

## **Governor Baker Orders Closing of Non-Essential Businesses in Massachusetts; Department of Public Health Prohibits Gatherings of More than 10 People**

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On March 23, 2020, in response to the growing COVID-19 pandemic, Massachusetts Governor Charlie Baker [ordered](#) all businesses not providing “COVID-19 Essential Services” to close their physical, brick-and-mortar premises to non-essential workers, customers, and the public as of 12:00 noon on March 24, 2020 through April 7, 2020.

Attached to the Governor’s order is a [list](#) of categories of workers providing “COVID-19 Essential Services” who may continue to work in brick-and-mortar businesses. The list includes certain workers in the following categories:

- Healthcare/Public Health/Human Services (including manufacturing and distribution of pharmaceuticals)
- Law Enforcement, Public Safety, First Responders
- Food and Agriculture
- Electricity, Petroleum, Natural and Propane Gas, and Steam
- Water and Wastewater
- Transportation and Logistics
- Public Works
- Communications and Information Technology
- Community-Based Essential Functions and Government Operations
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemicals
- Defense

Every employer must consult the full list to determine whether and how the Order impacts their businesses, because the categories do not include all types of activities nor all types of workers within each category. For example, the “healthcare” category contains not only physicians and nurses working in hospitals, but also a wide variety of hospital administrative, security, and other staff, meaning that most hospital workers are deemed “essential” under the order. By contrast, in other categories not necessarily all categories of workers are covered. The “financial services” category, for example, includes workers needed to maintain systems for processing financial transactions, workers needed to provide consumer access to banking and lending services, and data security-related and some other support staff. But the category does not include simply all financial services-related businesses or workers. Thus, a case-by-case, contextual analysis is necessary for each employer. Please reach out to your Foley Hoag attorney if you have specific questions related to the applicability of the Order.

Businesses providing services not currently on the list may request to be designated as essential by submitting a request to the Governor’s Office.

The Order encourages “continued operations” of non-essential businesses “through remote means,” and it appears that the express exemption for “central office personnel to maintain and operate central office, data centers, and other network office facilities” permits non-essential businesses to maintain limited on-site employees to ensure continuity of those remote operations. Similarly, the Order considers essential “customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting.”

Violations of the Order may result in fines up to \$300 per violation, or criminal penalties pursuant to Section 8 of Chapter 639 of the Acts of 1950. The government may also seek court injunctions to require compliance.

Separately, the Massachusetts Department of Public Health (DPH) issued updated [guidance](#) prohibiting gatherings of over 10 people, such as community, civic, and faith-based gatherings, as well as weddings, funerals, and similar gatherings. The guidance permits normal operations of businesses providing COVID-19 Essential Services (as explained above), such as grocery stores, banks, and pharmacies, as well as restaurants open for take-out and delivery, and also permits people to gather in unenclosed places such as parks, athletic fields, and parking lots so long as social distancing is maintained. Violations of the DPH Order are punishable first by a warning, then by a fine of up to \$300, and then by criminal penalties.

**Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.**

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