one week in advance, or as soon as possible where one week's notice is not practicable due to the nature of the event. At a minimum, the notification must provide the location and time of the event, the name and contact information of the event organizer, the number of anticipated attendees, and any other information reasonably requested by the Local Board of Health.

Time Limitation

All gatherings, no matter the size or location, must end and participants must disperse by 9:30 p.m. Religious gatherings and political gatherings are not subject to this time limitation.

Face Coverings

A new Executive Order on [Face Coverings](#) requires all persons over the age of 5 to wear face coverings in all public places, whether indoors or outdoors, even where they are able to maintain six feet of distance from others. Face coverings also are required in a carpool with non-household members.

There are exceptions for people who decline to wear a face covering because of a medical or disabling condition, because wearing a face covering would impede communication by or with a person with a hearing impairment or other disability, when a person is inside a personal vehicle alone or only with household members, or where applicable COVID-19 safety rules permit removal of masks, such as while eating or drinking in restaurants. A facility or business may decline entry to any individual who refuses to wear a face covering, unless the person has a medical reason for not wearing one.

An employer may require an employee requesting an accommodation to not wear a face covering to provide documentation to verify the condition.

A school also may require such documentation from a student participating in in-person learning.

Contact Tracing

If a host or event venue is notified that an attendee or worker tested positive for COVID-19, they must notify immediately the Local Board of Health in the municipality where the event took place. Hosts and event venues must assist the Department of Public Health and the Local Board of Health with contact tracing and case investigations. This may include providing lists of attendees and their contact information.

Stay-at-Home Advisory

In addition to the Executive Order, the Massachusetts Department of Public Health issued a [Stay-at-Home Advisory](#) urging all persons in Massachusetts to remain at home between 10:00 p.m. and 5:00 a.m. This includes not having gatherings at home with people outside of the household.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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