

Insights, News & Events

NEW JERSEY GOVERNOR ISSUES NEW EXECUTIVE ORDER AS STATE EXPERIENCES CORONAVIRUS “SECOND WAVE”

Insights
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“It is coming and it is coming now,” says New Jersey Governor Phil Murphy of the second coronavirus wave hitting the state. To address the public health dangers of the new uptick in cases, which are exacerbated by the return of many employees to the workplace over the last several months, Governor Murphy just issued a [new executive order](#) with requirements for employers that take effect at 6:00 a.m. on Thursday, November 5. The order also directs the establishment of complaint procedures and imposes penalties for violations.

EMPLOYER REQUIREMENTS

These apply to employers that require or permit all or part of their workforce to be physically present at the worksite. They are intended to protect employees, customers, and anyone else who might come into physical contact with business operations.

SOCIAL DISTANCING

To the extent possible, individuals at a worksite must maintain at least six feet of distance from one another at such functions as worksite meetings, orientations, and similar activities that traditionally require individuals to be together in close proximity in a single room or space; in common areas such as restrooms and breakrooms; and when entering and exiting the workplace.

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Where the nature of an employee's work or work area does not permit six feet of distancing, employers must ensure each employee wears a mask (more on mask mandates in the next section) and must install physical barriers between workstations wherever possible.

MASK MANDATES

Employers must require employees, customers, visitors, and other individuals entering the worksite to wear cloth or disposable face masks in accordance with [CDC recommendations](#). Children under two years old are excluded from the requirement, as are individuals engaged in activities such as eating or drinking, or where the service the employer provides cannot be performed on an individual wearing a mask. The mask mandate does not apply to educational employers subject to [Executive Order No. 175](#), which was issued on August 13, 2020.

There are two sets of mask mandates, one specific to employees and one to customers and visitors.

EMPLOYEE MASK MANDATES

- Employers must make cloth or disposable face masks available, at their expense, to employees.
- Employees are free to wear surgical-grade or other more protective face masks.
- Employers must provide employees with more protective equipment if the nature of the work requires it.
- Employers may deny entry to the worksite to any employee who declines to wear a face mask, except where that would violate state or federal law.
- Where an employee claims they cannot wear a mask because of a disability, and provides medical documentation of the disability if the employer requests it, the employer may be required under the Americans with Disabilities Act (ADA) or the New Jersey Law Against Discrimination (NJLAD) to grant the employee a reasonable accommodation.
- Employers may permit employees to remove their face masks when they are at their workstations and more than

six feet from other employees, or when an employee is alone in a walled office.

CUSTOMER/VISITOR MASK MANDATES

- Employers may deny entry to the worksite to any customer or visitor who refuses to wear a face mask, unless that would violate state or federal law.
- An employer may be required by the ADA or NJLAD to provide goods or services via a reasonable accommodation to a customer or visitor refusing to wear a face mask due to disability. The customer or visitor *may not* be required to produce medical documentation verifying a claimed disability.

HYGIENE MANDATES

Employers must also provide to employees, customers, and visitors, at no cost to them, sanitization materials, such as hand sanitizer that contains at least 60% alcohol and sanitizing wipes approved by the [United States Environmental Protection Agency](#) for the COVID-19 virus. Some further requirements related to the new hygiene mandates include the following:

Employers must ensure that employees practice regular hand hygiene, and provide break time for repeated handwashing throughout the workday as well as access to adequate handwashing facilities.

- Employers may require employees to wear gloves, in which case they must provide the gloves to the employees.
- Employers must routinely clean and disinfect all high-touch areas in accordance with [New Jersey Department of Health \(DOH\)](#) and [CDC](#). Examples of such areas are restrooms, handrails, doorknobs, and regularly used equipment.
- Prior to each shift, employers must conduct daily health checks of employees, through such means as temperature screenings, visual symptom checking, self-assessment checklists, and/or health questionnaires, consistent with [CDC guidance](#), the confidentiality

requirements of the ADA and NJLAD, and any [guidance from the EEOC](#).

- Employers must immediately separate and send home employees who appear to have [symptoms identified by the CDC as consistent with COVID-19](#). State and federal sick leave and family leave laws are applicable.
- Employers must promptly notify all employees of any known exposure to COVID-19 at the worksite, consistent with the ADA, other applicable law, and [guidance from the EEOC](#).
- Employers must clean and disinfect the worksite in accordance with [CDC guidelines](#).

COMPLAINT AND INVESTIGATION PROCEDURES

The executive order authorizes the New Jersey Department of Labor and Workforce Development (DOLWD), in consultation with the DOH, to establish an intake mechanism to receive complaints from individuals subject to the order's health and safety protocols. It also permits the agency to create processes for consideration of complaints, such as the use of employer and employee interviews, and for employers to correct deficiencies. Finally, the DOH is instructed to establish, in consultation with the DOLWD, a process to investigate complaints, for example by performing workplace inspections and issuing subpoenas for information.

COMPLIANCE AND TRAINING

The DOWLD is directed to provide compliance and safety training to employers and employees, by establishing a program to fund "workforce training partners" (presumably contractors) to develop and deliver training, and by developing notices and informational materials to inform workers of their rights and employers of their obligations under the order.

PENALTIES

The order authorizes penalties under statutes allowing disorderly persons prosecutions that can result in six months' imprisonment and/or a \$1,000 fine and the closure

of noncompliant facilities. However, the order also provides that it does not create a private right of action.

CONCLUSION

We continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [New Jersey office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.