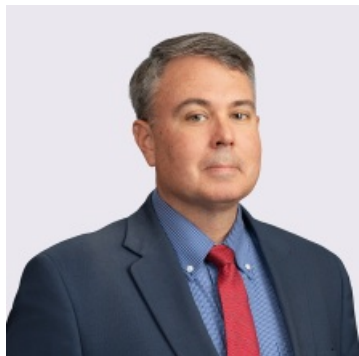


New Jersey Enters Phase Two: Outdoor Dining, Non-Essential Retail to Reopen with Restrictions

By James M. McDonnell & Justin B. Cutlip

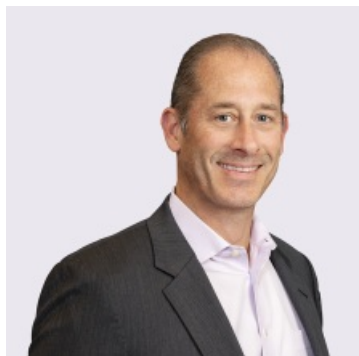
June 5, 2020

Meet the Authors



James M. McDonnell

Principal
908-795-5208
James.McDonnell@jacksonlewis.com



Justin B. Cutlip

Of Counsel
908-795-5136
Justin.Cutlip@jacksonlewis.com

Related Services

COVID-19
Disability, Leave and Health
Management
Hospitality
Restaurants
Retail
Workplace Safety and Health

Subject to certain restrictions, outdoor dining and non-essential retail shopping will be permitted in New Jersey beginning June 15, 2020, at 6:00 a.m., under [Executive Order 150](#) (EO 150).

EO 150 marks the state's entry into Phase Two of the Governor's Road Back Plan. (For an overview of the Plan, see our article, [New Jersey's Post-COVID-19 'Road Back' Plan Full of Red Lights](#).) Businesses must prepare to comply with the requirements to resume limited operations.

Restaurants and Dining Establishments

EO 150 permits restaurants, bars, and other establishments to offer outdoor dining, subject to the following seven conditions:

1. All areas designated for food or beverage consumption must conform with all applicable local, state, and federal regulations;
2. Capacity must be limited to ensure that all patrons can remain six feet apart from other patrons at all times, except for patrons sharing tables;
3. Satisfy the standards established by the Department of Health (details below);
4. Ensure all tables and individual seats in shared areas (*e.g.*, outdoor bar seats) are six feet apart in all directions;
5. Prohibit patrons from entering the indoor premises, except to walk through when entering, exiting, or using the restroom;
6. Require patrons to wear a face covering while inside the indoor premises (unless the patron has a medical condition or if the patron is a child under the age of two); and
7. Prohibit smoking in any outdoor areas designated for the consumption of food or beverages (this prohibition will expire automatically upon the state permitting in-person service in indoor areas).

The Department of Health issued [Executive Directive 20-014](#), in conjunction with EO 150. The Directive sets additional protocols and policies that any establishment offering outdoor dining must implement. These restrictions apply to business protocols, employees of the establishments, and customers.

Protocols

- Obtain municipal approvals and permits before offering outdoor dining;
- Post signage at the entrance stating that no one with a fever or symptoms of COVID-19 should enter the food or beverage establishment;
- Limit seating to a maximum of eight customers per table;
- Rope off or mark tables, chairs, and bar stools that are not to be used;
- Mark six feet of spacing in patron waiting areas;

- Provide physical guides (*e.g.*, tape and signs) to ensure customers remain at least six feet apart in line for the restroom or while waiting to be seated;
- Eliminate self-service options (*e.g.*, buffets, salad bars, and self-service soda fountains);
- Disinfect all tables, chairs, and all shared items (*e.g.*, menus, condiments, and pens) after each use;
- Install physical barriers and partitions at cash registers, bars, host stands, and other areas where maintaining a distance of six feet may be difficult;
- Ensure six feet of physical distancing between workers and customers (except at the moment of payment or when servicing the table);
- Require infection control practices (*e.g.*, regular handwashing, coughing/sneezing etiquette, and proper use and disposal of tissues);
- Frequent sanitization of high-touch areas such as credit card machines, keypads, and counters to which the public and workers have access;
- Conspicuous signage at the entrance alerting staff and customers to the six-foot social distancing requirement; and
- Implement an “inclement weather policy.” When the policy is triggered, the establishment must adhere to Executive Order 125 and offer takeout or delivery service only.

Employee Policies

- Wash or sanitize hands when entering the establishment;
- Conduct daily health checks (*e.g.*, temperature screening and symptom checking) safely and respectfully, and in accordance with any applicable privacy laws and regulations;
- Require employees with COVID-19 symptoms (*e.g.*, fever, cough, or shortness of breath) to go home;
- Require all employees to wear face coverings (except where doing so would inhibit the employee’s health) and require gloves when in contact with customers or handling prepared foods, serving utensils, and other items to customers;
- Provide employees with face coverings and gloves;
- Provide break time for repeated handwashing throughout the workday; and
- Provide staff sanitization materials (*e.g.*, hand sanitizer and sanitizing wipes).

Customer Policies

- Inform customers that the safety measures (*i.e.*, social distancing, face coverings, and so on) must be adhered to while in the establishment;
- Encourage reservations to control volume;
- Require customers to provide a phone number if making a reservation to facilitate contact tracing;
- Recommend customers wait in cars or away from the establishment if the wait area cannot accommodate social distancing;
- Alert customers via telephone calls or texts to limit use of shared objects (*e.g.*, buzzers);
- Encourage use of digital menus;
- Decline entry to the indoor portion of the establishment if the customer does not wear a face covering (unless for a medical reason or if the customer is a child under the age of two); and

- Provide a hand sanitizer station for customers.

Interestingly, the restrictions do not limit restaurant capacity; instead, allowing establishments to operate at a capacity that permits the requisite distancing provided in the EO 150 and Executive Directive. Furthermore, the Directive mandates any establishment that takes a reservation to obtain the customer's telephone number to facilitate contact tracing. The state likely will request that information from any such establishment in the event of a COVID-19 infection.

EO 150 further permits municipalities to authorize establishments to expand their respective footprints (*e.g.*, in sidewalks, streets, and parks) to adhere to the requirements in EO 150, as well as the Executive Directive.

Non-Essential Retail

EO 150 permits the brick-and-mortar premises of non-essential retail businesses to operate, provided those businesses follow Paragraph 1 of [Executive Order 122](#). The Governor, in a subsequent announcement, clarified that indoor malls remain closed and only retail business with exterior access may operate in Phase Two.

Such businesses must adopt policies that, at a minimum, include:

- Limit occupancy to 50 percent of maximum capacity;
- Establish hours of operation that provide access solely for high-risk individuals, as defined by the Centers for Disease Control and Prevention (CDC);
- Physical barriers for cashiers/baggers where feasible or otherwise ensure six feet of distance, except at the moment of payment or exchange of goods;
- Require infection control practices, *e.g.*, regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- Provide employee breaks for repeated handwashing throughout the workday;
- Contactless pay options and pickup or delivery of goods where feasible (such policies, where possible, must consider populations without internet access);
- Provide sanitization materials to staff and customers;
- Require frequent sanitization of restrooms, credit card machines, keypads, counters, shopping carts, and other high-touch areas;
- Signage alerting staff and customers of the required six-foot distancing protocol;
- Demarcate six feet of spacing on checkout lines; and
- Require workers *and customers* to wear cloth face coverings and workers to wear gloves when in contact with customers or goods.

Businesses must provide workers with gloves and facial coverings at the expense of the company. If a customer refuses to wear the required cloth face covering for non-medical reasons, the business *must* refuse entry to the customer if the business cannot provide such coverings to the customer at the point of entry.

Companies must ensure that locations operating under these restrictions meet all of the requirements in the Executive Order and Directive. Failure to do so may result in penalties including, but not limited to, civil fines, and imprisonment.

Reopening orders contain extensive requirements creating compliance issues that can vary significantly depending on the specific state or local jurisdiction. 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](#).

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.