

# Know Your Rights

## GATHERINGS, SOCIAL DISTANCING, AND FACE COVERING ORDERS IN THE TIME OF COVID-19

May 11, 2020

### EMERGENCY

Coronavirus  
disease (COVID-  
19) outbreak

In response to the COVID-19 pandemic, Massachusetts Governor Charlie Baker has declared a public health emergency and has issued several emergency orders. One limits the size of certain gatherings and also requires physical distancing in open spaces. Another requires most people to wear a face covering when out in public. These orders were issued under statutes that give the Governor broad powers during a public health crisis.<sup>1</sup> The orders apply to all of Massachusetts.

### Gatherings –COVID-19 Order No. 13:<sup>2</sup>

- Gatherings of more than 10 people in any confined indoor or outdoor spaces are prohibited.
- The order does not apply to gatherings in unenclosed outdoor spaces, such as parks, athletic fields or parking lots; but athletic and recreational activities that bring more than 10 people close together are specifically prohibited and guidance from the Department of Public Health and approved by the Governor says that any people in these spaces must stay at least 6 feet apart.<sup>3</sup>
- The order does not apply to private residential schools for special needs students or to public and private primary or secondary schools, which are covered by a separate order.
- The order does not apply to transportation facilities, polling locations, groceries, banks, farmers' markets, food pantries, pharmacies, health care facilities or other businesses currently deemed essential.
- This order can be enforced either by criminal prosecution or a civil fine of up to \$300.
- This order is in effect until at least May 18, 2020, but may be extended.

<sup>1</sup> St. 1950, c. 639, as amended, and G.L. c. 17, § 2A,  
<https://www.mass.gov/lists/emergency-preparedness-laws-and-regulations>.

<sup>2</sup> <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download>

<sup>3</sup> <https://www.mass.gov/doc/march-31-2020-assembly-guidance/download>.

## Face Coverings – COVID-19 Order No. 31: <sup>4</sup>

- Face coverings are required to be worn by people a) over the age of two b) who are in a place that is open to the public and c) where it is not possible to stay 6 feet or more away from other people.
- Face coverings do not have to be medical masks. The order asks people to use other kinds of face coverings so that medical masks can be used by first responders and medical providers.
- The order applies to both indoor and outdoor spaces open to the public.
- The order does not apply to any person who is unable to wear a face covering due to a medical condition. Persons who have such a medical condition are not required to provide medical proof to business owners or law enforcement.
- Stores and other places of public accommodation may deny entry to people without face coverings, except for people who have a medical condition that makes them unable to wear a face covering.
- The Department of Public Health is required to issue guidance on how the order applies to children between ages 2 and 5.
- This order can be enforced by a civil fine of up to \$300, but not by criminal prosecution. The one exception may be that someone covered by the order who enters a store/public accommodation without a mask, and who refuses to leave after being asked to do so, may be at risk for arrest and prosecution of the state's trespassing statute.
- This order is in effect until the public health emergency is lifted.



## Are these orders lawful?

- The Legislature has given the Governor broad powers to make orders during public health emergencies, such as the COVID-19 pandemic, and courts have ruled that use of such powers is legal – if truly needed to address a public health emergency.
- The U.S. and Massachusetts Constitutions may create some limits on how far such orders can go. For instance, rights of free speech, assembly and religion still apply and require that the orders serve and be narrowly tailored to achieve a compelling interest. And discrimination based on race, national origin, disability, gender, etc. is not allowed unless supported by a strong government interest related to the public health emergency.
- The orders may have been lawful when issued. But – as more testing becomes available, vaccines and other ways to fight the pandemic are developed, and more is known about how COVID-19 is and is not transmitted and how the orders are actually enforced – the orders should be reevaluated to ensure they are not more broad than is necessary to fight the spread of the disease and are not resulting in unlawful discrimination.

<sup>4</sup> <https://www.mass.gov/doc/may-1-2020-masks-and-face-coverings/download>

## **Do local emergency orders on gatherings and face coverings also apply?**

- Likely not, unless they are the same as the Governor's orders. The 1950 law that gives the Governor emergency powers in the face of a public health crisis says that it is unlawful for any municipality to adopt or enforce any rule or order that is different from an order issued by the Governor. St. 1950, c. 639, § 20. But the Governor's orders do allow local police to enforce them.



## **What can you do if you think you have been unlawfully discriminated against by businesses or the government because of these orders?**

- You can file a complaint with the Civil Rights Division of the Massachusetts Attorney General, <sup>5</sup> or the Massachusetts Commission Against Discrimination. <sup>6</sup>
- You may also share information about your experience with the ACLU of Massachusetts at [legalhelp@aclum.org](mailto:legalhelp@aclum.org) or [617-482-3170 ext. 301](tel:617-482-3170). Knowing how the orders are being applied will assist us in monitoring and advocating for any needed changes.

<sup>5</sup> <https://www.mass.gov/service-details/learn-about-the-attorney-generals-civil-rights-division>

<sup>6</sup> <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>.