



**POLICY RECOMMENDATIONS TO GOVERNOR BAKER'S COVID-19
REOPENING ADVISORY BOARD**

The Beacon Hill Institute

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Summary

- Relax Laws Pertaining to Independent Contractors in Healthcare
- Temporarily Halt Minimum Wage Requirements and the Planned Increase
- Extend Changes to Liquor Laws Past the End of State of Emergency Declaration
- Suspend Laws Prohibiting Licensed Workers from Providing Service at the Home
- Permanently Eliminate Certificate of Need (CON) Laws
- Suspend Plans to Join the Transportation Climate Initiative (TCI)
- Permanently Eliminate Predictive Scheduling Laws

As of May 13, 2020, 79,332 Massachusetts residents have contracted COVID-19, and 5,141 have been killed by the virus. Massachusetts ranks fourth in the nation in confirmed coronavirus cases and third in related deaths.¹

In Massachusetts, the economic consequences of the COVID-19 pandemic have been devastating. In the seven weeks following Governor Baker's statewide stay at home advisory that forced all nonessential businesses to close, a daunting 793,529 people have filed for unemployment insurance.² Consumer and business confidence have fallen to their lowest levels since the 2008 recession.³ Of top concern to lawmakers, tax revenues in April 2020 fell by 54% compared to April 2019, a shortfall of \$2.34 billion.⁴ According to projections from the Center for State Policy Analysis, tax revenues for FY 2020 will fall between \$1.8 billion to \$3 billion.

On May 11, 2020, Governor Baker unveiled a four-stage reopening plan designed to resume economic activity in the Commonwealth in a safe manner. Though vital to ensuring a safe transition from shutdown to limited commerce, the restrictions and requirements placed on businesses will make reopening costly. Unfortunately, many local businesses could find the prospect of reopening in the manner the Governor and health experts see fit unworthy of the cost.

The Massachusetts economy is experiencing a dramatic negative demand shock combined with a smaller negative supply shock. The increased, but necessary, costs businesses must incur to comply with the Governor's reopening plan will keep otherwise profitable shops closed. If legislators and executives are to act to mitigate the economic impact of the COVID-19 crisis and help businesses adjust to the uncertainty of the reopening plan, they must be willing to take bold, unprecedented action.

Now is not the time for half measures or kowtowing to special interests. Lawmakers must do what is best for their constituents, even if they meet fierce opposition from strong, entrenched special interests. The Beacon Hill Institute recommends that Governor Baker's Reopening Advisory Board, tasked with formulating policy designed for the transition

¹ "COVID-19 Coronavirus Pandemic", worldometers.info (May 7, 2020). <https://www.worldometers.info/coronavirus/>

² "More than 55,000 new unemployment claims filed in Massachusetts", WCVB (May 7, 2020). <https://www.wcvb.com/article/new-unemployment-claims-continue-rise-coronavirus-crisis-massachusetts-may-7/32401597>

³ Jim Kinney, "Massachusetts employers lose more confidence in midst of coronavirus; but optimism grows about conditions 6 months from now", MassLive.com (May 5, 2020). <https://www.masslive.com/news/2020/05/massachusetts-employers-lose-more-confidence-in-midst-of-coronavirus-but-optimism-grows-about-conditions-6-months-from-now.html>

⁴ Michael P. Norton, "With Filing Deadline Now In July, April State Tax Receipts Plunge By \$2.3 Billion In Mass.", WBUR (May 6, 2020). <https://www.wbur.org/bostonmix/2020/05/05/massachusetts-state-tax-collection-covid>

from full shutdown to partial opening of the economy and beyond, urge elected officials to adopt the following changes to state law.

Relax Laws Pertaining to Independent Contractors in Healthcare

- Labor laws in Massachusetts prevent employers (including hospitals) from hiring independent contractors if the skills they bring to the job are within the buyer's "usual course of business."⁵
- These laws hamstringing healthcare facilities, especially in time-sensitive scenarios such as the COVID-19 pandemic, by forcing businesses to rely on temporary (temp) staffing instead of hiring independent contractors that are qualified for the job.
- Not only do these laws harm businesses, but independent contractors are effectively put out of jobs during times where surges in staff are needed.
- Under the law, independent contractors, such as traveling nurses and doctors, must either become regular employees of the company (thus losing their independent status and job flexibility) or go through temp agencies where they are paid less.
- State legislature and Governor Baker must craft legislation that allow hospitals and other healthcare facilities to hire independent contractors, even if their skills are within the buyer's "usual course of business" for the duration of the Governor's state-of-emergency declaration and consider repealing these laws altogether.

Temporarily Halt Minimum Wage Requirements and the Planned Increase

- Under current law, the minimum wage in Massachusetts is set to increase by \$0.75 on January 1, 2021, from \$12.75 to \$13.50.⁶
- With unemployment expected to reach all-time highs before the crisis ends and knowing that post-recovery, businesses will be more strapped for cash than ever before, raising the minimum wage is counterproductive. For those businesses struggling on the margin to remain open, an increase in labor costs could force them to cut staff or close.
- For at least the interim period between crisis and full recovery, state legislators should pass legislation permitting businesses to hire individuals below the minimum wage requirement or temporarily pause the planned increase.
- Workers earning under the minimum wage will still be eligible for government assistance, as would businesses paying workers under the minimum wage.

⁵ Mike Hruby, "Limits on independent contracting hurt employers and workers", Commonwealth Magazine (May 7, 2020). <https://commonwealthmagazine.org/economy/limits-on-independent-contracting-hurt-employers-and-workers/>

⁶ "Massachusetts Minimum Wage Laws", Employment Law Handbook (2020). <https://www.employmentlawhandbook.com/wage-and-hour-laws/state-wage-and-hour-laws/massachusetts/minimum-wage/>

Extend Changes to Liquor Laws Past the End of State of Emergency Declaration

- The sale of alcohol accounts for 20-25% of total sales at the typical restaurant. Before Governor Baker signed the municipal relief bill on April 3, to-go or curbside alcohol sales were illegal in the Commonwealth of Massachusetts.⁷
- This restriction presented a tremendous challenge for the many bars and restaurants that serve alcohol in Massachusetts. Upon the enactment of stay-at-home orders, the typical restaurant immediately lost 20-25% of total sales (not accounting for revenue lost due to lack of patrons).⁸
- This temporary change in the liquor laws is set to last until the end of Governor Baker's COVID-19 state of emergency declaration. Although the end of the state of emergency declaration will signal the end of the official medical crisis in Massachusetts, it is likely many consumers will not feel comfortable eating and drinking in packed dining rooms in the immediate aftermath of the pandemic.
- If the temporary changes in liquor laws from the municipal relief bill are not extended, overall revenue and profits derived from liquor sales in the restaurant industry will be reduced.
- Therefore, legislators and Governor Baker should extend the liquor provisions in the municipal relief bill for at least six months after the end of the emergency declaration. If the emergency changes in the law do not prove to be catastrophic, state legislature can change the law permanently.

Suspend Laws Prohibiting Licensed Workers from Providing Service at the Home

- Under Governor Baker's COVID-19 emergency order, gatherings are limited to no more than 10 people.⁹
- This order applies to all non-essential businesses, including barbershops, hair and nail salons, and spas.

⁷ Nik Decosta-Klipa, "Massachusetts restaurants can now sell wine and beer to-go during the coronavirus outbreak", boston.com (April 3, 2020). <https://www.boston.com/news/local-news/2020/04/03/massachusetts-restaurants-wine-beer-coronavirus>

⁸ Kyle Thacker, "Growing Your Restaurant's Profit Margins," Modern Restaurant Management, (September 4, 2019). <https://modernrestaurantmanagement.com/growing-your-restaurants-profit-margins/>

⁹ Governor's Press Office "Governor Charlie Baker Orders All Non-Essential Businesses To Cease In Person Operation, Directs the Department of Public Health to Issue Stay at Home Advisory For Two Weeks" mass.gov (March, 23, 2020). <https://www.mass.gov/news/governor-charlie-baker-orders-all-non-essential-businesses-to-cess-in-person-operation>

- According to Massachusetts law, hairstylists, manicurists, and barbers are not permitted to provide their services from home unless their home is a facility that has been licensed through the Commonwealth. Already licensed hairstylists, manicurists, and barbers, if found to violate the law, can be stripped of their occupational licenses.
- To assist struggling barbers, hairstylists, and freelance workers, Governor Baker and the legislature should temporarily permit licensed workers to provide services at their homes, provided they do not violate gathering limits.
- Subsequent legislation at the statewide or local level should address the obvious issues with social distancing that this would create (such as requiring surgical masks and gloves to be used when rendering service).
- After the COVID-19 crisis subsides, these types of bans and the general licensing requirements for many occupations should be reconsidered, as they are largely designed to protect the special interests of guilds and labor groups.
- For instance, earning a barbers' license requires 1,000 hours of classroom hours, whereas obtaining an EMT license requires just 150 classroom hours in Massachusetts.¹⁰

Permanently Eliminate Certificate of Need (CON) Laws

- Under Massachusetts law, medical facilities are subject to Certificate of Need (CON) laws. CON laws, "require health care facilities to receive permission before expanding their capacities or providing new services. The lengthy and burdensome approval process [prevent] hospitals from quickly adding additional beds to care for COVID-19 patients."¹¹
- If anything can be learned from the COVID-19 crisis, speed is paramount in controlling a pandemic. CON laws endanger public health by limiting the ability of health facilities, with their lengthy approval processes, to expand in times of crisis. Necessities during the COVID-19 pandemic such as acute care beds fall under CON laws in Massachusetts.

¹⁰ Tom Joyce, "Bay Staters Taking Haircuts Into Their Own Hands," New Boston Post (April 11, 2020).

<https://newbostonpost.com/2020/04/11/bay-staters-taking-haircuts-into-their-own-hands/>

¹¹ Vittorio Nastasi, "Rolling Back Regulations to Combat COVID-19 Should Be Just the Start," Reason.com, (March 30, 2020).

<https://reason.org/commentary/rolling-back-regulations-to-combat-covid-19-should-be-just-the-start/>

- According to a study by the Mercatus Center at George Mason University, repealing Massachusetts’s CON laws would increase the number of quality hospitals and medical facilities in rural areas.¹²
- These facilities would stop local outbreaks and contain them in rural communities (such as those in western Massachusetts). With more hospitals and medical facilities, patients would not need to travel to medical hubs such as Worcester or Boston and potentially increasing the likelihood of an outbreak.
- Fundamentally, CON laws violate the right of private businesses to provide service as they see fit. CON laws are another policy meant to protect the special interest and enforce government-created monopoly and should be done away with permanently.

Suspend Plans to Join the Transportation Climate Initiative (TCI)

- Perhaps the only benefit of the COVID-19 negative demand shock is its effect on the price of oil and oil products. Since January 2020, the price of crude oil has fallen over 60.76% from 2019 average prices.¹³
- According to a Beacon Hill Institute and Massachusetts Fiscal Alliance study titled, “The Transportation Climate Initiative: Its Economic Impacts on Massachusetts”, TCI will negatively impact the commonwealth’s economy by unnecessarily raising the price of fuel.
- Under the 22% emission cap proposed by TCI, the price of finished gasoline would increase by 21 cents per gallon and the price of on-road diesel would increase by 42 cents per gallon as a result of the 22 percent emissions cap. In the first year of implementation, business investment would fall by \$229 million, disposable income by \$1,524 million, and private employment by 7,629 jobs. The cost per average Massachusetts household would be \$585. Cutting the supply of motor gasoline and on-road diesel into the state would impose unnecessary costs on local businesses and would take away from savings usually enjoyed by consumers in times of low-cost fuel.
- Business investment in the post-COVID-19 economy will be scant. Increasing the price of a key input (oil/fuel) will increase production costs and lower profit margins.
- As explained by the study, the net cost of the emissions cap would be \$773 million in 2022 and fall to \$655 million by 2026. Those costs were calculated during the longest

¹² “Certificate of Need Laws, Massachusetts State Profile” Mercatus Center at George Mason University (August 29, 2017). <https://www.mercatus.org/publications/certificate-need-laws-massachusetts>

¹³ “Crude Oil Prices - 70 Year Historical Chart”, macrotrends.net <https://www.macrotrends.net/1369/crude-oil-price-history-chart>

period of economic growth in American history. That period is over. The bottom line is that implementing TCI will likely prolong the commonwealth's recession.

Permanently Eliminate Predictive Scheduling Laws

- The proposed Fair Work Week Bills (S.1110, filed by Sen. Pacheco of Taunton, H.3809, filed by Rep. Garballey of Somerville, and S.1102, filed by Sen. O'Connor of Weymouth), call for "predictive scheduling regimes."
- These so-called Fair Work Week laws require employers in food and retail establishments as well as the hospitality industry to give advanced notice of schedules for hourly workers, penalize employers for any alterations in these schedules, and prevent "clopening" shifts, among other stipulations.¹⁴
- Fair Work Week laws harm the economy. A study conducted on San Francisco's predictive scheduling ordinance found that businesses "affected by scheduling regulations offered fewer jobs, scheduled fewer employees per shift, and reduced customer service."¹⁵
- In Massachusetts, the implementation of predictive scheduling will result in a loss of \$1.1 billion in economic output and approximately 11,000 jobs.¹⁶
- Fair Work Week laws are especially detrimental in our current economic situation. Governor Baker's four-phase reopening plan (released on May 11, 2020) places severe restrictions on many industries during its initial phases. Restrictions will be imposed and lifted depending on several key indicators such as the number of new confirmed COVID-19 cases, testing capabilities, and hospital capacity.¹⁷
- Governor Baker's plan, though necessary to ensure the safe reopening of the Massachusetts economy, creates a business environment prone to instability as businesses may find their staffing needs constantly changing. The proposed Fair Work Week bills will exacerbate the staffing issues many businesses will face during the

¹⁴ "Learn More: Fair Work Week Massachusetts" Fair Work Week Massachusetts (2019). <https://fairworkweekma.com/details>

¹⁵ "INFLEXIBLE SCHEDULING: How Employees, Employers, and Consumers are Hurt by Predictive Scheduling Laws", The American Consumer Institute Center for Citizen Research (October 15, 2019). <https://www.theamericanconsumer.org/wp-content/uploads/2019/10/Predictive-scheduling-Study.pdf>

¹⁶ "INFLEXIBLE SCHEDULING: How Employees, Employers, and Consumers are Hurt by Predictive Scheduling Laws" Pg. 12, The American Consumer Institute Center for Citizen Research (October 15, 2019). <https://www.theamericanconsumer.org/wp-content/uploads/2019/10/Predictive-scheduling-Study.pdf>

¹⁷ "Massachusetts creates list of mandatory safety guidelines for workplaces ahead of phased reopening", WCVB (May 12, 2020). <https://www.wcvb.com/article/massachusetts-creates-list-of-mandatory-safety-guidelines-for-workplaces-ahead-of-phased-reopening/32437505>

Commonwealth's reopening period by inhibiting their ability to hire staff quickly and make scheduling changes per the Governor's reopening plan.

- Employees will also be harmed by Fair Work Week legislation during the COVID-19 crisis and beyond. With predictive scheduling, employees who take advantage of flexible scheduling will lose their ability to work an extra shift on short notice. This will reduce many employees' ability to earn more pay, as nearly 70 percent of current retail employees have benefitted from using flexible scheduling.¹⁸
- It is thus in the interest of the economy to permanently eliminate these predictive scheduling bills. Governor Baker should veto such legislation if it arrives at his desk.

Conclusion

The Massachusetts economy is currently in the midst of a deep recession and will likely enter a depression due to the mass closure of businesses related to the COVID-19 pandemic. The recovery plan from the pandemic will be essential to the state's economy moving forward into the future. If the state's businesses continue to remain closed for much longer or are opened with the significant restraints imposed by the Baker administration, there could be permanent economic damage.

Governor Baker must take further action to help deter the economic damage caused by the pandemic. By removing certain restrictions and regulations on businesses (as outlined above), the recovery will be one that better returns the state to its baseline growth previous to the pandemic. It is essential that the state reopen with less restrictions, while removing certain regulations that hinder economic activity, to stave off a prolonged and potentially devastating recovery.

¹⁸ "INFLEXIBLE SCHEDULING: How Employees, Employers, and Consumers are Hurt by Predictive Scheduling Laws" Pg. 3, The American Consumer Institute Center for Citizen Research (October 15, 2019). <https://www.theamericanconsumer.org/wp-content/uploads/2019/10/Predictive-scheduling-Study.pdf>