



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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COVID-19: Governor Baker Issues Order Closing All “Non-Essential” Businesses Until April 7, 2020

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In response to the COVID-19 pandemic, as of this writing, a growing number of states, including California, Illinois, Connecticut, New York, New Jersey, Ohio, Illinois, Pennsylvania and Wisconsin, as well as large cities, such as Miami, New Orleans and Chicago, and counties like Miami-Dade and Dallas County, have issued executive orders restricting companies from requiring “non-essential” employees to come into the workplace. These orders are sometimes referred to as “essential business,” “shelter in place” or “life sustaining businesses.”

Governor Baker announced that Massachusetts will join this growing number of jurisdictions to restrict business operations for “non-essential” businesses and organizations, COVID-19 Order No. 13 (the Order). The [Order](#) went into effect on March 24, 2020, at noon EDT. [Exhibit A](#) of the Order assures continued operation of essential services in the Commonwealth, closes certain workplaces and prohibits gatherings of more than 10 people.

The Massachusetts Order

The Order includes an exhibit which identifies the production and service sectors that are designated as “COVID-19 Essential Services,” which are discussed in more detail below. Under the Order, even those businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services are urged to continue operations with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

Under the Order, businesses and other organizations that do not provide COVID-19 Essential Services are required to close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020, and are not permitted to re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. While not allowed to open “brick-and-mortar premises,” these non-essential businesses are nonetheless encouraged to continue operations through “remote means.”

The List of COVID-19 Essential Services

As noted above, the Order provides for an Exhibit that directly addresses what is a COVID-19 Essential Service. While certain industries and services are identified in the Exhibit, the Order permits the Governor to amend the list of COVID-19 Essential Service industries and services as necessary in response to conditions as they develop. In creating the initial list of COVID-19 Essential Services, the Order provides that the Governor based the list on federal guidance with amendments to reflect the needs of Massachusetts’ unique economy.

Businesses not currently listed as a COVID-19 Essential Service may request designation as an essential business. Requests by businesses to be designated an essential function should only be made if they are NOT covered by the guidance. An online form to apply for designation as an “Essential Service” can be found [here](#).

Exhibit A to the Order concludes by inviting questions to be directed to: covid19.biz@mass.gov.

Guidance and Enforcement

Under the Order, the Commissioner of Public Health is directed to issue guidance subject to the Governor's approval, to implement the terms of the Order. In addition, the Order also gives the Commissioner authority to supplement the terms of the Order in the event she determines additional measures are required to ensure that the terms of the Order are observed.

With regard to enforcement, violations of the terms of the Order or the DPH Guidance may result 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, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. Enforcement actions are subject to the jurisdiction of the Massachusetts District Court. Additionally, a business violating the Order or the DPH Guidance may well be subject to attention by the media.

We will continue to monitor developments within the Commonwealth as they progress.

Read more legal updates, blog posts, and speaking engagements related to this area on [Robinson+Cole's Coronavirus Response Team](#) page and feel free to contact any member of our team with questions.

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