

Massachusetts Orders All Non-Essential Workers to Stay Home

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Beginning Tuesday, March 24, 2020 at 12:00 PM, Massachusetts will join a growing number of states in closing non-essential businesses and organizations to employees, customers, and the public. Governor Charlie Baker [announced](#) the emergency order, [COVID-19 Order No. 13](#) (the “Order”) on Monday morning, March 23, noting that it applies to the “physical workplaces and facilities” of such non-essential businesses and workplaces. The closure, as of now, will last until Tuesday, April 7 at noon.

In announcing the closure, Governor Baker noted that it does not apply to grocery stores, pharmacies, and “other types of businesses that provide essential goods and services to Massachusetts residents.” Attached to Governor Baker’s emergency order is a list that the Commonwealth has designated as “[COVID-19 Essential Services](#),” and therefore exempt from the closure Order. The list designates several broad categories of businesses as essential, including:

1. **Healthcare, Public Health, and Human Services** – including workers providing COVID-19 testing, medical professionals and caregivers, hospital and laboratory personnel, public health and community health workers, workers managing health plans, pharmacy employees necessary for filling prescriptions, and others.
2. **Law Enforcement, Public Safety, and First Responders** – personnel in emergency management, law enforcement, EMTs, 911 call center employees, and others.
3. **Food and Agriculture** – Workers supporting groceries, pharmacies, and other retail, restaurant carry-out and quick serve food operations, including carry out and delivery employees, farm workers, workers supporting seafood and fishing industries, food manufacturer employees, and others. Notably, restaurants, bars, and other establishments that offer food for take-out and delivery may remain open if they follow social distancing protocols set forth by the Department of Public Health.
4. **Energy** – workers who maintain, ensure, or restore generation, transmission and distribution of electric power, including call centers, utility workers, and engineers, petroleum workers, natural and propane gas workers, steam workers, and others.

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5. **Water** – Employees needed to operate and maintain public and private drinking water, and wastewater and drainage infrastructure, among others.
 6. **Transportation and Logistics** – Mass transit and passenger rail workers, employees supporting or enabling transportation functions such as dispatchers, maintenance and repair employees, warehouse workers, and other workers that maintain and inspect infrastructure, among others.
 7. **Public Works** – Workers supporting the operation, inspection, and maintenance of essential public works facilities and operations, including roads and bridges, water and sewer, plumbers, electricians, exterminators, and utility workers, among others.
 8. **Communications and Information Technology** – Workers supporting radio, television, and media services, engineers, technicians, and other personnel associated with infrastructure construction or restoration, central office personnel, customer services, IT workers, and data center operators, among others.
 9. **Community-Based Essential Functions and Government Operations** – State inspectors such as elevator or building inspectors, weather forecasters, hotel workers, laundry services, professional services, commercial retail stores that supply other essential sectors, such as pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers, among others.
 10. **Critical Manufacturing** – Workers necessary for the manufacturing of materials and products needed for medical supply chains, among others.
 11. **Hazardous Materials** – Workers and nuclear facilities, and workers managing medical waste, among others.
 12. **Financial Services** – Workers needed to process and maintain systems for processing financial transactions, workers needed to provide consumer access to banks and lending services, and workers who support financial operations such as data and security operations, among others.
 13. **Chemical** – Workers supporting chemical and industrial gas supply chains, among others.
 14. **Defense Industrial Base** – Workers supporting essential services required to meet national security commitments, and personnel working for companies performing under Department of Defense contracts, among others.

The above is intended to provide a broad overview. The essential services list includes more specific details, and Massachusetts employers accordingly are strongly encouraged to review the list carefully. If a business function is not included in the COVID-19 Essential Services list, employers may [request designation](#) as an essential business. Businesses already covered by the list need not make a request. Massachusetts encourages businesses not among those providing “essential services” to continue operations via remote means.

Governor Baker also directed the Massachusetts Department of Public Health (the “DPH”) to issue a “stay at home advisory” outlining social distancing and self-isolation protocols, and encouraging at-risk individuals, such as those over 70 years old or with underlying health conditions, to limit social interactions as much as possible. Governor Baker instructed that such guidelines require grocery stores and other retailers with substantial retail grocery sales to establish limited exclusive-access hours for the elderly and other vulnerable populations to purchase groceries. Unlike some other states, Governor Baker is classifying the “stay at home” directive as an advisory, as opposed to an order.

Finally, the Order limits gatherings of more than 10 people (the limit had previously been 25 people) throughout the Commonwealth, including without limitation “community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisings...and any similar event or

activity that brings together more than 10 persons in any confined indoor or outdoor space.” The limitation does not apply to operations of any businesses in the provision of COVID-19 Essential Services.

Violations of the Order are punishable with warnings, civil fines of up to \$300 per violation, or even criminal penalties of up to \$500 or imprisonment. The Order also provides a mechanism for seeking injunctions to enforce the order or the DPH guidance. Additionally, the Order provides for similar penalties for violations of the pending DPH Guidance, although such language is seemingly inconsistent with Governor Baker's commentary that the DPH Guidance is an advisory, as opposed to order.

Certain Massachusetts towns, such as Provincetown and Nantucket, have also issued “stay at home” orders. Additionally, at this time, other states enacting various degrees of non-essential business closures include [New York](#), Connecticut, New Jersey, [California](#), Illinois, Ohio, Louisiana, and Delaware.

Employers with questions about the order, or the effects on their businesses, are encouraged to reach out to counsel for guidance.

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