

TRO enjoins enforcement of portions of Massachusetts emergency debt collection regulation. Now what?

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On April 17, 2020, Massachusetts Attorney General Maura Healey promulgated [emergency regulation 940 CMR 35.00](#) to address “unfair and deceptive debt collection practices during the state of emergency caused by COVID-19.” The regulation prohibits certain debt collection activities, including debt collection calls, for a period of 90 days beginning on March 26, 2020 (until June 24, 2020). ACA International filed a lawsuit in federal district court challenging the constitutionality of certain portions of the emergency regulation and moved for a TRO and preliminary injunction.

On May 6, 2020 the district court entered a [TRO temporarily enjoining the Attorney General](#) from enforcing certain portions of the regulation. Here is what the court’s TRO means for companies operating in Massachusetts:

While the TRO is in effect, the prohibition against debt collection calls in Massachusetts is unenforceable. This means that **debt collectors are free to make debt collection calls to Massachusetts residents as long as they otherwise comply** with existing Massachusetts and federal debt collection statutes and regulations. Also while the TRO is in effect, creditors and debt collectors may file collection or enforcement actions in Massachusetts courts.

However, the TRO is set to expire 14 days from its entry unless extended by the court. Typically, a TRO will last until a hearing is held on the requested preliminary injunction. In this case the court did not rule on the preliminary injunction motion, and has not set a hearing to consider it. As the court also did not state the duration of the TRO, it defaults to 14 days. The opportunity remains for either the court or the parties to act to extend that time. If this does not happen, **the prohibition against debt collection calls and court actions will once again be enforceable on May 21.**

Many companies are wondering if they should resume collection calls based on entry of the TRO. **Technically, companies may make calls while the TRO is in effect. However, it may not be practical to start and stop collection operations given the small window provided by the TRO, even if it is extended.** McGlinchey will continue to follow the case and provide updates on the status of the TRO and ACA’s efforts to obtain an injunction.

Companies should also be aware that the TRO **did not affect the portions of the regulation banning self-help repossession**. See 940 CMR 35.03(1). Only court actions are now permitted under the TRO. Accordingly, self-help auto repossessions remain prohibited until the expiration of the emergency regulation on June 24, unless the regulation is extended beyond that date by the Attorney General.

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Shanna M. Boughton

Patrick T. Voke

Candy Burnette

Mark S. Edelman