

New Jersey State, Local COVID-19 Executive Orders Pose Challenges for Businesses

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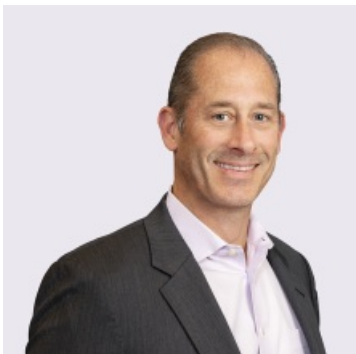
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New Jersey has implemented a number of measures in an effort to reduce the transmission of COVID-19, including extending the public health emergency, further restricting dining and bar operations, reducing capacity at gatherings (indoor and outdoor), and pausing most sports activities, among others, in the last month. At the local level, the City of Newark has implemented additional measures.

Governor Phil Murphy's Executive Orders generally state, "No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement."

On December 4, 2020, the City of Newark implemented [MEO-20-0016](#), which appears to set restrictions and obligations on businesses beyond those imposed by the Governor's statewide Executive Orders.

This article highlights key provisions in the Newark Order that may impact businesses.

Winter Outdoor Dining Requirements

The City established a COVID-19 Inspection Task Force to monitor compliance with Newark's protocols that will permit continued outside dining through March 31, 2021.

The Newark Order sets specific requirements (*e.g.*, permits, variances, and code compliance) for use of tents, dining domes (*e.g.*, igloos, huts, and bubbles), equipment, and barriers.

Additionally, the Newark Order sets a number of restrictions with respect to the outdoor operations of dining establishments, including:

- If using a tent, establishments must meet snow-bearing requirements and other standards, such as:
 - Obtaining appropriate UCC permits for tents, electrical wiring, and electrical or mechanical equipment (*e.g.*, HVAC systems, hard-piped fuel sources, and electrical installations)
 - Obtaining variances (if necessary)
 - Compliance with Uniform Fire Code for operational items (*e.g.*, portable propane heaters)
- If using a Dining Dome, a UCC permit is not necessary if limited to less than 120 square feet, the dome can be deconstructed on a daily basis and is secured so it can be lifted for emergency evacuation
- Maximum of 8 customers per table (unless immediate family or household)
- Minimum distance of 6 feet in between tables
- Encourage reservations;

- Cordon off dance floors from the public
- Require customers to provide a telephone number if reservations are made to facilitate contact tracing
- Consider alternatives to paper or physical menus
- Provide hand sanitizer stations for customer use
- Require face covering for individuals who wish to enter indoor portion of the establishment (unless the customer is under 2 or cites a medical reason)
- Require all groups to stay a minimum of 6 feet apart
- Adhere to all Department of Health protocols

To the extent a restaurant does not already comply with these restrictions, the operation should immediately implement policies to ensure compliance.

Restaurants, Businesses, Offices

In one of the broader sections of the Newark Order, the City requires “restaurants, businesses, and offices” to follow a number of protocols. While many of the restrictions appear directed toward dining establishments, the Newark Order appears to generally apply the obligations to “restaurants, businesses, and offices.” These include:

- Adhere to the face covering and social distancing protocols;
- All customers must wear a face covering at all times, except when eating or drinking (not simply while seated);
- If 2 or more customers or patrons test positive for COVID-19, then the business must close for a minimum of 48 hours;
 - The location or area must remain empty but ventilated to air out for the first 24 hours of the closure;
 - During the second 24 hours of the closure, the business must clean the location or area;
- If an employee or worker tests positive for COVID-19 *and has had contact with the business* where they are employed (*i.e.*, reported to work), the business must close for a minimum of 2 days;
 - The business must remain empty for the first 24 hours;
 - The business must be cleaned during the second 24 hours;
- All business must perform temperature checks of *all individuals* prior to entering a building, prohibiting those with a temperature in excess of 100.4 degrees;
 - No reservations at restaurants of more than 10 people;
 - No holiday gatherings or events of more than 10 people at restaurants;
 - All non-essential businesses must close at 8:00 p.m. on weekdays and 9:00 p.m. on weekends;
 - All outdoor dining must end by 9:00 p.m. daily; and
 - Restaurants may remain open until 9:00 p.m., with curbside, pick-up, take-out, and delivery being required to close by 11:00 p.m. daily.

Newark’s restrictions most certainly exceed any restrictions under Governor Murphy’s Executive Orders. Importantly, except for the hours of operations, the Newark Order makes no mention of any exemption for essential businesses from the requirements.

Religious Services

In addition to reiterating the state’s current 25%-capacity restriction, the Newark Order requires:

- All participants to wear face coverings, including individuals speaking, preaching, or singing during religious services; and
- Anyone with a temperature in excess of 100.4 degrees is prohibited from entering.

While the state's Executive Orders limit capacity, they do not appear to expressly require pastors, rabbis, priests, or other ministers to wear face coverings while preaching or require the same of those singing during the service.

Curfew

Non-essential businesses must close from 8:00 p.m. to 5:00 a.m. daily.

Violations

The Newark Order contains the following penalty provisions for businesses that violate the requirements:

- First violation: business closed for 2 days
- Second violation: business closed for 2 weeks
- Third violation: business closed for 30 days
- Fourth violation: business closed indefinitely

These penalties could be devastating for both businesses and employees. While the enforceability of the penalty provisions may be questionable, businesses should err on the side of caution with respect to compliance with the requirements of the Newark Order.

Governor Murphy's Executive Orders appear to prohibit municipalities from enacting or enforcing orders that may conflict or interfere with those statewide orders. However, the City of Newark's Order sets restrictions beyond those in Governor Murphy's prior Executive Orders. Businesses must prepare to comply with Newark's Order to avoid the particularly harsh penalty provisions.

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 local and [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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