March 22, 2020

New Jersey Governor Orders Businesses to Make "Best Efforts" to Reduce On-site Staff and Closes "Non-Essential" Retail Establishment Due to COVID-19 Pandemic

On Saturday, March 21, New Jersey Governor Murphy issued Executive Order 107 and Executive Order 108, both effective at 8:00 p.m. on March 21. Executive Order 107 directs that ***the brick-and-mortar premises of all non-essential retail businesses*** and ***all recreational and entertainment businesses close to the public*** no later than March 21 at 8:00 p.m., and remain closed until the Order is rescinded. Further, ***Executive Order 107 requires businesses and not-for-profit entities*** in the State of New Jersey, whether closed or open to the public, ***to make best efforts to reduce staff on site to the minimal number necessary*** to ensure that essential operations can continue, and ***to accommodate their workforce, wherever practicable, for telework or work-from-home arrangements***. New Jersey businesses should be aware that Executive Order 108 invalidates inconsistent orders from municipalities and only provides municipalities with discretion to impose restrictions on "online marketplaces for arranging or offering lodging" or local parks.

Essential retail businesses whose brick-and-mortar premises remain open to the public will be required to abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Separate restrictions will apply to restaurants; cafeterias; dining establishments and food courts, with or without a liquor license; all bars; and all other holders of a liquor license with retail consumption privileges.

Executive Order 107 provides a categorical list of brick-and-mortar retail businesses that may remain open to the public as "essential" retail business and a categorical list of recreational and entertainment businesses that must close to the public. Under Executive Order 107, the State Director of Emergency Management (SDEM) has the discretion to make additions, amendments, clarifications, exceptions and exclusions to the list of essential brick-and-mortar retail businesses, and recreational and entertainment businesses. Brick-and-mortar retail businesses and recreational business that may be required to close to the public under the Order may seek clarifications, exception or exclusion by requesting an opinion or action from the SDEM***. Day Pitney attorneys are studying precedent and preparing to promptly submit client applications to SDEM for such clarifications, exceptions or exclusions, as appropriate, for purposes of gaining full or partial relief from the restrictions of Executive Order 107.***

Executive Order 107 defines essential retail businesses to include:

- Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store
- Pharmacies and alternative treatment centers that dispense medicinal marijuana
- Medical supply stores
- Retail functions of gas stations
- Convenience stores
- Ancillary stores within healthcare facilities

- Hardware and home improvement stores
- Retail functions of banks and other financial institutions
- Retail functions of laundromats and dry-cleaning services
- Stores that principally sell supplies for children under five years old
- Pet stores
- Liquor stores
- Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics
- Retail functions of printing and office supply shops
- Retail functions of mail and delivery stores

The categorical list of recreational and entertainment businesses closed to the public includes:

- Casinos and any in-person wagering
- Racetracks and retail sports wagering location
- Gyms, fitness centers, classes
- All entertainment centers, including but not limited to movies, theaters, nightclubs
- Indoor areas of any mall
- All places of public amusement, parks, children's play centers, zoos
- All personal care facilities, including but not limited to hair and nail salons, massage or spa facilities
- All municipal, private and public libraries

Notably, the State's COVID Information Hub provides additional guidance for businesses outside the retail, recreational and entertainment space. This guidance indicates that "[m]anufacturing, industrial, logistics, ports, heavy construction, shipping, food production, food delivery, and other commercial operations may continue operating, but … they should limit staff on site to the minimal number to ensure that essential operations can continue."

In addition to requiring closure to the public of non-essential retail business and recreational and entertainment businesses, Executive Order 107 restricts the movement of residents of the State of New Jersey. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses; 2) obtaining takeout food or beverages from restaurants, other dining establishments or food courts; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair or engaging in outdoor activities with immediate family members, caretakers, household members or romantic partners while following best social distancing practices, including staying six feet apart; 7) leaving the home for an educational, religious or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency. Further, when in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members or romantic partners. Individuals who travel, in accordance with the Order, should only use public transportation if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making all efforts to stand or sit six feet away from other riders and frequently use sanitizing products. Gatherings of individuals, such as parties, celebrations or other social events, are cancelled, unless otherwise authorized by any part of this Order.

The New Jersey Orders are less restrictive than the Executive Orders issued by the governors of New York and Connecticut, which Executive Orders require *all* non-essential business to reduce their on-site workforce by 100%. New Jersey businesses are required only to make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations. But, the New York and Connecticut Executive Orders do not expressly address the free movement of individuals.

For your information, on March 18, New York's Governor Cuomo issued Executive Order 202.6, addressing on-site workforce reductions, which Executive Order becomes effective March 22. "Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction on Executive Order 202.6" was published by the New York State Department of Economic Development. The New York DED guidance includes a form to submit a Request for Designation as an Essential Business for Purposes of Executive Order 202.6.

On March 20, Connecticut Governor Lamont issued a similarly worded Executive Order 7H, which becomes effective March 23 and is subject to further guidance to be issued by the Commissioner of Department of Economic and Community Development (DECD). For more information on the Connecticut Executive Order, see Day Pitney Prepares to Assist Clients in Requesting Designation as "Essential" Business under Connecticut's COVID-19 "Work from Home" Executive Order.

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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