

New Jersey Requires COVID-19 Workplace Protocols Effective November 5, 2020

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Only four days after extending New Jersey’s public health emergency an additional 30 days, Governor Phil Murphy signed [Executive Order 192](#) (EO 192), requiring businesses that operate during the continuing COVID-19 crisis to implement workplace safety protocols effective November 5, 2020, at 6:00 a.m. Significantly, EO 192 provides for the establishment of complaint and investigation procedures to resolve non-compliance.

Businesses should review and update, if necessary, workplace policies for operations during the COVID-19 pandemic.

Applicability

EO 192 applies to every business, non-profit, and governmental or educational entity that the Order collectively defines as “employer.” Certain entities are excepted (see below).

Protocol Requirements

Any employer that requires or permits its workforce to be physically at the worksite must implement (at a minimum) the following protocols to protect employees, customers, and others who come into physical contact with the business operations:

1. Require at least six feet of social distancing to the maximum extent possible. If not feasible, the employer must ensure each employee wears a mask and physical barriers are installed wherever possible.
2. Require employees, customers, visitors, and other individuals entering the worksite to wear cloth or disposable face masks while on premises, except where the individual is under the age of two or where it is impracticable to wear a face mask (*e.g.*, eating, drinking, or where the service provided cannot be performed by an individual wearing a mask).

- The employer may permit employees to remove their face masks when employees are at their workstations and are more than six feet apart from others or when alone in the office.
- Employers must make face masks available (at the expense of the employer) to employees.
- Employers may deny entry to the worksite to any employee who declines to wear a face mask, except where doing so would violate state or federal law (*e.g.*, where accommodation might be required under the New Jersey Law Against Discrimination [NJLAD] or the Americans with Disabilities Act [ADA]). However, an employer may require employees to produce medical documentation supporting claims that they are unable to wear a face mask because of a disability.
- As to customers or visitors, an employer may deny entry to the worksite to any

customer or visitor who declines to wear a face mask, except where doing so would violate state or federal law. The accommodation principles under the ADA and NJLAD (including the undue hardship concept) apply to the consideration.

- Where a customer or visitor declines to wear a face mask due to disability, neither the employer nor the employees can require the customer or visitor to produce medical documentation (unless otherwise required by state or federal law).

3. Provide sanitization materials (*e.g.*, hand sanitizer with at least 60 percent alcohol and wipes) approved by the Environmental Protection Agency for SARS-CoV-2 virus to employees, customers, and visitors at no cost to those individuals.

4. Ensure employees practice regular hand hygiene, including providing regular breaks for repeated handwashing, provide adequate handwashing facilities, and so on. If an employer requires employees to wear gloves at the worksite, those gloves must be provided at no cost to the employees.

5. Routinely clean and disinfect all high-touch areas in accordance with Department of Health (DOH) and Centers for Disease Control and Prevention (CDC) guidelines, including, but not limited to, restrooms, handrails, doorknobs, common surfaces, safety equipment, and other frequently touched surfaces.

6. Prior to each shift, conduct daily health checks of employees, such as temperature screenings, visual symptom checking, self-assessment checklists, or health questionnaires (consistent with CDC guidance, following confidentiality requirements, and consistent with guidance on the ADA and NJLAD issued by the Equal Employment Opportunity Commission [EEOC] and the Division on Civil Rights).

7. Immediately separate and send home employees who appear to have symptoms, as defined by the CDC.

8. Promptly notify all employees of any known exposure to COVID-19 at the worksite (while following the confidentiality requirements under the ADA and other laws enforced by the EEOC and other agencies).

9. Clean and disinfect the worksite in accordance with CDC guidelines when an employee has been diagnosed with COVID-19.

10. Continue to follow guidelines and directives from the DOH, CDC, and Occupational Safety and Health Administration.

Exceptions

First responders, emergency management personnel, emergency dispatchers, healthcare personnel, court personnel, law enforcement, corrections personnel, hazardous material responders, transit workers, child protection personnel, child welfare personnel, housing or shelter personnel, military employees, and governmental employees engaged in emergency response activities are exempted from the protocol requirements of EO 192 when the requirements interfere with the discharge of their operational duties.

The requirements of the Order also do not apply to the U.S. government or to religious institutions to the extent application of the protocols “would prohibit the free exercise of religion.”

Expanded Role of Administrative Agencies

The Order requires the DOH to establish a process for intake and investigation of complaints, in consultation with the Department of Labor and Workforce Development (NJDLWD). The process will include an intake and investigation procedure (*e.g.*, workplace inspections, issuance of subpoenas, employee interviews, employer interviews, and so on). At a minimum, the NJDLWD and DOH process must “provide employers with an opportunity to correct the alleged or confirmed deficiency.”

Potential fines, penalties, or other measures an administrative agency may take to address non-compliance are not addressed in EO 192.

Interplay With Prior Executive Orders

EO 192 “supplements” the requirements outlined in prior Executive Orders or Administrative Orders, including 122, 125, 142, 145, 147, 149, 155, 157, 165, 175, 181, and 183. However, paragraph 2(c) of EO 142, which limited workgroups to fewer than 10 people, is rescinded.

Training, Notice

EO 192 directs the NJDLWD to “provide compliance and safety training for employers and employees” through its programs (subject to funding availability) and the development of notices or informational materials to inform workers of their rights and employers of their obligations. Accordingly, employers may have posting and notice obligations when the NJDLWD develops its workplace guidance.

While EO 192 does not address penalties or fines for non-compliance, penalties for violations of Executive Orders range from monetary fines to jail time. Moreover, non-compliance of EO 192 ultimately may result in agency investigations into workplace operations during the crisis.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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