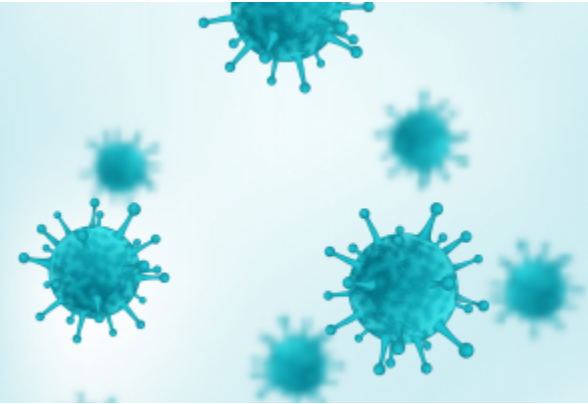# COVID-19 Alert: Phase I: Start Plan

Massachusetts Office Spaces Are Authorized to Re-Open: A Report From the Field

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On May 18, 2020, Massachusetts Governor Charlie Baker implemented "*Phase I: Start*" of the Commonwealth's phased economic re-opening plan. A component of the *Phase I: Start* plan **authorizes office worksites,** *outside Boston*, **to re-open to limited operations as early as May 25, 2020** (Boston offices are authorized to re-open as early as June 1, 2020).

Since the Governor's announcement, many of our clients have begun to navigate the legal and practical considerations that relate to the re-opening of office spaces in a COVID-19 context. This summary discusses those considerations, as informed by our clients' on-the-ground experiences.

THE COMPLIANCE LANDSCAPE

According to the *Phase I: Start* plan, Massachusetts employers that are authorized to recommence worksite operations during Phase I, *including employers that operate office space* ("Phase I Authorized Businesses"), must comply with certain general safety standards (the "General Compliance Standards") before re-opening. Specifically, Phase I Authorized Businesses must:

- Comply with the Commonwealth's new *Mandatory Workplace Safety Standards*, which create general, minimum standards for social distancing, hygiene, staffing and operations, and cleaning and sanitation that are specifically designed to limit infection risks associated with business operating during COVID-19 periods.

- Create a written "COVID-19 Control Plan," based on this template.

- Complete, sign, and post a "Compliance Attestation Poster" in an area within the business premises that is visible to workers and visitors.

- Post Employer and Worker posters – Posters that businesses can print and display within the business premises to describe the rules for maintaining social distancing, hygiene protocols, and cleaning and disinfecting.

In addition to the General Compliance Standards, Phase I Authorized Businesses must comply with the following specific compliance standards before re-opening office environments (the "Office Space Specific Standards"):

Social Distancing Standards

- Employers must limit occupancy within their office space to no more than 25 percent of (a) the maximum occupancy level specified in any certificate of occupancy or similar permit or as

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provided for under the state building code; or (b) the business or organization's typical occupancy as of March 1, 2020.

- Employers must ensure separation of 6 feet or more between individuals unless this creates a safety hazard due to the nature of the work or the configuration of the workspace.

  – Close or reconfigure worker common spaces and high-density areas where workers are likely to congregate (*e.g.*, break rooms, eating areas) to allow 6 feet of physical distancing;

  – Redesign work stations to ensure physical distancing (*e.g.*, separate tables, use distance markers to assure spacing).

  – Cafeterias may operate only with prepackaged food, practicing physical distancing and appropriate hygiene measures.

  – Physical partitions must separate workstations that cannot be spaced out (partitions must be taller than standing workers).

  – Establish directional hallways and passageways for foot traffic, if possible, to minimize contact. Post clearly visible signage regarding these policies.

  – Limit visitors where feasible, and avoid congregation in common areas (*e.g.*, lobbies).

- Employers must designate assigned working areas (*e.g.*, floor, building) to individuals where possible to limit movement throughout the facility and limit contact between workers.

- Employers must stagger work schedules and improve ventilation for enclosed spaces where possible (*e.g.*, open doors and windows).

- Employers must limit meeting sizes, ensure 6 feet of social distancing, and encourage remote participation.

- Employers must stagger lunch and break times, regulating maximum number of people in one place and ensuring at least 6 feet of physical distancing.

- Employers must minimize the use of confined spaces (*e.g.*, elevators, control rooms, vehicles) by more than one individual at a time; all workers in such spaces at the same time are required to wear face coverings.

Hygiene Protocols

- Employers must ensure access to handwashing facilities on site, including soap and running water, wherever possible, and encourage frequent handwashing; alcohol-based hand sanitizers with at least 60% alcohol may be used as an alternative.

- Employers must supply workers at workplace location with adequate cleaning products (*e.g.*, sanitizer, disinfecting wipes).

- Employers must require regular, and not less than daily, cleaning and sanitation of all high-touch areas such as workstations, door handles, and restrooms.

- Employers must avoid sharing use of office materials / equipment or disinfect equipment

between use (*e.g.*, telephones, fax machines).

- Employers must post visible signage throughout the site to remind workers of the hygiene and safety protocols

Staffing and Operations Standards

- Employers must establish and communicate a worksite specific COVID-19 Prevention Plan for all office locations, including:

    – Contact information for local health authorities, including the MA Department of Public Health, and your local / municipal Health Authority.

    – Regularly evaluate all workspaces to ensure compliance with all Federal, State and Local Guidelines.

    – Isolation, Contact Tracing, and Communication plan if a worker is diagnosed as positive with COVID-19, or comes into close contact (within 6 feet for 10 minutes or more) with an individual diagnosed with COVID-19.

- Employers must provide training to workers on up-to-date safety information and precautions including hygiene and other measures aimed at reducing disease transmission, including:

    – Social distancing, hand-washing, proper use of face coverings.

    – Self-screening at home, including temperature or symptom checks

    – Importance of not coming to work if ill.

    – When to seek medical attention if symptoms become severe.

    – Which underlying health conditions may make individuals more susceptible to contracting and suffering from a severe case of the virus.

- Workers must wear face coverings when social distancing of 6 feet is not possible, except where unsafe due to medical condition or disability.

- Workers must continue to telework if feasible; external meetings should be remote to reduce density in the office.

- Employers should establish adjusted workplace hours and shifts for workers (if working in-person, leverage working teams with different schedules or staggered arrival / departure) to minimize contact across workers and reduce congestion at entry points.

- Employers must limit visitors and service providers on site; shipping and deliveries should be completed in designated areas.

- Employers must limit business sponsored travel and comply with state and federal travel restrictions / guidelines.

- Workers must stay home if feeling ill.

- Workers who are particularly vulnerable to COVID-19 according to the Centers for Disease Control (*e.g.*, due to age or underlying conditions) are encouraged to stay home or arrange an

alternate work assignment.

- Workers are strongly encouraged to self-identify and report symptoms or any close contact to a known or suspected COVID-19 case to the employer.

- Employers must encourage workers who test positive for COVID-19, to disclose to the employer for purposes of cleaning / disinfecting and contact tracing. If the employer is notified of a positive case at the workplace, the employer should notify the local Board of Health ("LBOH") where the workplace is located and work with them to trace likely contacts in the workplace and advise workers to isolate and self-quarantine. Testing of other workers may be recommended consistent with guidance and / or at the request of the LBOH.

- Employers must post a notice to workers and customers of important health information and relevant safety measures as outlined in government guidelines.

- Employers must log everyone who comes in contact with the site to enable contact tracing, including temporary visitors (*e.g.*, those doing material drop-offs).

Cleaning and Disinfecting Standards

- Employers must conduct frequent cleaning and disinfecting of the site (at least daily and more frequently if feasible).

- Employers must keep cleaning logs that include date, time, and scope of cleaning.

- Employers must conduct frequent disinfecting of heavy transit areas and high-touch surfaces (*e.g.*, doorknobs, elevator buttons, staircases, vending machine, bathrooms).

- Employers must clean shared spaces (*e.g.*, conference rooms) between use and supply cleaning products (*e.g.*, sanitizer, disinfecting wipes.

- In the event of a positive case, employers must shut down the site for a deep cleaning and disinfecting of the workplace, in accordance with current CDC guidance.

PRACTICAL CONSIDERATIONS

As Massachusetts employers navigate the complicated web of worksite re-opening compliance standards, practical considerations and best practices are emerging:

Executing A Re-Opening Plan

The scope and complexity of the compliance requirements that apply to office re-openings implies a threshold question that each Phase I Authorized Business must ask itself: *Whether the business is able to execute on a compliant re-opening plan?*

The on-the-ground experience of our clients indicates that the following considerations must be resolved before this threshold question can be answered in the affirmative.

- *Plan*. In addition to the template COVID-19 Control Plan outlined in the General Compliance Standards, employers should adopt safety protocols that are customized to the employer's particular work environment and business models.

- *Evaluate*. The employer must determine that it has the resources – such as sanitation and social distancing tools – to create the type of safe work environment anticipated in the

compliance standards.

- *Train*. Employers should train its managers with respect to new policies, including training with respect to recognizing and responding to violations. Employees should be trained to the extent necessary to ensure that they understand their obligations under the policies and the consequences for failing to adhere to them.

- *Manage*. The logistics burden related to an office re-opening will be, in many cases, onerous. The employer should adopt a project-management approach to its office re-opening plans, including assigning trusted individuals or teams, with appropriate subject matter expertise, to develop and manage re-opening processes.

Obtaining the Right Tools

Massachusetts is presently experiencing shortages in Personal Protective Equipment ("PPE"), office space modification tools, construction materials, and sanitization tools. The Massachusetts Government has taken steps to address such supply chain limitations, including by creating a PPE Supply Chain Portal for the exchange of hygienic supplies. However, employers should anticipate continuing hygienic supply shortages when developing office re-opening plans.

Managing Change

As employees re-enter work spaces, employers should focus on managing actual and perceived changes to employee experiences. Specifically, employers should take steps to establish the "new normal" of the work environment, and effect clear employee communications that:

- Clearly inform employees of safety and social distancing protocols related to office visitors and use of conference rooms and other common areas;

- Explain office re-configurations;

- Implement training programs that permit employees to familiarize themselves with new office protocols; and

- Engage employees as "partners" in change processes, including communications and surveys that invite employees to participate in certain decision-making related to worksite protocols.

In addition, employers should recognize potential employee stress, burn-out, and mental health outcomes related to COVID-19:

- Employers might consider additional breaks and days off to employees to deal with stress and concerns related to COVID-19.

- Employers might consider implementing employee assistance plans (or advertising preexisting employee assistance plans and health plan benefits) that provide employees with access to mental health professionals.

Adopting Common Sense Strategies

No legal rule or compliance standard can anticipate every attribute of every employer. As such, to a certain extent, employers are on their own to establish re-opening plan details that address the particularities of an employer's worksite. On subjects that lack clear government guidance, the employer should adopt, and clearly document, approaches that are grounded in common

sense.

Remaining Vigilant

Best practices for controlling the spread of COVID-19 in work environments are evolving. Employers should anticipate changes to government-mandated safety standards, and must be nimble enough to execute such changes.

Morse is focused on assisting our clients through these unprecedented and challenging times. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.

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