Client Alert: Massachusetts Updates Essential Services List – See What Can Continue and What Must Stop

BY CESIRA NEWCOMB • APRIL 1, 2020

Yesterday, on March 31, 2020, Governor Baker issued an order extending the closure of non-essential businesses and organizations for in-person operations in Massachusetts until May 4, 2020. In connection with that order, the Governor made changes to the Commonwealth's "COVID-19 Essential Services List" and updated the "COVID-19 Essential Services FAQs" webpage.

The updated essential services list takes effect today, April 1, 2020, at 12:00pm. We encourage all businesses and organizations with operations in Massachusetts to review the new order, updated essential services list, and FAQs to determine whether their business or organization is essential.

Here are a few of the many new additions and edits to the essential services list (this is not a comprehensive summary of all changes, and all businesses and organizations should consult the list directly):

CHANGES AFFECTING CERTAIN SCIENTIFIC RESEARCHERS IN HIGHER EDUCATION

Scientific researchers in higher education are now allowed to report to work to complete in-process research to ensure health and safety and prevent the loss of essential data.

CHANGES CURTAILING CERTAIN CONSTRUCTION ACTIVITY STATEWIDE

The previous list broadly provided that "Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)" were essential. This broad provision has been deleted and replaced with several more targeted provisions. Housing and any mixed used projects with a housing component may continue, but remain subject to the COVID-19 Guidelines and Procedures for all Construction Sites and Workers https://www.mass.gov/covid-19-guidelines-and-procedures-for-all-construction-sites-and-workers-at-all-public-work . Construction functions are generally allowed (a) in the public sector (public schools, colleges and universities and state facilities projects managed by DCAMM, and (b) in the sectors of energy, healthcare, IT, communications and computing and for certain "essential global, national and local infrastructure" for computing services, business infrastructure, financial transactions/services, web-based services, and critical manufacturing. Additionally, Workers supporting construction for "essential products, services, and supply chain and COVID-19 relief efforts" may continue.

- **Other commercial projects not included in one of the listed essential categories are restricted.** The individual municipal construction shutdowns (e.g., Boston, Cambridge, Somerville, and any others) remain in effect and are not superseded by the Governor's Order. The full updated list must be carefully reviewed for a particular project.

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Some permitted construction activities have been retained but moved from one category to another.

CHANGES EXPANDING CRITICAL MANUFACTURING ACTIVITY

The new list updates and expands the definition of essential critical manufacturing activity in several respects. For example, the list clarifies that manufacturing operations necessary for supply chains associated with: (i) the IT industry, (ii) wood products; (iii) commodities used as fuel for power generation facilities; and (iv) processing and reprocessing of solid waste are essential.

The updated list also provides that "needed to maintain the continuity" of critical manufacturing functions and supply chains are now essential, as are "workers necessary to maintain a manufacturing operation in warm standby."

In addition, workers who produce or manufacture parts or equipment that support continued operations for any essential services and increase in remote workforce (including computing and communication devices, semiconductors, and equipment such as security tools for Security Operations Centers (SOCs) or datacenters) are now essential.

Manufacturing businesses with operations in Massachusetts should consult the updated essential services list to review all changes.

CHANGES AFFECTING HOTEL WORKERS

The previous list broadly provided that "hotel workers" were essential. This broad provision has been deleted. Under the updated list, workers at hotels, motels, inns, and other lodgings providing overnight accommodation, are essential only to the degree those lodgings are offered or provided to accommodate the COVID-19 Essential Workforce, other workers responding to the COVID-19 public health emergency, and vulnerable populations.

GARDEN CENTERS, NURSERIES, GREENHOUSES, AGRICULTURAL SUPPLY STORES AND AGRICULTURAL BUSINESSES ADDED

Essential Services now include these uses. Agribusiness support services and farm labor for food production for export in addition for domestic use are added.

OTHER RETAIL USES

Dry cleaners, convenience stores, retail vending are added.

CHANGES EXPANDING ESSENTIAL WORKERS PROVIDING DISINFECTANT, SANITATION, AND RELATED SUPPORT SERVICES

The updated list expands disinfectant, sanitation, and related support essential services in several respects. For example, the list clarifies that workers providing disinfection services, for all essential facilities and modes of transportation, and supporting the sanitation of all food manufacturing processes and operations from wholesale to retail are essential. In addition, workers who provide support required for continuity of services, including commercial disinfectant services, janitorial/cleaning personnel, and support personnel functions that need freedom of movement to access facilities to support front-line employees are essential.

ADDITIONS TO ESSENTIAL HEALTH CARE BUSINESSES

The list is expanded to add optometrists, chiropractors, peer support and recovery coach workers, workers in biomedical facilities and manufacturer workers for biotechnology companies as essential workers, among others.

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WAREHOUSE USE EXPANDED

Warehouse operators, including vendors and support personnel critical for business continuity and customer service is expanded from the prior list that was limited to warehouse operations for medical, food and beverage, and transportation

ADDITIONS FOR PROPERTY MANAGEMENT STAFF

Workers responsible for handling property management, maintenance, and related service calls who can coordinate the response to emergency “at-home” situations requiring immediate attention, as well as facilitate the reception of deliveries, mail, and other necessary services.

CLIENT TIP

The above are only some examples of the many changes and edits made to the Massachusetts essential services list. Businesses and organizations with operations in Massachusetts should review the updated essential services list and FAQs. Stay tuned for further updates.

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