



New Jersey Expands Business Shutdowns, Imposes New Rules On Essential Businesses And Retail Customers

Insights

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New Jersey Governor Phil Murphy just issued an executive order that expands the existing statewide partial business shutdown and regulates onsite conduct at many of the businesses remaining open, including the conduct of customers. The order goes into effect at 8:00 P.M. Friday, April 10. What do employers need to know about this development?

New Policy Mandate For Essential Retail Businesses

Governor Murphy's March 21, 2020 executive order required the shutdown of all "non-essential" retail businesses, providing a detailed list of "essential" retail business permitted to remain open. The new order requires those essential retail businesses to adopt, at minimum, the following policies, some of which affect not just retail workers, but customers as well:

- Limit occupancy at any one time to 50% of the stated maximum;
- Wherever possible, establish hours of operation that permit access solely to high-risk individuals, as defined by the federal Centers for Disease Control and Prevention (CDC);
- Install a physical barrier, such as a shield guard, between customers and cashiers/baggers where feasible, or ensure six feet of distance between those individuals, except at the moment of payment or exchange of goods;
- Require infection control practices, such as regular hand-washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- Provide employees break time for repeated handwashing throughout the work day (the order does not indicate whether such time must be compensated);
- Where feasible, provide contactless pay options, and pickup and delivery of goods, giving particular consideration to populations without internet access;
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to employees and customers;
- Require frequent sanitization of high-touch areas, such as restrooms, credit card machines, keypads, counters, and shopping carts;
- Place conspicuous signage at entrances and throughout the store alerting employees and customers to the required six feet of physical distance;

- Require workers and customers to wear cloth face coverings while on the premises, except where it would inhibit the individual's health or the individual is under two years of age, and require workers to wear gloves when in contact with customers or goods. Further:
 - Businesses must provide, at their expense, such face coverings and gloves to their employees;
 - If a customer refuses to wear a cloth face covering for non-medical reasons and the business cannot provide one at the point of entry, the business must decline entry to the individual, unless the business is providing medication, medical supplies, or food, in which case the business should provide alternate methods of pickup or delivery of such goods;
 - Where an individual declines to wear a face covering due to a medical condition, neither the business nor its staff shall require the individual to produce medical documentation verifying the condition; and
 - Workers and customers must be permitted to wear surgical-grade masks or other more protective face coverings, if they are already in possession of such equipment, or if the business is otherwise required to provide its workers with such equipment due to the nature of the work.

Shutdown Of Non-Essential Construction Projects

Construction, which Governor Murphy's prior order had left alone, is also a target of the April 8 order. "The physical operations of all non-essential construction projects shall cease" when the new order takes effect Friday night. "Essential construction projects," which may continue operating (subject to the further requirements of the order, discussed below), consist of the following:

- Projects necessary for the delivery of health care services, such as hospitals, other health care facilities, and pharmaceutical manufacturing facilities;
- Transportation projects, including roads, bridges, and mass transit facilities or physical infrastructure, including work done at airports and seaports;
- Utility projects, including those necessary for energy and electricity production and transmission, and decommissioning of facilities used for electricity generation;
- Residential projects exclusively designated as affordable housing;
- Projects involving pre-K through 12 schools, such as projects in Schools Development Authority districts;
- Projects involving higher education facilities;
- Projects already underway involving individual single-family homes, or individual apartment units where an individual already resides (this includes additions to single-family homes such as solar panels) so long as the construction crew consists of five or fewer individuals;
- Projects already underway involving a residential unit for which a tenant or buyer has already entered into a legally binding agreement to occupy the unit by a certain date, and the

construction is necessary to ensure the unit's availability by that date;

- Projects involving facilities where the manufacture, distribution, storage, or servicing of goods or products that are sold by online retail business or essential retail businesses, as defined by the Governor's March 21 order and subsequent administrative orders adopted pursuant to it;
- Projects involving data centers or facilities critical to a business's ability to function;
- Projects necessary for the delivery of essential social services, including homeless shelters;
- Any project necessary to support law enforcement agencies or first responder units in their response to the COVID-19 emergency;
- Any project ordered or contracted for by federal, state, county, or municipal government;
- Any project that must be completed to meet a deadline established by the federal government;
- Any work on a non-essential construction project needed to:
 - Physically secure the project site;
 - Ensure the structural integrity of buildings on the site;
 - Abate hazards on the site that would exist if the construction were to remain in its current condition;
 - Remediate a site; and
 - Otherwise ensure that the site and any buildings on it are appropriately protected and safe during the suspension of the project.

Policy Mandate For Manufacturing Businesses, Warehousing Businesses, And Businesses Engaged In Essential Construction Projects

The order requires manufacturing businesses, warehousing businesses, and businesses engaged in essential construction projects to adopt, at minimum, the following policies:

- Prohibit non-essential visitors from the worksite;
- Limit worksite meetings, inductions, and workgroups to fewer than 10 individuals;
- Require individuals to maintain six feet or more of distance between them wherever possible;
- Stagger work start and stop times where practicable to limit the number of individuals entering and leaving the worksite at the same time;
- Stagger lunch breaks and work times where practicable to enable operations to safely continue while utilizing the smallest number of individuals possible at the site;
- Restrict the number of individuals who can access common areas at the same time, such as restrooms and breakrooms;
- Require workers and visitors to wear cloth face coverings, in accordance with CDC recommendations, while on the premises, except where it would inhibit the individual's health or

the individual is under two years of age, and require workers to wear gloves while on the premises;

- Businesses must provide, at their expense, such face coverings and gloves to their employees;
- If a visitor refuses to wear a cloth face covering for non-medical reasons and the business cannot provide one at the point of entry, the business must decline entry to the individual;
- Where an individual declines to wear a face covering due to a medical condition, neither the business nor its staff shall require the individual to produce medical documentation verifying the condition;
- Workers and visitors must be permitted to wear surgical-grade masks or other more protective face coverings if they are already in possession of such equipment, or if the business is otherwise required to provide its workers with such equipment due to the nature of the work;
- Require infection control practices, such as regular hand-washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- Limit sharing of tools, equipment, and machinery;
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to employees and customers; and
- Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery.

What To Do When COVID-19 Exposure Is Suspected

All essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing essential construction projects must also adopt, at minimum, the following policies:

- Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
- Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness; and
- Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC, and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.

Cleaning Protocols

Where a business is authorized to maintain in-person operations under Governor Murphy's March 21 order and subsequent administrative orders, owners of buildings used for commercial, industrial, or other enterprises, such as facilities for warehousing, manufacturing, commercial offices, airports, grocery stores, universities, colleges, government, hotels, and residential buildings with at least 50 units, shall adopt, at minimum, the following cleaning protocols in areas where operations are conducted:

- Clean and disinfect high-touch areas routinely in accordance with CDC guidelines, particularly in spaces that are accessible to staff, customers, tenants, or other individuals, and ensure cleaning procedures following a known or potential exposure in a facility are in compliance with CDC recommendations;
- Otherwise maintain cleaning procedures in all other areas of the facility; and
- Ensure that the facility has a sufficient number of workers to perform the above protocols effectively and in a manner that ensures the safety of occupants, visitors, and workers.

Conclusion

For now, we will 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 state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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