

COVID-19 Impacts on Legal System, Business, and Environmental Compliance in Massachusetts - April 27, 2020 Update

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The impacts of the new coronavirus and COVID-19 have been swift across government, business, and everyday lives, resulting in shuttered businesses and remote working, a shock to the stock market, and a wide variety of responses at the state and local level. Massachusetts has done an admirable job of collecting its statewide resources on its [website](#) and many localities have done the same. Beveridge & Diamond activated its business continuity plan and is working remotely throughout its seven offices. Here we review impacts to clients with pending matters in the state and federal courts, ongoing business operations in the Commonwealth, and enforcement and other environmental compliance deadlines.

State Courts

State Courts Closed Except for Emergency Matters Through at Least June 1. State courthouses in Massachusetts are closed to the public ***through at least June 1, 2020***. Originally, the Massachusetts' Supreme Judicial Court (SJC) issued a [series of orders](#) that [closed the state courts](#) to the public except to address emergency matters that cannot be resolved through a videoconference or telephonic hearing. However, on April 6, 2020, the Trial Court issued [Emergency Administrative Order 20-7](#) further restricting the emergency matters to be heard virtually unless a Regional Administrative Justice (RAJ) First Justice "determines that virtual resolution of the matter is not practicable or would be inconsistent with the protection of constitutional rights." The original closure through April 6 was extended through May 4 by the SJC's [Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 \(Coronavirus\) Pandemic](#) on April 1. These rules were implemented by each of the individual trial courts (Superior Court, Land Court, etc.) through a series of [Standing Orders](#). Although the clerk's offices remain open, the language of the SJC's order indicates that it is not business as usual for most cases, as the clerk's offices are open to accept pleadings and other documents only "in emergency matters." Land Court also issued [an updated emergency order](#) on April 2 that retains Land Court closures through at least May 4.

On April 27, 2020, the SJC issued its Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, which extended the courthouse closures and other dates discussed below to June 1, 2020. Notably, the SJC looks to be trying to jumpstart some non-emergency matters that can be handled virtually. The SJC directs the Trial Court departments to “identify categories of matters that they will attempt to address virtually, in whole or in part, where practical to do so in view of skeletal court staffing, technological constraints, and the need to prioritize emergency matters, and where doing so is consistent with the protection of constitutional rights.” Whether the Trial Courts intend to start addressing civil matters virtually remains uncertain until they issue their guidance on the non-emergency matters that will attempt to address.

Some Courts are Temporarily Closed Entirely. In addition to the general limitation to just emergency matters, some courts are [temporarily closed](#) altogether to respond to a COVID-19 exposure for differing durations. As of April 27, 2020, various courts in the New Chardon Courthouse were closed through April 29. The Land Court, Suffolk Superior Court, and John Adams Courthouse had been closed for different durations in April.

Mistrials for Current Trials and Delays for Others. Jury trials in civil and criminal cases scheduled through July 1, 2020 are continued to after July 1. Civil and criminal bench trials are continued to at least June 1, 2020, although they may be conducted virtually by the agreement of the parties and of the court. For any in-progress trial, a mistrial was declared.

Statutes of Limitations Tolled. The SJC tolled Massachusetts statutes of limitations from March 17, 2020 through May 31, 2020 and all deadlines set forth in state statutes or court rules, standing orders, or guidelines that would expire between March 16, 2020 and June 1, 2020 are tolled until June 1, 2020. This means that a state court deadline that would have run between March 17 and May 4 is extended to May 4, but deadlines beyond May 4 are not being tolled for that period.

Electronic Service Now Permitted in Many Instances. Parties in civil cases may use email for service of most pleadings under Mass R. Civil P.5(b) where the email addresses of the lawyers have been disclosed in previous filings with the court. The SJC’s [order](#) on March 30 cautioned attorneys that they must periodically check spam and quarantine folders to make sure they have not missed an email, but prohibited email service for summons and complaint, attachment, trustee process, third-party complaints, and subpoenas. This means that ongoing civil litigation is the main beneficiary of these rules, as new complaints, third-party complaints, and other more complicated matters will continue to require traditional service consistent with the additional consequences associated with those matters. In addition, pro se litigants cannot be served by email unless they assent.

Electronic Signatures. On April 6, 2020 (and effective on April 7, 2020), the SJC issued [an order permitting the use of electronic signatures](#) in Massachusetts Courts. The order applies to “all courts and case types” and to attorneys and self-represented parties alike. Electronic signatures may take the form of a scanned signature, image representing the signature, or a “/s/ name of signatory” block (as is common practice in federal courts). Following the order, electronic signatures are permitted in all Massachusetts courts “unless the court specifically orders otherwise.” Electronic signatures also are acceptable for affidavits made under oath, although the party must make efforts to secure an original signature as soon as practicable after filing with the court.

No Oral Arguments in Appeals Court in April. All cases scheduled for oral argument in April 2020 have been [deemed submitted on the briefs](#) on file without any oral argument unless otherwise ordered by the Court. In a [subsequent order](#), the Appeals Court provided parties an opportunity to provide a supplemental memorandum. The court directed that the memo should not exceed 5 pages

and may “be used to call to the attention of the panel points in a party’s case that the party would have emphasized at oral argument” but did not open the door for raising of new issues, consistent with Mass. R. A. P. 16(c). Supplemental memoranda are due on April 16, 2020 and may be electronically filed.

Civil Matter Uncertainty. A lack of comprehensive electronic filing in the Superior and Land Courts coupled with court closures and directives to focus on emergency matters leave civil matters in limbo during this period. The trial court strategy appears to be to push deadlines and hearings out and their utilization of telephonic or videoconference to continue to move civil matters is highly uncertain. How the trial courts will implement the April 27 order regarding virtual hearings in civil matters remains to be seen.

Trial Court Helpline. The Trial Court has established a help line that the public and attorneys can call to ask general questions about civil and criminal cases and help them navigate the court system while it is experiencing COVID-19 disruptions. The Help Line is staffed from 8:30 a.m. to 4:30 p.m., Monday through Friday, and can be reached by calling 833-91COURT. For emergency matters, the Trial Court has directed that litigants and lawyers should call the clerk or register office at the court. Court contact are located on the [Courthouse Locator page available here](#).

Federal Courts

Federal Courts are Open With Restrictions. The [Federal District Court for the District of Massachusetts](#) remains open with [restrictions on visitors](#) and [limited counter hours for clerks](#) (9 a.m. to 2 pm). Its original continuation of [all jury trials](#) scheduled through April 27, 2020 was extended to May 29, 2020 by the Court’s [order](#) on March 30. The Springfield courthouse had been closed from March 23 until [March 27](#) as a result of concerns that a clerk’s office employee had Covid-19 symptoms. A subsequent test determined that that individual did not have the coronavirus. In order to keep the work on the court moving, judges have pivoted to holding hearings and conferences by telephone and video and issued a [public notice](#) regarding public access to these teleconferences and videoconference hearings.

First Circuit Court of Appeals Extends Deadlines But Not for Filing of Appeals. In an [explanation on its website](#), the First Circuit announced that all oral arguments for the April sitting of the court have been canceled and that the clerk’s office is not accepting in-person filings, although the drop-box is available. The deadline for non-emergency filings, including briefs, appendices, and petitions for rehearing due to be filed between March 26, 2020 and April 24, 2020 has been extended for 30 additional days. However, cases that are calendared for oral argument, have already been argued, or are otherwise expedited are excepted from this automatic extension. Importantly, deadlines for notices of appeal and other documents that give the First Circuit jurisdiction that are set by statute or rule are not extended but a party may request an extension and may also challenge an automatic extension.

Due to health concerns over the COVID-19 virus, the Clerk's Office for the U.S. Court of Appeals for the First Circuit will not accept in-person case filings at its intake window, until further notice. If you plan to file a paper document at the Moakley Courthouse, please use the drop-box located on the first floor by the main entrance. You can reach the Clerk's Office by phone at 617-748-9057.

Business Closures

While many businesses continue to operate across Massachusetts, the past weeks have seen a

series of actions that curtail operations for many businesses. On March 10, 2020 Governor Charlie Baker [declared a state of emergency](#) in the Commonwealth to combat the spread of COVID-19. On March 23, Governor Baker [issued COVID-19 Order No. 13](#) that prohibits gatherings of more than ten people and requires “nonessential businesses and organizations” to shutter their physical workplaces as of March 24, 2020, through April 7, 2020. The order was extended to May 5, 2020 by [COVID-19 Order No. 21](#).

These Emergency Orders references [a list of essential services](#) that are exempt from the order. Categories of exempted essential services are drawn mostly from the [recent guidance](#) issued by the federal Department of Homeland Security and include:

- Health Care & Public Health
- Law Enforcement, Public Safety & First Responders
- Food & Agriculture
- Critical Manufacturing
- Transportation
- Energy (including electricity, petroleum, natural gas/propane, and steam)
- Water & Wastewater
- Public Works
- Communications and Information Technology
- Financial Services
- Defense Industry Base
- Chemical Manufacturing & Hazardous Materials
- Other Designated Community Based Essential Function & Government Operations
- News Media

Certain businesses and employees in the above categories may continue physical and in-person operations, but are “urged to follow social distancing protocols for workers in accordance with guidance from the Department of Public Health.” Businesses not on the list [may request designation as an essential service](#), and many reportedly have done so.

The list of essential services also includes “Professional services (such as legal and accounting services) and payroll and employee benefit services, when necessary to assist in compliance with legally mandated activities and critical sector services or where failure to provide such services during the time of the order would result in significant prejudice.” This provision will allow law firms, consultants, and other service professionals to support clients engaged in certain functions.

Since the Emergency Order, the Baker administration has taken further actions applicable to food service, grocery stores, and other businesses in the commonwealth, and has closed all schools through May 4. On March 26, 2020, Governor Baker [sought a Major Disaster Declaration](#) from the federal government, which was [granted](#) the next day.

Since this is a rapidly evolving situation, we encourage businesses and citizens to monitor information provided by the Commonwealth on the State of Emergency, closures, and other actions at: <https://www.mass.gov/info-details/covid-19-state-of-emergency>.

Local Governments

Cities and towns have taken a variety of steps to confront the coronavirus in their municipalities that will interrupt day-to-day business in a variety of ways, including slowing permitting, responses to public record requests, and ongoing discussions on subjects outside the current crisis. Municipalities have declared [states of emergency](#), [closed town and city halls](#), and postponed municipal board and committee meetings. Some municipalities have closed parks and recreational areas to encourage social distancing and many delayed Annual Town Meetings and elections schedule in April.

On April 3, the Governor signed [legislation](#) that addressed constructive approvals, scheduling and continuance of annual town meetings, implementation of budgets, and other time-sensitive financial issues. Paralleling the extensions for state permits and appeals, the legislation allows local hearings to be continued during the state of emergency, although there is language that appears to provide boards and committees the discretion to hold virtual meetings. The legislation:

- Suspends the requirement for a local board to act commence a hearing within a specified period of time as of March 10, 2020 to be resumed 45 days after termination of the state of emergency (or later if provided by statute or rule);
- Suspends constructive approvals when a local board fails to act within specified period of time until 45 days after the state of emergency ends (or later if provided by statute or rule);
- Extends deadlines by which local permit applications are to be heard and acted upon, with that period resuming 45 days after the state of emergency ends (or later if provided by statute or rule);
- Continues all hearings for which a hearing was held before March 10, 2020 but not concluded until the first hearing date of the permit granting authority after the state of emergency ends, but not later than 45 days after the termination of the order; and
- Suspends the time for required recording of local permits or approvals with the Registry of Deeds.

In order to aid municipalities to carry on their business, on March 12, Governor Baker issued [an order](#) suspending some provisions of the state's Open Meeting Law (G.L. c. 30A, § 20). This order eased the requirement to meet in a public place and permitted remote participation by all members of a meeting of a public board or committee provided the public has a way to monitor the proceedings in real time (e.g. telephone, internet, etc.). Where a municipality cannot accomplish real-time participation "due to economic hardship and despite best efforts" the municipality must post the transcript or recording on its website. Based on this order, many municipalities are rescheduling

certain town meetings and hearings to occur by video or audio conference. [Legislation](#) subsequently codified the governor's order.

Environmental Compliance Considerations

During the public health crisis presented by COVID-19—and the mandatory business closures resulting from it—businesses will need to keep a careful eye on environmental compliance and permitting. Environmental compliance requirements remain in effect, meaning that businesses will need to continue compliance with permits, environmental regulations, and other environmental requirements that apply to their operations.

Massachusetts and MassDEP

As of the date of this publication, the Massachusetts Department of Environmental Protection (MassDEP) has not issued broad guidance or policy updates regarding environmental compliance, enforcement, or flexibility mechanisms related to challenges presented by COVID-19. On a webinar on March 31, MassDEP Commissioner Marty Suuberg said that he did not expect to issue a document similar to US EPA's enforcement memorandum discussed below. Instead, MassDEP has issued a sector-specific [FAQ for Public Water Suppliers and Wastewater Service Providers](#), and has [suspended bottle redemption enforcement](#). But apart from these limited measures MassDEP has not yet provided guidance or altered compliance requirements. A list of COVID-19 Guidance and Directives issued by state agencies [is maintained here](#); businesses may want to check this page periodically as new items are added on a near-daily basis.

Other states, [like California](#), have emphasized the importance of continued compliance during the COVID-19 crisis. With many government offices closed and staff working remotely, including much of the Massachusetts Department of Environmental Protection (MassDEP), it may be more difficult for some entities to carry out routine permitting and compliance actions. Nonetheless, Massachusetts businesses should assume that environmental compliance and permitting requirements continue to apply.

Through [COVID-19 Order No. 17](#), Governor Baker sought to ease the pressure of permitting and appeal deadlines under the authority of the Executive Office of Energy and Environmental Affairs and the Executive Office of Housing and Economic Development. The order only addresses state-issued permits, although there is pending legislation to address similar issues at the local level (as discussed above). The Order:

- Suspends constructive approvals when a state permitting authority fails to act within a specified period of time for until 45 days after the state of emergency ends;
- Extends requirements for hearings to commence within a certain time after filing of an appeal with the time period picking up 45 days after the state of emergency concludes;
- Extends requirements for state permitting agencies to issue a permit or appeal decision within a particular period of time, with that period resuming 45 days after the state of emergency ends;
- Extends the period for filing appeals of state decisions that fall within the state of emergency until 45 days after the termination of the state of emergency;

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- Tolls the expiration of state permitting approvals that were valid on March 10, 2020 during the state of emergency, unless the permit holder was in violation of the terms of the permit on March 10, 2020; and
 - Relaxes public participation requirements for the State Revolving Fund Intended Use Plan.

Notably, enforcement orders are excluded from extensions and tolling under the order.

Federal and U.S. EPA

On March 26, the U.S. Environmental Protection Agency issued a guidance document entitled "[COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program](#)." EPA's March 26, 2020 guidance addresses a range of issues relating to environmental enforcement and compliance and COVID-19. The guidance addresses situations where EPA will apply enforcement discretion to pandemic-related non-compliance, where regulated entities follow the conditions set forth in the policy. Eligibility for the benefits of the policy depends on meeting the articulated conditions, including adequate documentation.

EPA conditions application of its enforcement discretion on a demonstration that all efforts have been made to comply with environmental obligations. Where that is not "reasonably practicable" due to a COVID-19 related reason, documentation is critical. More specifically, EPA's policy sets forth the following expectations:

- Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
- Identify the specific nature and dates of the noncompliance;
- Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
- Return to compliance as soon as possible; and
- Document the information, action, or condition.

EPA's policy, which is retroactive to March 13, 2020, covers the three most common instances of expected non-compliance: civil violations, routine compliance monitoring and reporting, and settlement agreement or consent decree obligations. The policy does not apply to CERCLA or RCRA Corrective Action sites, emergency reporting of accidental releases, pesticide product imports, state or tribal matters, or criminal actions.

Importantly, EPA's guidance does not relieve or eliminate any compliance obligations or deadlines; rather, it indicates how EPA will take certain enforcement actions in light of COVID-19 impacts. The policy is detailed and, in some instances, nuanced, and we recommend careful assessment to determine whether it may be applicable to your operations. [We have published a thorough analysis of EPA's COVID-19 policy here.](#)

Additional Compliance Resources

Additional resources for water, wastewater, waste, and recycling industries are available at:

- [Solid Waste Association of North America – Guidance on COVID-19](#)
- [Department of Labor – OSHA Guidance](#)
- [CDC Guidance for Businesses and Employers](#)
- [Federal Motor Carrier Safety Administration – Emergency Declaration](#)
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