

MASSACHUSETTS ISSUES COVID-19 GUIDELINES AND COURT SYSTEM PROTOCOLS

May 2020

Recent circumstances unique to the **COVID-19** health crises have forced many states to review existing guidelines, alter current regulations and adopt new rules. The Commonwealth of Massachusetts has implemented a phased approach and imposed mandatory practices and protocols in order to reopen businesses and stimulate the economy. Courts in Massachusetts have established protocols and procedures, as outlined below, that enables its judicial system to continue to operate in a safe and efficient manner.

Massachusetts is the third state to have been most impacted by COVID-19. The Governor of Massachusetts, **Charlie Baker**, announced on May 11, 2020, that the Massachusetts economy will gradually reopen using a four-phase approach based on guidance from public health officials.

Businesses and activities considered to have a lower risk of COVID-19 transmission will open in earlier phases. The state's **Reopening Advisory Board** presented its full report on May 18, 2020, outlining industries and activities that may re-open during each phase and the required safety practices and cleaning protocols for each industry to operate.

Upon lifting prior stay-at-home advisories, the state began at Phase 1 for the re-opening the economy, allowing limited industries to resume operations with severe restrictions imposed. Phase 2 is labeled the "Cautious" stage, allowing additional industries to resume operations with specific restrictions and capacity limits. Thereafter, Phase 3 is designated as "Vigilant" permitting additional industries to resume operations with guidance. Only following the development of a vaccine and/or therapy preventing transmission will enable progression to Phase 4 that is identified as the "New Normal." If, however, existing public health metrics fall below thresholds at any time, there is a potential for reversal back to a prior phase.

Governor Baker has issued **Mandatory Safety Standards** governing social distancing, hygiene, staffing and operations, and cleaning and disinfecting protocols that are required for businesses to re-open.

Social distancing requires that all persons, including employees, customers and vendors, remain at least six feet apart to the greatest extent possible, both inside and outside workplaces. Employers must establish protocols to ensure that employees can practice adequate social distancing, and post signage for safe social distancing. In addition, employers must require face coverings or masks for all employees.

Hygiene safety standards require employers to provide hand-washing capabilities throughout the workplace, ensure frequent hand-washing by employees, and provide adequate supplies to do so. Employers are to provide for regular sanitization of "high touch" areas, such as workstations, equipment, screens, doorknobs and restrooms throughout the work site.

Staffing and operations protocols require employers to provide training for employees regarding social distancing and hygiene protocols, as well as mandate that all employees who are experiencing COVID-19 symptoms do not report to work. Employers are to establish a plan for employees who get ill from COVID-19 at work, and implement a return-to-work plan.

Cleaning and disinfecting standards require employers to establish and maintain cleaning protocols specific to the business and industry, and ensure thorough cleaning and disinfecting after an active employee is diagnosed with COVID-19. Employers are to perform disinfecting of all common surfaces at appropriate intervals.

MASSACHUSETTS COURT SYSTEMS

In light of the COVID-19 pandemic, the **United States District Court for the District of Massachusetts** has issued general orders supporting video and teleconferencing for civil and criminal hearings in accordance with the applicable statutes and rules of the **Judicial Conference of the United States**. The US District Court for the Dist. of Mass. will support public access to hearings for the duration of this national emergency and has made accommodations available to allow the public access via teleconference and videoconference hearings.

The **Supreme Judicial Court in Massachusetts** is open for business, but conducting all business virtually—by telephone, videoconference, email or comparable means and through the electronic filing system—except for emergency matters that cannot be addressed through such means. The Clerk’s Office for the Commonwealth which handles matters before the full court, and the Clerk’s Office for the County of Suffolk which handles matters before the single justice, administrative and disciplinary matters affecting members of the bar and bar admissions, are accepting filings electronically and by mail. Oral arguments are proceeding before the full court and single justices, but arguments are being conducted virtually using remote technology, rather than in-person. Additionally, some cases are being decided on by only the briefs submitted, without oral argument.

Until at least July 1, 2020, the Superior Court will remain open to conduct court business, but courthouses will be closed to the general public, except where entry is required to address an emergency matter that cannot be resolved using remote technology. The **Massachusetts Superior Court** will address non-emergency matters in both civil and criminal cases, to the extent feasible, with available staffing. In civil cases, such matters will include processing and ruling on motions submitted under **Superior Court Rule 9A, Rule 16** conferences, final pre-trial conferences, status conferences and hearings on non-evidentiary motions.

As provided in the **SJC Court Order** dated May 26 effective June 1, 2020, all jury trials in both criminal and civil cases, which were scheduled to commence between March 13 and September 4 are continued to a date no earlier than September 8, 2020. Bench trials for both criminal and civil matters, which were scheduled to commence between March 13 and September 4 are continued to a date no earlier than September 8, 2020, unless in the trial judge’s discretion the bench trial may be conducted virtually. This Order also provides that all statutes of limitation are tolled from March 17, 2020 through June 30, 2020, when the tolling

period shall end and will not be further extended, unless there is a new surge in COVID-19 cases and a new or extended period of tolling becomes necessary. In addition, the Order further reflects that, unless otherwise ordered by a judge, all deadlines set forth in statutes or court rules, standing orders, otherwise ordered by a judge, all deadlines set forth in statutes or court rules, standing orders, tracking orders or guidelines that are set to expire between March 17 and June 30 are tolled until June 30. The new deadline in each instance mentioned above is calculated by determining how many days remain after March 17 until the original deadline, and that same number of days will remain until the new deadline of June 30, 2020.

On March 30, 2020, the Massachusetts Senate filed a Bill with the **Massachusetts Legislature** identified as Massachusetts Senate Bill **S.D. 2888**, bill entitled “An Act Concerning Business Interruption Insurance,” concerning insurance coverage for loss of use, occupancy and business interruption. This Bill shall require all insurance policies insuring against loss or damage to property, the loss of use and occupancy and business interruption in force in the Commonwealth of Massachusetts, to cover any losses resulting from business interruption directly or indirectly due to the global pandemic, known as COVID-19, and further prohibits denial of a claim due to the fact that COVID-19 is a virus and/or that there is no physical property damage, requiring coverage to continue until **Executive Order 591** is rescinded by the Governor.

The Bill further authorizes and regulates reimbursement of insurers for such business loss payments to insureds and directs the **Commissioner of Insurance** to impose and collect assessments against licensed insurers that provide business interruption coverage for the purpose of funding insurance reimbursement during the COVID-19 public health emergency. If passed, the Bill would eliminate an insurers’ ability to deny coverage for COVID-19 claims based on the absence of physical loss or damage to covered property and would further compel coverage for COVID-19 claims even though the parties explicitly negotiated a virus exclusion when the policy was written.

Litchfield Cavo attorneys are continuously monitoring the complexities, ongoing concerns and legal implications of coronavirus issues and are ready to assist on all COVID-19 related legal matters.

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