

Amid Surging COVID-19 Cases, Massachusetts Rolls Back Business Reopening, Mass Gatherings Orders

By Michael R. Bertoncini

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Citing significant increases in confirmed COVID-19 cases, positive COVID-19 tests, and hospitalizations for COVID-19, Massachusetts Governor Charlie Baker has issued orders rolling back Massachusetts [business reopenings](#) and further limiting [mass gatherings](#). These orders go into effect on December 13, 2020.

Under these orders, all Massachusetts communities will roll back to Phase III, Step 1 of the state's reopening plan.

General Rules on Business Reopening Roll Backs

The rollbacks include the following:

- All Phase III, Step 2 enterprises (i) must close to the public
- Outdoor theaters and performance venues will be limited to 25% of capacity and no more than 50 people
- Capacity will be reduced from 50% to 40% for the following sectors:
 - Offices
 - Retail
 - Lodging (common areas)
 - Places of worship
 - Gyms/health clubs
 - Libraries
 - Museums
 - Golf facilities
 - Movie theaters (maximum 50 people per theater)
 - Driving and flights schools
 - Arcades and indoor and outdoor recreational businesses

These new capacity limits do not apply to sectors that do not currently have a percentage-based capacity limit, including restaurants, laboratories, and close-contact personal services.

Face Coverings in Offices, Gyms

Additional guidance on face coverings in offices and gyms includes the following:

- In offices, employees must wear face coverings at their place of work when not in their own workspace and alone (this includes a face covering requirement in meeting rooms even where six feet of social distancing can be maintained)
- Employers are encouraged to close or limit the use of break rooms
- Patrons must wear face coverings at all times in gyms

In addition, Massachusetts continues to encourage all employers to offer telework where possible.

Restaurants, Other Indoor Dining

Massachusetts also is adopting new guidelines for restaurants and other venues with seated dining, including:

- Patrons must wear face coverings, except when eating and drinking
- Restaurants must seat no more than six patrons (reduced from 10) per table

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- Restaurants must impose a 90-minute time limit on tables
- Musical performances at restaurants will no longer be permitted
- Food court seating must be closed in malls

In addition, customers are encouraged to dine only with members of the same household.

Mass Gatherings

The new order on mass gatherings provides that indoor gatherings at event venues and other public settings are limited to 25 people (reduced from 50) and outdoor gatherings in those settings are limited to 50 people (reduced from 100) in a single venue or space.

Hosts of outdoor gatherings of greater than 25 people will be required to provide advance notice of the gathering to their local board of health. Gatherings at private residence or other places that are not event venues or public spaces are limited to 10 people indoors and 25 people outdoors.

All gatherings regardless of size or location must end and participants must disperse by 9:30 p.m.

Healthcare Employers

The Massachusetts Department of Public Health has issued two orders. First, effective December 11, 2020, hospitals will curtail elective procedures that can be safely postponed. Second, to increase access to COVID-19 testing, congregate care providers may participate in a testing program sponsored by the state to conduct CLIA-waived COVID-19 tests of their staff and residents without applying for or receiving state clinical laboratory licensure, subject to fulfilling certain requirements.

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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