

New Jersey Employers Should Update Their Workplace COVID-19 Safety Protocols In Light of Recent Executive Order

By: Laura H. Corvo
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Under a recent Executive Order (the Order) signed by New Jersey Governor Phil Murphy, all New Jersey employers will now be required to implement health and safety protocols designed to protect workers from COVID-19. The Order, which Governor Murphy issued in response to the rising number of COVID-19 cases and the lack of national workplace standards for preventing the spread of COVID-19, requires employers throughout New Jersey to establish procedures related to, among other things, social distancing, masking, health screenings, hygiene, cleaning, symptomatic employees and notification of a workplace exposure to COVID-19. The Order requires that the New Jersey Department of Labor establish an online complaint form for employees, and work with the New Jersey Department of Health to develop investigation protocols. Employers who fail to comply with the Order can be exposed to penalties of up to \$1,000, imprisonment of up to six months and closure by the New Jersey Department of Health.

The Order is New Jersey's first COVID-19 workplace guidance to apply to *all* employers who have employees in New Jersey. Previous guidance was only industry specific. This means businesses with employees in New Jersey who have already implemented COVID-19 policies will have to ensure compliance with the Order and those employers who *do not* have such policies need to implement them.

WHAT THE NEW JERSEY EXECUTIVE ORDER REQUIRES

The Order requires all businesses, non-profits, governmental entities and educational institutions which require or permit employees to work in a worksite located in New Jersey to implement protocols related to the following areas:

- **Social Distancing.** Employees must be required to maintain at least six feet of distance from each other whenever possible (including during meetings, in common areas and when entering and exiting the workplace). When the nature of the work does not permit six feet of distance, employers are required to install physical barriers between workers and ensure mask wearing.
- **Masking Requirements for Employees.** Employees must be required to wear face masks or coverings (in accordance with CDC guidance, *i.e.*, covering the nose and mouth) at all times while in the workplace except when (1) the employee is alone in a walled off office, (2) the employee is at a work station that is six feet away from others or (3) when it is impractical do so (such as while eating or drinking). While employees may be permitted to wear their own surgical-grade face mask or other protective face covering if they choose, employers must provide cloth or disposable masks to employees at no cost to the employee. The Order also specifies that employers may have to provide accommodations to employees who cannot wear face masks or coverings due to medical-related reasons.
- **Masking Requirements for Customers and Visitors.** In addition to employees, all visitors and customers who enter the workplace must be required to wear a face mask or covering, and employers must deny entry to any employee, customer or visitor who refuses to wear a cloth or disposable face mask or covering, except when prohibited by state or federal law.
- **Health Screenings.** Employers must conduct routine health screenings of employees. These health screenings need to be conducted on a daily basis and prior to each shift the employee works for the employer. The Order lists examples of the types of health screenings that employers may perform to include temperature checks, visual symptom checks, self-assessment checklists

and/or health questionnaires consistent with CDC guidance, including the latest CDC guidance regarding COVID-19 symptoms. The Order also requires that employers keep information regarding health screenings confidential.

- **Hygiene.** Employers are required to provide sanitation materials, such as hand sanitizers or sanitizing wipes to employees, customers and visitors at no cost to those individuals. Employers must also require that employees practice regular hand hygiene throughout the day and provide employees with breaks for hand washing and access to hand washing facilities. While the Order permits employers to adopt policies requiring employees to wear gloves, glove wearing must be in addition to regular hand hygiene and the employer must provide the gloves at no cost to the employee.
- **Cleaning.** Employers must also conduct routine cleaning and disinfecting of all high-touch areas and areas accessible to employees, customers or other individuals including restrooms, handrails, door knobs, other common surfaces, safety equipment and frequently touched surfaces (including employee equipment).
- **Employees Exhibiting Symptoms in the Workplace.** Employers are required to separate and send home any employee who develops COVID-19 symptoms during the workday. Such employees must be permitted to utilize available time off under the New Jersey Earned Sick Leave Act and New Jersey Family Leave Act.
- **Known Workplace Exposure.** In the event of a known workplace exposure to COVID-19, employers must “promptly notify *all* employees” and ensure that the notification is consistent with ADA and other applicable laws and EEOC guidance (*i.e.*, without revealing the identity of the exposed individual). Employers must also clean and disinfect the worksite in accordance with CDC guidance.

WHAT EMPLOYERS SHOULD DO IN LIGHT OF THE ORDER

- **Update or Implement Written Policies.** Those employers who have existing COVID-19 workplace safety protocols should review and update those to ensure compliance with the Order. Those employers that *do not* have written policies regarding COVID-19 workplace safety should immediately implement them consistent with the Order.
- **Communicate and Train.** Employers should communicate the policies to employees, have employees acknowledge their receipt and understanding of the policies and train them in those policies. In addition, employers should designate a point of contact (such as human resources) for employees to obtain information about the protocols, ask questions about the protocols and report violations of the protocols.
- **Enforce.** While written policies will be helpful in demonstrating compliance, they will not absolve employers of exposure for violations of the Order if employees fail to follow the employer’s written mandates. This means employers need to make sure that employees are complying with the safety protocols, including disciplining those employees who fail to abide by the protocols.
- **Routinely Review and Update COVID-19 Workplace Safety Protocols.** The Order highlights a growing trend of state and local COVID-19 workplace mandates that is likely to continue in the absence of national workplace standards. That means employers inside and outside of New Jersey should routinely review and update COVID-19 workplace protocols to ensure compliance with state and local mandates.

If you have any questions please contact Laura Corvo (corvol@whiteandwilliams.com; 201.368.7226) or another member of the Labor and Employment Group.

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