

# Massachusetts Releases Reopening Plan & Business Requirements

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Massachusetts has unveiled its [plan](#) to reopen from the shutdown enacted in response to the COVID-19 outbreak. This plan was formalized on May 18th in Governor Baker's "Order Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19" (the "[Order](#)"). The reopening plan is divided into four flexible phases, each lasting a minimum of three weeks, although a resurgence of the virus could necessitate a return to an earlier phase of the plan and extend the reopening timeline.

Many Massachusetts businesses now have concrete guidance on the measures they are required to complete before reopening their workplaces, and a tentative timeline on when they might be able to reopen. Businesses must meet the required [Mandatory Safety Standards for Workplaces](#) (the "Safety Standards") in order to reopen. Currently, only the Phase 1 standards have been released, with the release of other phase standards to follow as the plan progresses. In addition, as the plan progresses, the requirements for businesses in earlier phases will likely be updated as the public health emergency develops. Businesses should track updates from Massachusetts authorities going forward, including guidance from local jurisdictions.

## **The Reopening Plan**

### ***Phase 1 – Start***

The first phase began on May 18th, with the opening of construction, manufacturing, places of worship, firearms retailers, and shooting ranges. Additionally, office spaces, car washes, hair salons, pet groomers, drive-in movie theatres, laboratories, and most parks will also be allowed to reopen as part of Phase 1 on May 25th (though Boston offices may only open on June 1st). In addition to the Safety Standards for all businesses, the state has developed sector-specific guidance and checklists (see below for link and further discussion) on the steps needed to reopen. General gatherings are still limited to less than 10 people, but this restriction is suspended for businesses that follow the established Safety Standards.

### ***Phase 2 – Cautious***

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In Phase 2, retail, restaurants, lodging, and personal services businesses such as nail salons and day spas will be allowed to reopen. Although specific safety guidance has not been released, [previews](#) of this guidance released by the Commonwealth contemplate restrictions and capacity limitations to protect public health. Business travel is still discouraged and travelers arriving in Massachusetts are still urged to quarantine for 14 days. In addition, safety guidelines for businesses that opened in earlier phases may be updated.

### ***Phase 3 – Vigilant***

The bulk of other businesses will be allowed to open in Phase 3, excluding only night clubs and large venues. Again, this phase might prompt an update to safety standards for previously opened businesses depending on how things unfold. The size limit on gatherings might also be adjusted upwards based on health trends.

### ***Phase 4 – New Normal***

The last phase should be the resumption of activity across the spectrum as Massachusetts enters the “new normal.” Note that the new normal is not simply a return to the status quo from before the COVID-19 pandemic. Businesses should be prepared for new requirements and standards to continue to ensure a safe and healthy working environment. In addition, businesses should prepare policies and procedures to handle any future public health emergencies.

## **Reopening Requirements**

Businesses must meet certain requirements in order to reopen in Phase 1. The business must observe the Safety Standards, which are broken down into four categories:

- Social Distancing:
  - Maintain six foot distancing between all persons to the greatest extent possible
  - Establish protocols to ensure employees can practice social distancing
  - Provide social distancing signage
  - Require face coverings or masks for all employees
- Hygiene Protocols:
  - Provide hand-washing capabilities throughout the workplace
  - Ensure frequent hand washing and ensure supplies to do so are available
  - Implement regular sanitation of high touch areas in the workspace
- Staffing and Operations:
  - Train employees on social distancing and hygiene protocols

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- Ensure that any employee with COVID-19 symptoms does not report to work
  - Establish a plan for how to handle an employee experiencing COVID-19 symptoms at work
  - Develop a return-to-work plan for employees who were sick with COVID-19 symptoms (see our prior blog post on [Handling a Positive Workplace Diagnosis](#))
  - Cleaning and Disinfecting:
    - Establish and maintain cleaning protocols specific to the requirements of your business
    - Ensure that cleaning and disinfecting is performed immediately when an active employee is diagnosed with COVID-19
    - Disinfect common surfaces at intervals appropriate to the workplace

There are also additional [Sector Specific Safety Protocols and Best Practices](#) for each industry, and businesses must comply with these applicable safety protocols. Essential businesses that remained open before Phase 1 must also comply with these standards by May 25th. Recommended best practices for each industry are also available to help guide business in maintaining a safe and healthy workplace.

Businesses wishing to reopen in Phase 1 must also develop a COVID-19 Control Plan outlining how the business will comply with the Mandatory Safety Standards. This plan does not need to be submitted, but must be maintained on the businesses' premises. The state has issued a [template](#) to help businesses comply with this requirement. The Control Plan template is mainly a checklist in which the business is self-certifying that it is following the Safety Standards.

Finally, [Compliance Attestation Posters](#) must be printed, signed, and conspicuously placed in the workplace so that workers and visitors may view them. [Employer](#) and [Employee](#) posters, which display helpful safety requirement reminders, are also available (but there is no mandate to post them).

## **Enforcement of the Order**

The Attorney General's Office has established an [online complaint form](#) for workers to report unsafe working conditions related to the COVID-19 safety requirements. The Attorney General's Fair Labor Hotline can also be used to report concerns and complaints (even anonymously). Employees can report concerns pertaining to:

- Cleaning and disinfection
- Failure to display the Compliance Attestation Poster
- Hygiene
- Personal Protective Equipment

- Requiring employees sick with COVID-19 symptoms to report to work
- Retaliation
- Social Distancing

With these robust reporting mechanisms in place, it is important not only for business to comply with all safety requirements in a careful and timely manner, but also communicate with their workforce about their COVID-19 plan and safety protocols. Concern for the health and safety of workers as they head back into the workplace is a priority for the Attorney General's Office, and businesses suspected of violating the required safety standards may be pursued vigorously.

The Order outlines that violations of the Safety Standards can result in a fine of up to \$300 per violation. The Safety Standards can also be enforced by injunction in a district court, or other court of competent jurisdiction. The Massachusetts Department of Public Health and Department of Labor Standards are charged with enforcing and issuing regulations and guidance on the Safety Standards. Municipal boards of health (or their authorized agents) also have concurrent enforcement authority, but notably cannot promulgate their own safety standards.

## **Boston Reopening Office Workspace Guidance**

Separate from the Commonwealth's directives, the City of Boston issued a [Return To Workplace Framework For Commercial Spaces In Boston](#) (the "Framework") on May 28, 2020, which allows Boston offices to begin reopening on June 1st. The Framework consists of operational recommendations and best practices, but not *requirements* since the Governor's Order forbids municipalities from setting additional COVID-19 workplace safety rules. These best practices provide guidance on how to specifically implement each of the four categories established by the Safety Standards. Boston office-based businesses should review and implement these recommendations where feasible.

## **Parting Thoughts**

As Massachusetts begins carefully reopening, businesses should keep in mind that the situation remains fluid. While the Reopening Plan gives a basic structure and a greater degree of certainty to the process, it includes evolving standards that could backtrack if the viral outbreak worsens again. Additionally, the current safety standards and requirements for Phase 1 will likely be updated as the Commonwealth moves into later phases. Employers must stay informed of these developments to position their business for success and compliance in these uncertain times.

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National Law Review, Volume X, Number 153

Source URL: <https://natlawreview.com/article/massachusetts-releases-reopening-plan-business-requirements>