



11.16.20

Comprehensive COVID-19 Workplace Safety Rules Established in Massachusetts

Background

Posted on October 15, 2020, Massachusetts has put into place a second emergency workplace safety rule in response to the COVID-19 pandemic. This second emergency rule amends the first emergency rule and is set to expire on November 28, 2020.

Summary

Coverage

While there are some exemptions, generally the emergency regulations apply to all employers who are operating a brick and mortar premises that is open to workers, customers, vendors, and/or the public. The first emergency rule exempted certain employers, including restaurants, grocery stores, farmers' markets, and other businesses subject to the state sanitary code.

Under the second emergency rule, restaurants have now been removed from the exemptions

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list and have been added to the Sector-Specific Workplace Safety Rule Category, detailed below.

Generally, applicable and sector-specific safety rules for workplaces are issues pursuant to the Governor's COVID-19 Orders No. 33 and 37 and are incorporated by reference in the emergency regulations. If the generally applicable COVID-19 workplace safety rules conflict with the sector-specific rules, the sector-specific rules will apply. The sector-specific workplace safety rules apply to certain workplace sectors, including the following:

- Car washes
- Construction
- Driving and flight schools
- Drive-in movie theaters
- Golf facilities
- Laboratories
- Libraries
- Operators of lodgings
- Manufacturing
- General use office spaces
- Close contact personal services
- Places of worship
- Retail business

The second emergency rule added the following sector-specific workplaces:

- Fitness centers and health clubs
- Indoor and outdoor events
- Indoor recreation
- Museums, cultural and historical facilities, guided tours
- Theaters and performance venues
- Restaurants

General Workplace Safety Rules

The emergency rules state that all enterprises operating brick and mortar premises that are open to workers, customers, vendors, or the public must adopt and maintain the following safety rules. With the second emergency rule, the requirement that all enterprises must immediately adopt general workplace safety rules was removed, but no other requirements were changed.

Social Distancing: All persons should remain at least six feet apart to the greatest extent possible. Covered employers must establish protocols to ensure workers can practice adequate social distancing and provide signage for safe social distancing. Face coverings or masks are required for all workers.

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Hygiene Protocols: Covered employers must provide hand-washing capabilities throughout the workplace and ensure frequent worker hand washing and adequate supplies. Covered employers must also provide regular sanitization of high-touch areas, including workstations, equipment, screens, doorknobs, and restrooms.

Staffing and Operations: Covered employers must provide training on the social-distancing and hygiene protocols, not allow workers displaying COVID-19-like symptoms to report to work, and develop a written control plan. For the written control plan, employers may use the template provided on the [Massachusetts Department of Labor Standards \(DLS\) website](#). The written control plan must address workers who become ill from COVID-19 at work, and provide a return-to-work plan following the guidance issued by the Massachusetts Department of Public Health and the Centers for Disease Control. It must be kept on the premises and made available for inspection by any enforcement agency.

Cleaning and Disinfecting: Covered employers must establish and maintain cleaning protocols specific to the employer. If an active worker is diagnosed with COVID-19, cleaning and disinfecting must be performed. Common surfaces must be disinfected at intervals appropriate for the workplace.

Self-Certification and Compliance

Before opening a brick and mortar premises, covered employers must bring the workplace into full compliance with the general workplace rules and the sector-specific rules of the emergency regulation as well as the Governor's orders No. 33 and 37. Employers must then complete the required self-certification on the DLS's website.

Posting

Under the emergency regulations, covered employers must post notices in a location where employees/workers and customers will have an opportunity to read them. The required notices are as follows:

- The employer's self-certification
- The reopening poster for employers which is available on the DLS's website
- The reopening poster for workers which is available on the DLS's website
- Any sector-specific notices

These notices must be posted in English and any other language that is spoken by at least 5% of the employer's workforce. For notices in additional languages, the DLS or other state sources have made translations available.

Notice to Local Boards of Health

The DLS has the authority to enforce and implement the emergency regulation's sector-specific rules and workplace safety rules. The second emergency rule adds that nothing in the rule restricts the ability of any other duly authorized entity to enforce any additional rules related to COVID-19 safety that have been released under the authority of any Executive Order, statute, municipal ordinance, bylaw, or regulation.

Additionally, the DLS and the local boards of health (LBOH) have the authority to conduct inspections. If either one discovers that an employer is not in compliance with the workplace safety and sector-specific rules, they will allow the employer 24 hours to comply before issuing additional measures. These additional measures include the following:

- Verbal consultation and redirection
- Written warning and order to correct
- Civil fine of up to \$300 per violation
- Cease and desist letter
- Injunction to enforce compliance in court

The second emergency rule amends these measures to include only the following:

- Civil fine of up to \$300 per violation
- Cease and desist letter
- Injunction to enforce compliance in court

The emergency regulations also state that employees may not be discharged or discriminated against because the employee has filed a complaint or provided testimony in any proceeding under the emergency regulations.

The second emergency rule also provides that the COVID-19 Workplace Safety Rules are to supplement and not displace otherwise applicable health and safety rules that have been issued by any state, local, or federal authority acting within their scope of lawful authority.

Employer Next Steps

- Post the necessary updated notices in a location where both employees and customers or vendors can read them.
- Update any policies if applicable.
- Inform your employees of any changes.
- Ensure that your workplace is in compliance with all workplace safety rules.
- Ensure that your workplace is in compliance with the applicable items that have been outlined in the Second Emergency rule, as well as Sector-Specific workplace rules.

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