

Governor Baker Issues Guidelines Allowing Use of Non-Essential Workers For Remote Fulfillment May 6, 2020

As you know, on March 13, 2020, Governor Baker signed an Executive Order requiring most businesses to close their brick and mortar facilities to the public and their employees until April 7, 2020 (the “Order”). The Order has been extended twice and is currently scheduled to expire on May 18, 2020. Attached to the Original Order was an Exhibit A, which provided a description of the types of businesses deemed “essential” and that are allowed to remain open to the public and their employees subject to public health restrictions. Exhibit A to the Original Order was amended and reissued on March 23, 2020 to expand upon the list of essential businesses. Under the Order, only the owner of a non-essential business is permitted inside the business facility as needed to take care of crucial tasks that cannot be done remotely or to retrieve necessary materials or documents.

On May 4, 2020, the Governor further amended Exhibit A to allow businesses to use their brick and mortar facilities to fill orders for non-essential items, subject to certain “remote fulfillment guidelines”. As of this writing, it does not appear that the remote fulfillment guidelines are contained in an official order, but they can be found within the Frequently Asked Questions About Essential Services section of the Commonwealth’s COVID-19 website at: <https://www.mass.gov/info-details/covid-19-essential-services-faqs#general-questions---essential-services-related>. We have summarized these remote fulfillment guidelines and requirements, below.

The information contained herein is current as of the date of issuance. Where the state and federal governments are regularly enacting new or updated laws, regulations, and guidances in response to the COVID-19 crisis, we recommend that you consult with counsel regularly to ensure that you have the most up-to-date information.

Remote Fulfillment Defined

Under the remote fulfillment guidelines, non-essential businesses may bring in a small number of employees in order to fulfill online or phone orders, but not to manufacture non-essential goods or to be open to the public. Distribution centers, warehouses and call centers may now operate from brick and mortar facilities. Likewise, retailers such as car dealerships, flower shops, book shops, clothing stores and craft stores may operate out of brick and mortar facilities, but only for the purpose of having their employees fill and ship phone and online orders.

All retail establishments, except those who sell essential items as the primary goods sold at the store must remain closed to the public.

Remote Fulfillment Guidelines

Non-essential businesses may allow employees to return to brick and mortar facilities for the purpose of filling and shipping non-essential items, subject to the following restrictions:

- Facilities must be closed to the public, as the allowance is for the fulfillment of remote sales/orders only;
- Employees may only be engaged in the packaging and delivery/shipping of phone and online orders, not the manufacturing of those product;
- Operating hours must allow for sufficient ongoing off-hour sanitation/cleaning;
- All employees must wear face coverings while on-site;
- All employees must maintain 6 feet social distancing and employers should stagger employees within the facility to ensure social distancing;
- Any deliveries made by employees must be 'no-contact' deliveries: items must be left in mailboxes, mailrooms, garages, lobbies, at doorstep, or similar no-contact drop-off points;
- Employers must stagger shift start/stop times and breaks/lunchtimes in order to minimize employee contact;
- Facilities must have readily accessible hand sanitizer and hand washing facilities for employee use;
- In a facility that is used for remote fulfillment:
 - There must be enough space within the facility for all employees present to be able to maintain six feet of social distancing;
 - In a facility under 10,000 square feet, a maximum of 3 employees may be allowed on the premises at a time;
 - In a facility between 10,000 – 30,000 square feet, a maximum of 5 employees may be allowed on the premises at a time;
 - In a facility more than 30,000 square feet, a maximum of 7 employees may be allowed on the premises at a time;
- Employee workspaces must be cleaned frequently, following public health guidelines;
- Employers must require employees to self-administer a temperature check prior to beginning each shift. Any employee with any symptoms, including a temperature over 100.0 degrees, must not report to work and should self-isolate, contact their doctor and follow medical guidance;
- Employees in quarantine, due to exposure to a known case of COVID-19 or someone with COVID-19 like illness, must remain under quarantine for 14 days since day of exposure and not report to work;
- Employers must strictly adhere to any further workplace guidance;
- Facilities found in noncompliance must be closed immediately;
- Facilities unable to fully comply with all of these parameters shall not operate.

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Car Dealerships

The Remote Fulfillment Guidelines include specific guidelines for car dealerships. Car dealerships may now sell cars in a limited manner only, if the remote fulfillment guidelines are followed as well as the following specific guidelines:

- The dealership must remain closed to the public and sales must be conducted exclusively via phone or online, and the dealership must follow the remote fulfillment guidelines specified above;
- Test drives are not permitted;
- To the maximum extent feasible, processing of documents should occur electronically. Any processing of documents that must occur in person should be done in compliance with social distancing protocols; and
- The transfer and delivery and return of vehicles (new or leased or trade-in) may be conducted in person by appointment only at the dealership, or at a customer's residence.

The dealership service department/garage may continue to operate as an essential service.

Golf Courses

Golf courses continue to be considered “non-essential” and cannot have employees working on-premises. Notwithstanding this restriction, essential services, such as grounds keeping to avoid hazardous conditions and security, provided by employees, contractors, or vendors are permitted. Private and municipal operators of golf courses may permit individuals access to the property so long as there are no gatherings of any kind, appropriate social distancing of six feet between individuals is strictly followed, and the business operator and golfers abide by the specific guidelines for golf courses outlined below.

The specific guidelines for golf courses are:

- Security personnel can be delineated by each club (ex. a pro and the head starter) and will be present to enforce social distancing. There can be no other employees working at the recreational component of the golf operation.
- All staff must wear face coverings while on the property
- Club facilities including but not limited to the club house, pro shop, restaurant, bag room and locker room must remain closed
- No caddies allowed
- No golf carts allowed
- Push carts may be used. Players must either carry their own bag or use a push cart
- All golfers must maintain proper social distancing of at least 6 feet at all times
- Groups of players are restricted to no more than 4 players at one time
- Members-only clubs can allow guests as determined by the security personnel on the golf course
- Private clubs that allow non-members to make reservations can do so at their discretion

- Maintenance personnel are permitted to work on the golf course
- Tee Time Policy must be 15 minutes between groups
- Golfers must stay in their car until 15 minutes before their tee time and must return to their car immediately following play
- Online and remote payment options must be utilized
- All golfers must use their own golf clubs. Sharing golf clubs or rental golf clubs is not allowed
- Flag sticks must remain in the hole. Hole liners must be raised so picking a ball out of the hole doesn't occur
- Bunker rakes must be removed, and ball washers must be removed or covered
- Practice putting green, driving range, and chipping areas must be closed
- Facilities must have readily accessible hand sanitizer

We will continue to keep you updated on additional developments in the face of this rapidly evolving pandemic. A reminder that we have established a Coronavirus “hotline”, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary contact or other KP Law attorney, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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