

GOVERNOR ANNOUNCES TEMPORARY REVISIONS TO COVID-19 MEASURES EFFECTIVE DECEMBER 26, 2020

December 24, 2020

In response to increasing COVID-19 infection rates and in anticipation of the pending holiday season, on December 22, 2020, Governor Baker issued an Executive Order imposing temporary revisions to COVID-19 safety standards to reduce the spread of the coronavirus in Massachusetts. This Executive Order, titled “Order Temporarily Applying Further Capacity Restrictions to Statewide COVID-19 Safety Rules, COVID-19 Order No. 59,” can be found [here](#). These new temporary restrictions will take effect at 12:01 a.m., on Sunday, December 26th, and will continue until Sunday, January 10, 2021, with the possibility of further extension, based upon available public health data. Of note, under this Executive Order, the allowable maximum occupancy limits in multiple workplace sectors are reduced from 40% to 25%. These capacity reductions are applicable to only those activities and businesses that are allowed to operate in Phases I, II, or III of the Governor’s reopening plan. Phase IV enterprises still must remain closed entirely.

Boards of Health, Police Departments, and other regulatory and enforcement entities should be mindful of these temporary reductions in capacity limits. “COVID fatigue,” when coupled with the upcoming holidays, may lead to increased instances of individuals, businesses, and organizations disregarding these temporary limitations. Looking forward, if the post-holiday COVID-19 infection rates track the post-Thanksgiving rates, these temporary reductions in capacity limitations may very well be extended further into January. Finally, these capacity reductions do not impact other required safety practices, such as social distancing and mask wearing, which remain in effect.

Private Gathering Limitations: Current capacity limits on gatherings *at private residences* are unchanged, i.e., 10 individuals indoors and 25 individuals outdoors. However, as noted below, gathering limitations for indoor and outdoor “events” is reduced.

Elementary Schools: Elementary (K-12) schools will continue to be exempted from these capacity limits, but are required to follow the current standards and guidelines issued by the Department of Elementary and Secondary Education.

Town/City Halls: Town and City Halls are generally covered under the office space sector-specific safety guidelines, and thus will be required to reduce capacity to 25% (as noted in the below chart), which was the capacity limitation imposed on office spaces at the beginning of Governor Baker’s Phased Reopening Plan. However, there will continue to be allowances for offices providing “critical services” such as public safety, public health, and other critical services. No prior approval is required to take advantage of this exemption.

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Sector-Specific Capacity Limitation Reductions:

Sector	Current Capacity Limit	New Limit eff. 12/26/20
Restaurants	None	25% of seating capacity - workers and staff excluded from capacity count; indoor and outdoor capacity counted separately
Indoor and Outdoor Events	25 people indoor / 50 outdoor	10 people indoor / 25 outdoor
Theaters and Performance Venues	Movie theaters – 40%, maximum 50 people Indoor performance venues – Closed; Outdoor performance venues – 25%, maximum 50 people	Movie theaters – 25% and maximum 50 people Indoor performance venues – Remain Closed; Outdoor performance venues – 25% and maximum 25 people
Office Spaces; Driving and Flight Schools; Libraries; Fitness Centers and Health Clubs; Museums / Cultural & Historical Facilities / Guided Tours; Arcades; and Sectors Not Otherwise Addressed	40%	25%
Operators of Lodging	40%	25% - applies to common areas only
Golf Facilities	40%	25% - applies to indoor areas only
Places of Worship; Retail Businesses; and Close Contact Personal Services	40%	25% - workers and staff excluded from capacity count
Casinos	None	25% - Mass Gaming Commission may issue further revisions to capacity limits
Indoor & Outdoor Recreation Businesses Permitted to Be Open; and Common Areas in facilities subject to EEA-issued safety rules	40%	25% - Does not apply to youth and amateur sports facilities

Except as otherwise indicated above, these capacity limitations are based upon the facility's maximum permitted occupancy as stated in the certificate of occupancy or similar license or permit on file with the municipality (i.e., municipal building department or other record holder). Per Executive Order No. 59 "[w]here no licensed or permitted capacity allowance is on record and for any enclosed space within a larger facility, occupancy shall be limited to no more than 5 persons per 1,000 square feet." As with prior Executive Orders, each person over the capacity limit may be treated as a separate violation.

We will continue to keep you informed of new developments as they arise. In the meantime, please feel free to contact your KP Law attorney with any questions and/or e-mail us at coronavirusinfo@k-plaw.com. We will be in touch with you as soon as possible.

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