

E-NEWS Brief

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MASSACHUSETTS UPDATES:
NEW EXECUTIVE ORDER RE CONTINUED SHUTDOWN;
LOCAL DISCRETION OVER "ESSENTIAL" VS. "NON-ESSENTIAL"

GOVERNOR'S 3/31 ORDER EXTENDING "NON-ESSENTIAL" BUSINESS CLOSURES TO MAY 4TH

On March 31st Governor Baker issued an Executive Emergency Order extending the date for which non-essential business facilities must remain closed to their workers, customers and the public to May 4th.

There have been some changes to those services deemed "Essential" in this Order but **all the "essential" services potentially applicable to MMTA member businesses have stayed the same. Other clarifications have been added in the form of Q&A, also noted below.**

The most relevant element of the Order is that as in the past few weeks, there is no distinction between marine servicing for industrial v. recreational vessels – all employees that repair and maintain marine vessels remain “essential.”

- Employees who repair and maintain...marine vessels... and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers.
- retail fuel centers and the distribution systems that support them remain essential.
- Security staff to maintain building access control and physical security measures.

- Workers necessary for the manufacturing metals (including steel and aluminum), industrial minerals, semiconductors, materials and products needed for... supply chains associated with transportation... Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains, and workers necessary to maintain a manufacturing operation in standby.

Read the full updated "COVID-19 Essential Services" list here:
<https://www.mass.gov/doc/march-31-essential-services-list/download>

IMPORTANT POINTS FOR MMTA MEMBERS:

- If you conclude your business meets one of the exemptions for staying open (e.g., fueling pumps, boat repair) "essential" for one service, that does not mean you are allowed to provide other services that do not qualify for an exemption (e.g., retail). However, it is not always clear-cut, and if you have staff in to repair boats and they answer the phone for someone requesting a slip lease, this is not forbidden. For example, Target is being allowed to stay open because of its grocery offerings, and its workers are not required to stop people from buying clothing and other items also in the store. That said, health and safety is the most important element in decision making and maintaining CDC Guidelines and "social distancing" applies at work as well as personally.

The point of making this distinction is to emphasize the serious importance of limiting the amount of people that will interact with each other in the workplace and how they interact.

The State has posted a FAQ's page related to this Order, which includes additional guidance on what "Non-Essential" Businesses are and aren't allowed to do during the duration of the shutdown.

→ See the full list of FAQ's here: <https://www.mass.gov/info-details/covid-19-essential-services-faqs#general-questions---essential-services-related>

Below are some particularly relevant FAQ's

- If I work outside and can socially distance, can I keep running my business even if it isn't essential? **YES in some circumstances**
- What should I do if it is unclear if my business is essential, or if I have submitted a request for my industry to be added to the essential services list?
 - If a business, organization, or facility is unsure about whether or not it is considered "non-essential" it should:
 - First, carefully review the Order, the essential services list and the posted FAQ to confirm that the business, organization, or facility is not addressed in some way.
 - Second, if "non-essential" status is still unclear, make a **good faith determination** about whether it is "non-essential", based on: i. the Order's purpose, which is to "minimize all unnecessary activities outside of the home during the state of emergency"; and ii. how similar businesses, organizations, and facilities are treated under the Order.
 - Third, if the business, organization, or facility decides to remain open pending more detailed legal advice, strictly adhere to all applicable guidance from the CDC and DPH regarding social distancing and environmental cleaning and disinfection.

Are suppliers and persons in supply chains for essential businesses allowed to stay open? **YES**

I am an essential company with more than 10 employees. How do we comply with best practices? **You are allowed to operate while maintaining social distancing measures**

Are marine mechanics essential? YES

- See **CDC guidance for businesses**.

LOCAL DISCRETION OVER "ESSENTIAL" VS. "NON-ESSENTIAL" BUSINESSES

It has come to our attention that different localities are enforcing the "essential" services order differently. Our guidance remains the same as before – **if you believe part of all of your business operations fall within one of the "Essential" Services categories, note down or print and highlight that portion which applies to your business, and provide this text to any local officials.**

There is explicit guidance on the state's website: "**If the Governor has deemed your business essential, your city or town is prohibited from deeming your business non-essential and preventing you from remaining open if you are complying with the Governor's order.**" If my city has deemed me non-essential, but the Governor has deemed me essential (or vice versa) should I stay open?

- If your business provides an essential service, you are not required to stay open, but you may. If the Governor has deemed your business essential, your city or town is prohibited from deeming your business non-essential and preventing you from remaining open if you are complying with the Governor's order.

This means that as long as you are acting in good faith upon one of the Executive Order's listed exemptions, your city or town legally is not supposed to be able to stop you from continuing carrying out these statewide exempted functions. HOWEVER, in practical terms, realistically, it is extremely risky long term and in the immediate crisis to go against a local official's order to close, no matter what the Governor's order states.

Finally, for any business staying open or re-opening, please know you legally can require medical affidavits from your employees attesting to an absence of illness or contact with someone who is ill. If you would like a sample to consider using, contact Jamy Madeja at jmadeja@Buchananassociates.com or (617) 256-8491 (*cell*)

If you have any comments or questions regarding your business' compliance, please consider contacting Jamy Madeja at jmadeja@Buchananassociates.com or (617) 256-8491 (*cell*).

