

NORRIS, MURRAY & PELOQUIN, LLC

Legal Counsel to Employers and Schools

Volume 8, Issue 11

Client Advisor

November, 2020

Travel Order Update

Massachusetts' full list of states deemed to be low risk for purposes of the Governor's Travel Order is now limited to just six states (Hawaii; Maine; New Hampshire; New York; Vermont and Washington), and the country's capital (Washington, D.C.).

Current as of 11/7/2020.



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Governor's Office Reacts To COVID-19 Spike

Last week, Governor Baker issued four new Executive Orders, COVID-19 Order No(s). 53, 54, 55, and 56, in response to the increase in COVID-19 cases throughout the Commonwealth. The Orders, which are summarized below, impose new restrictions regarding face coverings, limits on gatherings, and workplace re/opening protocols. Order No(s). 53, 54 and 55 became effective Friday, November 6, 2020; Order No. 56 became effective on November 9, 2020.

Face Covering Order- COVID-19 Order No. 55 imposes a new requirement that all persons wear face coverings in public spaces, whether indoors or outdoors. Order 55 rescinds a prior Order (No. 31), and requires all persons to wear face coverings, even in situations where 6 feet of distance can be maintained. The Order permits certain exceptions to this requirement, including persons with medical conditions, persons inside their own vehicles, when alone or with other household members, and situations where sector-specific safety standards allow for the removal of face coverings.

Notably, the sector-specific safety standards for office spaces appears to fit within the exceptions in the Order as those standards currently do not require employees to wear face coverings inside the workplace when a distance of 6 feet can be maintained. It is possible, however, that the sector-specific guidance for office spaces may be changed to align with the Order. The Order allows employers and school officials to request documentation/verification from an employee or student who refuses to wear a mask or requests an accommodation due to a medical or other disabling condition. Violations of the Order are punishable by civil fines up to \$300 per violation.

Gathering Limits and Early Closure Orders- Order No. 54 limits indoor gatherings at private residences to 10 people and outdoor gatherings at private residences to 25 people. The Order requires that all indoor and outdoor gatherings be conducted in a way that at least 6 feet of distance is maintained between participants. All gatherings must disperse by 9:30 p.m., with the exception of religious or political gatherings.

Curfew- Order No. 53 requires certain businesses and activities, such as restaurants, fitness centers, and entertainment venues, to close each day by 9:30 p.m. Similar to prior COVID-19 Orders, the DPH and local boards of health are authorized to enforce the Orders with the assistance of State and local police, if necessary.

Low Risk Communities/Re-openings- Order No. 56 permits "Low Risk Communities" to operate according to the rules applicable to Step 2 of Phase III of the Commonwealth's phased Re-Opening Plan, as identified in Schedule A of the Order. All other communities must remain at and comply with rules applicable to Step 1 of Phase III.

Stay-at-Home Advisory- In addition to the COVID-19 Orders, Governor Baker issued a new Stay-at-Home Advisory, which encourages residents to remain at home between the hours of 10 p.m. and 5 a.m., unless going to work or school, or for other essential activities, such as going to the grocery store, pharmacy, or seeking medical care.

DESE UPDATES ON THE FACE COVERING ORDER AND COVID-19 PUBLIC HEALTH METRICS

Following the announcement of Governor Baker's COVID-19 Order No. 55, requiring face coverings in all public places, DESE released guidance last Friday outlining how the Order impacts school districts, teachers, and students. DESE mostly reiterated, in accordance with its initial reopening guidance issued in June, that all students in grade 2 and above are required to wear masks covering their nose and mouth while at school and on the bus to and from school. Adults are also required to wear face coverings throughout the school day. Consistent with the Order, exceptions to the requirement may apply for students and staff with documented medical conditions or disabilities who cannot safely wear face coverings. Schools are encouraged to have mask breaks outside or in places where six feet of distance can otherwise be maintained.

DESE also issued guidance for interpreting the Department of Public Health metrics and community color-code designations for school settings. The color-code designation of gray, green, yellow, or red accounts for the size of the community, positive COVID-19 cases per 100,000 residents, and percent of positive tests within the community (e.g. red > 8 cases per 100,000 residents). The guidance largely reinforces Governor Baker's statement that schools, with proper safety protocols in place, are not significant sources of COVID-19 transmission, despite the recent relative increase in cases across the Commonwealth.

According to the guidance, school districts should continue to prioritize in-person learning regardless of color designation, unless evidence of in-school transmission exists where there the virus spreads through interactions while in school settings. Hybrid models should be utilized in communities with red designations, however, in-person instruction for high-needs students should be provided wherever possible. Schools in communities with designations of gray, green, and yellow are expected to hold instruction fully in-person, if feasible. However, parents in those communities still have the option to choose remote learning for their children. Finally, schools with suspected in-school transmission cases or in communities with significant outbreaks should reopen and continue operating after mitigation strategies have been implemented and in consultation with DESE, DPH, and local boards of health; fully remote learning models should only be used as a "last resort."

If you have any questions regarding Governor Baker's Orders or the DESE Guidance, please do not hesitate to contact one of our NMP attorneys.

CLIENT ALERT: Unemployment Benefits Fraud

There is a significant and growing problem in Massachusetts and elsewhere involving unemployment benefits fraud made possible in part because the new pandemic programs have lowered the barriers to collecting benefits, and the usual security methods haven't kept up. In California, the State's Employment Development Department (EDD) had to engage in a two-week reset in mid-September to help the EED take steps to prevent fraud and reduce the growing backlog. And in October, the New York Times reported that, "[t]he black-market sale of jobless benefits is just one sign that the unemployment insurance system - the main artery for delivering financial assistance to laid-off workers - has been besieged during the coronavirus crisis by criminal networks intent on bilking the government out of hundreds of millions of dollars."

It is important that employers and employees work together to recognize and report fraudulent activity. Reports can be made using the Department's secure fraud reporting form (available online), calling the DUA customer service department at (877) 626-6800 or by emailing the Department of Unemployment Assistance at UIFraud@detma.org.