

Code of Massachusetts Regulations

DEPARTMENT OF LABOR STANDARDS

454 CMR 31.00 COVID-19 WORKPLACE SAFETY REGULATIONS

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31.01: Authority, Purpose, and Scope

(1) Authority. 454 CMR 31.00 is promulgated in accordance with and under the authority of M.G.L. c. 149, §6 and 6½ and the Governor’s COVID-19 Order Nos. 33,37, 40, and 43 issued pursuant to Chapter 639 of the Acts of 1950, as amended.

(2) Scope. All enterprises operating brick-and-mortar premises in the Commonwealth other than those exempted herein by section 31.08.

(3) Purpose. This regulation is intended to establish a uniform set of COVID-19 Workplace Safety Rules for all enterprises operating brick and mortar premises across the Commonwealth to ensure that all enterprises adopt appropriate health and safety measures to protect against the spread of the COVID-19 virus.

31.02: Definitions

COVID-19. 2019 novel Coronavirus, the disease caused by SARS-CoV-2 virus

Department. The Department of Labor Standards

Enterprise. Places of employment, businesses or other organizations operating brick-and-mortar premises in the Commonwealth that is open to workers, customers, vendors, or other members of the public.

LBOH. Duly authorized Local Board of Health

31.03: General Workplace Safety Rules

All enterprises, authorized to open, operating brick-and-mortar premises that are open to workers, customers, vendors or the public shall adopt and maintain the following COVID-19 Workplace Safety Rules:

(1) Social Distancing

- (a) All persons, including workers, customers, and vendors should remain at least 6 feet apart to the greatest extent possible, both inside and outside workplaces;
- (b) Establish protocols to ensure that workers can practice adequate social distancing;
- (c) Provide signage for safe social distancing; and
- (d) Require face coverings or masks for all workers.

(2) Hygiene Protocols

- (a) Provide hand-washing capabilities throughout the workplace;
- (b) Ensure frequent hand washing by workers and adequate supplies to do so; and
- (c) Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, and restrooms throughout the workplace.

(3) Staffing and Operations

- (a) Provide training for workers regarding the social distancing and hygiene protocols;
- (b) Do not allow workers who are displaying COVID-19 like symptoms to report to work; and
- (c) Develop a written control plan.
 - (i) In developing the written control plan enterprises may use the template provided on the department's website.
 - (ii) The written control plan shall establish a plan to address workers who become ill from COVID-19 at work, and a return-to-work plan, following guidance issued by the Massachusetts Department of Public Health and the Centers for Disease Control.
 - (iii) Plans shall be kept on premises and made available for inspection by any enforcement agency.

(4) Cleaning and Disinfecting

- (a) Establish and maintain cleaning protocols specific to the enterprise;
- (b) When an active worker is diagnosed with COVID-19, cleaning and disinfecting must be performed; and
- (c) Disinfection of all common surfaces must take place at intervals appropriate to said workplace.

31.04: Compliance and Self-Certification

(1) Enterprises that are authorized to open their brick-and-mortar premises to workers, customers, or the public shall be required to self-certify compliance with all COVID-19 Workplace Safety Rules under section 31.03 and any applicable Sector-Specific Rules under section 31.09. Before opening a brick-and-mortar premise, an enterprise shall be required to implement the following measures:

- (a) Bring the workplace into full compliance with all COVID-19 Workplace Safety Rules established in section 31.03 and all Sector-Specific Rules under section 31.09 that are applicable to the individual workplace because of the nature of its operations.
- (b) Complete the required self-certification found on the department's website to verify compliance with all general and specific rules and make the self-certification available for inspection upon a request by State or local authorities.
- (c) Post conspicuously on the premises, in a place or places as will provide reasonable opportunity for all workers, customers and the public to read, all public notices and advisories required by section 31.05 or any applicable Sector-Specific Rules.

31.05: Posting of Notices

(1) All enterprises that are authorized to operate brick-and-mortar premises that are open to workers, customers, or the public shall post conspicuously on the premises, in a place or places as will provide reasonable opportunity for all workers, customers and the public to read, the following public notices:

- (a) Self-certification required by section 31.04(1)(b)
- (b) Employer Guidance poster available on the department's website
- (c) Employee Guidance poster available on the department's website
- (d) In addition to the notices required in (a) through (c) above, enterprises, as applicable, shall post any sector-specific notices required by the Sector-Specific Rules pursuant to section 31.09.

(2) Notices shall be posted in (a) English and (b) in any other language that is spoken by at least 5% of the employer's workforce for which a translated notice in that language is available from the Commonwealth.

(3) Each enterprise shall take steps to ensure that such notices are not altered, defaced, or covered by other material. Reproductions or facsimiles of such state posters shall constitute compliance with the posting requirements.

(4) Any enterprise failing to comply with the provisions of 454 CMR 31.05 shall be subject to enforcement pursuant to section 31.07.

31.06: Notice to Local Boards of Health

If an enterprise is notified of a presumptive case or positive test result for COVID-19 at the workplace, the enterprise shall notify the LBOH where the workplace is located and assist the LBOH, as reasonably requested, to advise likely contacts to isolate and self-quarantine. Testing of other workers may be recommended consistent with guidance issued by the Massachusetts Department of Public Health and the Centers for Disease Control or at the request of the LBOH.

31.07: Enforcement

The department and duly authorized agents shall have general authority to implement and enforce the COVID-19 Workplace Safety Rules and Sector-Specific Rules established through this regulation. A LBOH or duly authorized agent shall have concurrent authority with the department to enforce COVID-19 Workplace Safety Rules and Sector-Specific Rules established in this regulation. Nothing in this regulation shall restrict the ability of any other duly-authorized entity to enforce additional rules relating to COVID-19 safety issued under the authority of any Executive Order or statute, municipal ordinance or bylaw, or regulation.

(1) Complaints

Any person may file a complaint for a violation of this regulation with the department or the LBOH with jurisdiction for the location of the workplace. Upon receipt of a complaint, the department or the LBOH will review the complaint to determine if further action is warranted.

(2) Inspections

- (a) The department or its duly authorized agents and the LBOH in which an enterprise is located shall have the authority to conduct inspections of all enterprises covered by M.G.L. c. 149, § 6 and 6½ including, but not limited to, the authority to:
 - (i) enter at reasonable times any enterprise where work is performed or where there is reason to believe that a violation of a COVID-19 Workplace Safety Rule exists and examine the enterprise's compliance with such rules;
 - (ii) inspect and investigate during the enterprise's regular working hours all pertinent conditions, devices, equipment and materials therein; and
 - (iii) question privately any employer, owner, manager, agent or worker, and review all records required by 454 CMR 31.04 and 31.05.
- (b) When an enterprise requires security clearances for entry into a particular area, the enterprise shall provide appropriate clearances to the department, its authorized agent or the LBOH. In the event the enterprise does not control the security clearances, the enterprise shall make reasonable effort to obtain access for the authorized inspector.
- (c) The inspection shall be conducted in such a manner as to preclude unreasonable disruption of the enterprise's operations.
- (d) Workers shall have the right to report unsafe and unhealthful working conditions to the enterprise or to the department or the LBOH in accordance with subsection (1).
- (e) A representative of the employer and a representative authorized by the workers shall be given an opportunity to accompany an authorized inspector during the physical inspection of any workplace.

(3) Penalties

- (a) If the department, its authorized agent or the LBOH finds that an enterprise is not operating in compliance with the COVID-19 Workplace Safety Rules established in section 31.03 or any applicable Sector-Specific Rules established under section 31.09 the department, its authorized agent or the LBOH may implement the following enforcement measures:
 - (i) Civil fine of up to \$300 per violation; provided that each individual instance of non-compliance may be fined as a separate violation; provided further that prior to issuing

a fine a duly authorized enforcement agent may issue a verbal or written warning and order to correct;

- (ii) Cease and Desist letter; or
- (iii) File for an injunction to enforce compliance in the district court or any other court of competent jurisdiction for the municipality in which the violation has been charged.

(b) These regulations do not grant the department, its authorized agent or the LBOH authority to close an enterprise for violation of a COVID-19 Workplace Safety Rule absent a court order under subdivision (iii) of division (a); provided, however, that the department, a LBOH, or other duly-authorized authority may revoke any permit or close an enterprise by acting pursuant to other legal authority.

(c) Where a compliance issue presents an immediate threat to health and safety or a risk of confrontation, the department, its authorized agent or a LBOH may request the assistance of state and local law enforcement authorities to enforce these regulations.

(4) Anti-Retaliation

No person shall discharge or in any manner discriminate against any worker because the worker has: filed any complaint under or related to 454 CMR 31.00 or provided any testimony or other information in any proceeding under or related to 454 CMR 31.00. Any worker who believes that he or she has been discriminated against in violation of 454 CMR 31.07(4) may seek remedy in accordance with M.G.L. c. 149, § 185.

31.08: Exemptions

(1) 454 CMR 31 shall not apply to the following enterprises:

- (a) Any municipal legislative body, the General Court, or the Judiciary
- (b) Federal governmental entities
- (c) Any health care facility or licensed health care provider
- (d) Grocery stores, farmer markets and other enterprises subject to the sanitary code established pursuant to M.G.L. c. 111, §127A; provided they are still required to follow any guidance established by the Massachusetts Department of Public Health
- (e) Any of the following workplaces or facilities with specialized functions and populations:
 - (i) Public and private elementary and secondary (K-12) schools
 - (ii) Residential and day schools for special needs students
 - (iii) Licensed, approved, or exempt childcare programs and any emergency childcare centers and emergency residential programs operating under emergency authorization
 - (iv) Facilities operated by the Department of Correction or any Sheriff
 - (v) Facilities operated, contracted or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
 - (vi) Facilities that provide safe spaces for the unstably housed such as homeless and domestic violence shelters
 - (vii) Any other facilities or workplaces that the Commissioner of Public Health has exempted in writing

31.09: Sector-Specific Rules

(1) Sector-Specific COVID-19 Workplace Safety Rules issued pursuant to Governor’s COVID-19 Orders No. 33 and 37 are incorporated by reference, and applicable to all enterprises covered by 454 CMR 31 that are authorized to open; provided however that where the COVID-19 Workplace Safety Rules conflict with the Sector-Specific Rules, the Sector-Specific Rules shall apply. Enterprises that are authorized to open shall adopt and comply with all Sector-Specific Rules applicable to their workplaces. The Sector-Specific COVID-19 Workplace Safety Rules include:

- (a) car washes
- (b) construction
- (c) driving and flight schools
- (d) drive-in movie theaters
- (e) golf facilities
- (f) laboratories
- (g) libraries
- (h) operators of lodgings
- (i) manufacturing
- (j) office spaces
- (k) close contact personal services
- (l) places of worship
- (m) retail businesses
- (n) fitness centers and health clubs
- (o) indoor and outdoor events
- (p) indoor recreation
- (q) museums, cultural and historical facilities, guided tours
- (r) theaters and performance venues
- (s) restaurants

(2) Enterprises not listed under subsection (1) that are authorized to open shall follow the Sector-Specific Rules entitled “Sectors Not Otherwise Addressed”.

31.10: No Conflict with other Health and Safety Rules

These generally COVID-19 Workplace Safety Rules shall supplement and shall not displace otherwise applicable health and safety rules issued by any Federal, State, or local authority acting within the scope of its lawful authority.

31.11: Severability

The provisions of 454 CMR 31.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 454 CMR 31.00.

REGULATORY AUTHORITY

454 CMR 31.00: M.G.L. c. 149, §6 and 6½ and the Governor’s COVID-19 Order Numbers 33, 37, 40, and 43 issued pursuant to Chapter 639 of the Acts of 1950