April 10, 2020

New Jersey Executive Order No. 122 Mandates Stricter Protocols for Businesses During COVID-19 Pandemic

In his continuing effort to mitigate community spread of COVID-19, New Jersey Governor Murphy signed Executive Order No. 122 on April 8. The Order requires all nonessential construction projects to cease operations and places new requirements on businesses that are allowed to remain open and on landlords of those businesses. The Order's mandates go into effect at 8 p.m. on Friday, April 10. We previously reported here regarding Murphy's Executive Orders 107 and 108, effective at 8 p.m. on March 21, restricting nonessential retail, recreational and entertainment businesses; mandating minimum staff on-site for businesses continuing to operate; and encouraging employers to accommodate telework wherever practicable. Executive Order No. 122 places additional restrictions on businesses across the state.

Essential Construction Projects

The new Executive Order defines, in 13 general categories, what are referred to as "essential construction projects," including but not limited to projects necessary for the delivery of healthcare, transportation projects, utility projects, affordable housing projects, education facilities, certain home construction projects, certain data centers, and certain manufacturing and storage facilities servicing online retail or essential retail businesses. All other nonessential construction projects must cease operations no later than at 8 p.m. on Friday, April 10, except for work required to secure the site, ensure the structural integrity of buildings, abate hazards, and basically ensure the site and any buildings are appropriately protected. Given the ambiguity in some of the descriptions, any business that is engaged in or planning to engage in any construction project should consult with counsel and its contractor to determine if the project can proceed and, if doubt exists, how best to confirm with the proper governmental authority that its construction project is "essential" under the Executive Order and permitted to continue.

For essential construction projects, the new Executive Order imposes additional requirements, summarized below.

Essential Retail Businesses

Pursuant to the new Order, essential retail businesses that maintain in-person operations must implement policies that at a minimum:

a. limit occupancy at 50 percent of the stated maximum store capacity at one time;
b. establish hours of operation, wherever possible, that permit access solely to high-risk individuals;
c. install physical barriers between customers and cashiers/baggers wherever feasible, or otherwise, ensure 6 feet of distance between them except when paying for/exchanging goods;
d. require "infection control practices" (e.g., regular hand-washing, coughing and sneezing etiquette, proper tissues usage and disposal);
e. provide employee break time for repeated hand-washing throughout the workday;
f. arrange for contactless pay options, pickup and/or delivery of goods where feasible;
g. provide sanitization materials (e.g., hand sanitizer/wipes) to workers and customers;
h. require frequent sanitization of high-touch areas (e.g., restrooms, credit card machines, keypads, counters, shopping carts);

i. place conspicuous signage at entrances and throughout the store regarding the 6 feet of physical distance requirements;
j. demarcate 6 feet of spacing in checkout lines; and
k. require, with limited exceptions, workers and customers to wear cloth face coverings and workers to wear gloves when in contact with customers and goods.

With regard to the face covering and glove requirements, businesses, at their expense, must provide these protections to workers. Further, businesses that already provide workers with surgical-grade masks or other more-protective face coverings (either by law or otherwise) should continue to do so. Where customers refuse to wear cloth face coverings for nonmedical reasons, they must be denied entry to the business unless the business is providing medicine, medical supplies or food. In those situations, the business should provide alternative methods of pickup and/or delivery of such goods. Where customers refuse to wear cloth face coverings for medical reasons, the business and its employees are forbidden from requiring the individual to produce medical documentation verifying the stated condition.

Manufacturing, Warehousing and Essential Construction Project Businesses

The new Executive Order places similar but not identical mandatory obligations on manufacturing businesses, warehousing businesses and businesses engaged in essential construction projects. At a minimum, these businesses must:

a. prohibit nonessential visitors from entering the work site;
b. limit work site meetings, inductions and workgroups to fewer than 10 individuals;
c. require individuals to maintain 6 feet or more of distance between them whenever possible;
d. stagger work start/stop times to limit the number of individuals entering/leaving the work site concurrently;
e. stagger lunch breaks and work times to enable operations to safely continue while utilizing the least number of individuals possible at the site;
f. restrict the number of individuals who can access common areas (e.g., restrooms, breakrooms) concurrently;
g. require "infection control practices" (e.g., regular hand-washing, coughing and sneezing etiquette, proper tissues usage and disposal);
h. limit sharing of tools, equipment and machinery;
i. provide sanitization materials (e.g., hand sanitizer/wipes) to workers and visitors;
j. require frequent sanitization of high-touch areas (e.g., restrooms, breakrooms, equipment, and machinery);
k. immediately separate and send home workers who arrive at work with or become sick during the day with COVID-19 symptoms;
l. promptly notify workers of any known exposure to COVID-19 at the work site, which notice must be consistent with the Americans with Disabilities Act and other applicable laws;
m. clean and disinfect the work site in accordance with Centers for Disease Control and Prevention (CDC) guidelines when a worker at the site has been diagnosed with COVID-19;
n. follow all CDC, OSHA and New Jersey Department of Health guidelines and directives for maintaining a clean, safe and healthy work environment; and
o. require workers and visitors to wear cloth face coverings and workers to wear gloves when on the premises.

With requirements similar to those for essential retail businesses, non-retail businesses that are allowed to remain open must provide face coverings and gloves to workers at the company's expense and should continue to provide surgical-grade masks or other more-protective face coverings where required or applicable. If visitors refuse to wear cloth face coverings for nonmedical reasons, they must be denied entry to the business. If individuals refuse to wear face coverings for medical reasons, the business is forbidden from requiring the individual to produce medical documentation verifying the stated condition.

Landlords of Businesses Allowed to Remain Open

Executive Order No. 122 requires owners of buildings used for commercial, industrial or other enterprises to implement cleaning protocols in areas where operations are conducted. At a minimum, such landlords must:

a. routinely clean and disinfect high-touch areas in accordance with CDC guidelines;
b. maintain cleaning procedures in all other areas of the facility;
c. follow a known or potential COVID-19 exposure in the facility, ensure cleaning procedures in the facility are in compliance with CDC recommendations; and
d. ensure that the facility has a sufficient number of workers to effectively perform the protocols outlined in a., b. and c. in a manner that ensures the safety of occupants, visitors and workers.

As a result of Executive Order No. 122, New Jersey businesses should review their current COVID-19-related policies and protocols to ensure compliance with these new mandates. Where necessary, they should update or develop written policies that implement the required obligations of Executive Order No. 122. Businesses should also review their lease agreements to determine their obligations under their leases regarding maintenance and cleaning of premises.

Day Pitney is here to assist with any questions businesses have or guidance businesses may need on all COVID-19-related laws and regulations, including Executive Order No. 122.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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