

Governor Baker Orders All Non-Essential Businesses to Close

March 24, 2020

Businesses need to fully consider what parts of their businesses are covered under essential services in order to properly apply the order.

On March 23rd, Governor Baker issued an emergency order requiring all businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public as of Tuesday, March 24th at noon until Tuesday, April 7th at noon. All businesses that do not provide Essential Services, as defined in the Order, are required to operate remotely to the extent possible. See [COVID-19 Order No. 13](#).

The Baker-Polito Administration issued a list of designated businesses and organizations that provide essential services and workforces related to COVID-19 that may continue to operate brick and mortar facilities. See [Exhibit A to Covid-19 Order No. 13](#). This list is based on federal guidance, but was tailored to reflect the needs of Massachusetts’ economy. Essential Services include workforces engaged and working in the following production and service sectors:

- Healthcare/Public Health/Human Services
- Law Enforcement, Public Safety, and First Responders
- Food and Agriculture
- Energy – including electricity, petroleum, natural gas/propane, and steam workers
- Water and Wastewater
- Transportation and Logistics
- Public Works
- Communications and Information Technology
- Other Community-based Essential Functions and Government Operations
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemical
- Defense Industrial Base

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Restaurants, bars, and other retail establishments that sell food and beverage products will also remain open for take-out and delivery services, so long as they follow the social distancing protocols set forth in the Department of Public Health guidance. On-premise consumption of food and drink is prohibited. Governor Baker also directed the Department of Public Health to issue an advisory to residents to stay at home and avoid unnecessary travel, but he stopped short of issuing a mandatory order for residents to shelter-in-place. Gatherings of more than 10 people are prohibited during the state of emergency, but this limitation does not prohibit gatherings of more than 10 people in an outdoor space, like a park or athletic field. The Order does not apply to religious places of worship, but those institutions are required to comply with the prohibition against gatherings of more than 10 people.

During Governor Baker's press conference on Monday morning, he made a point to emphasize key industries and services that are covered under the "COVID-19 Essential Services" designation. Governor Baker clarified that grocery stores and the businesses which support them will remain open, including functions like shipping, producers, farms, packaging plants and wholesalers. He also noted that pharmacies and all medical facilities will remain open, as well as manufacturers of medical products, pharmaceuticals, and similar businesses that are developing and making products that are needed to battle COVID-19 and other diseases. Baker emphasized that travel is still permitted across the state and gas stations will remain open.

Businesses with functions that are not designated as Essential Services in COVID-19 Order No. 13, but believe they are providing essential services or functions may submit a request to be designated as such for the purposes of the Order. Businesses can submit such designation request here:

<https://www.mass.gov/forms/essential-service-designation-request>

Enforcement and Penalties: the Order will be enforced by the Department of Public Health, with the assistance of state and local policies if necessary. Violations of the Order may result in criminal penalties and can include civil fines of up to \$300 per violation.

As businesses work to quickly and efficiently comply with Governor Baker's Order, there has been some confusion as to whether essential functions at various businesses are covered under the Order. For example, "data center operators, system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators" are included in the list of Essential Services, but they are listed under the Information Technology function. It is unclear whether these functions are considered essential only in certain industries, or if this Essential Service category is applicable to all industries.

The Massachusetts Executive Office of Housing and Economic Development has compiled the *COVID-19 Essential Business FAQs* that will be updated regularly to provide clarity on the functions and businesses that are covered under the Governor's Order. See the latest guidance from the FAQs here:

<https://www.mass.gov/info-details/covid-19-essential-business-faqs>

Employers should thoroughly review Governor Baker's Covid-19 Order No. 13 and its Exhibit A. Employers are advised to consult outside counsel to determine whether all or part of their business is covered under the list of "COVID-19 Essential Services." Consulting counsel can be an important part of employers' decisions to close their physical workplace and facilities or to reopen them.

If you have questions regarding these developments, please contact a member of the Labor, Employment & Benefits team.

For more guidance on issues related to the coronavirus pandemic, please visit our [COVID-19 resource center](#).

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