COVID-19: Massachusetts to Enter Step 2 of Phase 3 for Lower-Risk Communities; Revised Gathering Order Issued

Effective Monday, October 5, Massachusetts begins Step 2 of Phase 3 of reopening via Order 51 in lower-risk communities, defined as cities and towns that have not been a “red” community in any of the last three weekly Department of Public Health weekly reports. This would mean that the community has had an average daily incidence rate of eight or fewer cases per 100,000 residents in that time period.

Until October 5, all sectors remain subject to previously-issued guidance. On that date, however, certain sectors will be eligible to reopen, with restrictions, in the lower-risk communities:

- **Performance venues**: permitted to open with 50% capacity, with a maximum of 250 people (both indoor and outdoor)
- **Arcades and indoor and outdoor recreation businesses**: capacity increased to 50%, with additional activities permitted (including trampolines, obstacle courses, roller rinks and laser tag)
• **Retail businesses**: fitting rooms allowed to open

• **Gyms, museums, libraries, and driving and flight schools**: capacity increased to 50%

Please see our alert for more information on reopenings and sector-specific guidance in Massachusetts and throughout the region, as well as our alert on travel restrictions.

If a municipality that currently qualifies as lower risk sees an increase in cases that causes it to no longer qualify as lower risk, then the businesses that were allowed to open in Step 2 of Phase 3 must immediately close their brick and mortar premises and may not operate under the increased capacity adjustments. These businesses will have to follow the gathering size restrictions in Order 52 (see below) and from previous phases of sector-specific guidance. Order 51 is in effect for the duration of the state of emergency unless rescinded earlier.

Order 51 references **Order 52**, Governor Baker’s new order on gathering size, which is also effective as of October 5. This order replaces Order 46 and will remain in place throughout the duration of the state of emergency unless rescinded. The Order makes clear that all indoor and outdoor events must comply with the limitations of the order and sector-specific guidance, unless otherwise exempt. Pursuant to Order 52, these adjustments include the following:

• Indoor gatherings at all venues and locations limited to 25 people

• Outdoor gatherings at private residences limited to 50 people

• Outdoor gatherings at event venues and in public settings:
  - Lower risk communities: up to 100 people
  - Communities that do not qualify as lower risk: up to 50 people

These restrictions do not apply to religious gatherings, but such events must still follow the sector-specific rules for **places of worship**. Outdoor gatherings for political expression are also exempt, but indoor political gatherings are not. The operator of any event venue where a gathering of more than 50 people is expected must provide notice to the Board of Health at least one week prior to the event, unless the timing of such notice is not practicable due to the nature of the event, like for a memorial service.

Additionally, participants in all indoor and outdoor gatherings, even at private residences, must maintain six feet of social distance from anyone not in the same household. For gatherings of more than 10 people, face coverings are required for everyone over the age of five. This applies to both indoor and outdoor settings.

The same exceptions apply as in previous gathering orders, exempting federal government entities, health care facilities, polling places, public and private schools, licensed child care programs, and corrections facilities, among others.

State and municipal police are authorized to enforce Order 52, with violations
resulting in a civil fine of up to $500 per violation.

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