

Client Alert
November 5, 2020

Governor Baker Issues Three New COVID-19 Orders

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On Monday, November 2, 2020, Governor Baker issued three new COVID-19 Orders, all of which are effective Friday, November 6, 2020 at 12:01 a.m.

COVID-19 Order No. 53 (<https://www.mass.gov/doc/covid-19-order-53/download>) imposes a Mandatory Night-Time Closing Period for Certain Businesses and Activities from 9:30 p.m. each day until 5:00 a.m. the following day. This Mandatory Closing Period Order prohibits certain businesses, facilities, and activities from admitting customers, patrons, or members of the public to their premises or otherwise offering, providing, or permitting in-person, on-premises services or activities, during the closed period. Businesses, facilities, and activities subject to the mandatory closing period include:

1. Restaurants, except take-out and delivery of food and non-alcoholic beverages;
2. Indoor and outdoor recreation, including arcades;
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; and
16. Museums/cultural and historical facilities/guided tours.

Governor Baker's mandatory closing period order is aligned with the Stay at Home Advisory, also issued on November 2, 2020 by the Massachusetts Department of Public Health (DPH), which advises all residents of Massachusetts to stay home between the hours of 10:00 p.m. and

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5:00 a.m. (<https://www.mass.gov/news/stay-at-home-advisory>). Together, the two new initiatives are designed to further limit activities that could lead to COVID-19 transmission.

COVID-19 Order No. 54 (<https://www.mass.gov/doc/covid-19-order-54/download>) limits the size and duration of certain indoor and outdoor gatherings. Subject to certain exceptions, including exceptions for religious activities and political expression, all participants in indoor and outdoor gatherings, including gatherings at private residences, must maintain at least 6 feet of physical distance from every other participant, except members of the same household. Indoor gatherings at “event venues and in public settings” are limited to 25 people, while outdoor gatherings are limited to 100 people in Lower Risk Communities and 50 people in communities that do not qualify as Lower Risk Communities. (Lower Risk Community is defined in COVID-19 Order No. 51 <https://www.mass.gov/doc/governors-covid-19-order-51/download>). “Event venue or public setting” is defined as “any setting open to the public and any event venue, club, park, or other venue or space, public or private, that is used or available for gatherings through lease, license, permit, contract, reservation or similar arrangement.” In addition to the social distancing and gathering limitations, all gatherings, including at private residences, must end and participants must be dispersed by 9:30 p.m., and all participants must wear face coverings in accordance with COVID-19 Order No. 55, discussed below, except that face coverings are only required at gatherings at private homes that include more than 10 people and where attendees include non-household members.

COVID-19 Order No. 55 (<https://www.mass.gov/doc/covid-19-order-55/download>) requires a mask or cloth face covering for all persons over the age of 5 “when in a public location, whether indoors and outdoors.” The Order describes “public locations” as:

any place open to the public including, without limitation, grocery stores, pharmacies, and other retail stores; public transportation, taxis, livery, and other ride-sharing vehicles; public streets and ways; and any location that hosts indoor or outdoor events or performances.

There are certain limited exceptions to the Face Covering Order, such as if a person is unable to wear a face covering due to a medical condition. Further, the Face Covering Order explicitly directs DPH to issue guidance to implement its terms.

With regard to these new COVID-19 Orders, employers should pay particular attention to whether they are a public location which requires employees and customers, patrons or clients to wear face coverings. Pursuant to this Order, face coverings are required even where social distancing is possible, and, as stated above, “public location” is broadly defined. Accordingly, this Order expands the face covering requirement beyond that directed in COVID-19 Order No. 31, which is expressly rescinded by this new Order.

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This Client Alert was prepared by Nan O'Neill and reviewed with Katherine Hesse and Sarah Spatafore. If you have any questions regarding this Alert or any other issue related to COVID-19, please contact Nan O'Neill, Kier Wachterhauser, Sarah Spatafore, or the attorney assigned to your account, or call 617-479-5000.

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