

Insights

NATIONWIDE IMPLICATIONS OF CDC AND NJ UPDATED WORKPLACE REQUIREMENTS

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Recent state and federal developments are a reminder that the COVID-19 landscape is continually changing and demonstrate that businesses must remain alert and nimble as they address rapidly evolving mandates from both the federal and state sectors in the COVID-19 environment. Specifically, in the last week: (1) the Centers for Disease Control (“CDC”) issued interim guidance¹ for critical infrastructure workers; and (2) on April 8, 2020 the Governor of New Jersey signed a new Executive Order² expanding the state’s Stay-at-Home restrictions.

Businesses that continue to operate under Stay-at-Home orders can expect evolving requirements intended to keep workplaces safe. The New Jersey order is an example of just one state with recent changes; however, it is not alone. Many states are modifying their orders or issuing new guidance as the nation continues to learn more about COVID-19 and as the business community tries to understand and adjust to the orders. One of the biggest challenges is that there is no one source from which updated requirements for businesses might come. New requirements may be issued by state or local health departments, state or local executive orders, and federal agencies. These two most recent developments underscore the importance of continued monitoring to ensure businesses remain aware of the rapidly changing environment.

Below are just some of the details of these recent requirements:

CDC Interim Guidance:

- Under the previous guidance, all workers, even those in the critical infrastructure sectors, were advised to leave work and “self-quarantine” for 14 days if exposed to someone with the COVID-19 virus.
- New guidance allows critical infrastructure workers who have been exposed to COVID-19 to return to work and outlines the requirements. In order to do so, the worker must: (1) be asymptomatic; (2) practice social distancing whenever possible; (3) take their temperature before entering the work premises; (4) not share headsets or objects used near the face; and (5) wear a face mask at all times for 14 days after the exposure.

- Importantly, employers are urged to, among other things, send workers home immediately if they are sick, increase the indoor air circulation in the facility, and expand sanitation and/or cleanliness practices.

The April 8 New Jersey Executive Order:

- On March 21, 2020, the Governor of New Jersey issued an initial stay-at-home order which, among other things, required that New Jersey residents remain in their homes and “brick and mortar premises” of non-essential businesses be closed.³ The order allowed essential businesses to continue operating with only a few preventative measures in place.
- Effective April 10, “essential” retail businesses must implement additional measures to reduce the spread of COVID-19, including reducing occupancy, adjusting hours of operation, enforcing social distancing (including physical barriers), increasing sanitation measures in high-contact areas, providing additional employee breaks for handwashing, and requiring employees and customers to wear face coverings and employees to wear gloves (subject to certain medical exemptions).
- While the initial order permitted construction projects to continue operating, the April 8 order changed course, requiring non-essential construction to cease. “Essential” construction projects in the following areas may continue: health care services, social services, transportation, utilities, affordable housing, school (pre-K to 12) and higher education facilities. Additionally, certain projects already underway are allowed to continue for residential construction, as well as any emergency repairs necessary to ensure the health and safety of residents.
- Manufacturers, warehouses, and other businesses must implement the following at their workplaces: prohibit non-essential visitors from entering the worksite, limit worksite meetings, require individuals to maintain six feet or more of social distancing between them wherever possible, require employees to wear face masks and gloves, stagger work times and lunch breaks, limit access to breakrooms and restrooms, and limit the sharing of tools, equipment, and machinery.

Steps Businesses Should Consider?

The April 8 modifications to the New Jersey Order and to the CDC guidance highlight issues all businesses should be considering, whether in New Jersey or any other state, as changes may be coming to your state next:

1) **Consider paying for sanitary measures.** Businesses may be responsible for providing infection control practices, sanitization materials to workers and visitors alike, and frequently sanitizing high-touch areas such as restrooms, breakrooms, equipment, and machinery.

2) **Plan for the impact of changing definitions of “Essential Businesses”**. Following New York State’s lead, New Jersey just stopped all “non-essential” construction projects. Are any projects that your company has in jeopardy of being halted?

3) **Social distancing requirements at work**. Many states already require social distancing in the workplace, and states that do not currently may implement those requirements in the future. Are you prepared to operate with employees physically separated by at least six feet or more? Are your work spaces, lunch room, break room, and physical plant compliant wherever possible? Are you prepared to adjust schedules? Are you prepared to provide masks and gloves? Are you able to manage the number of customers that enter, and ensure that they are adhering to social distancing requirements?

4) **Exposed employees working**. Based on the CDC guidance, critical infrastructure exposed employees can go to work as long as they follow the requirements in the guidance. Has your company been sending employees home that now can return to work? Is your company able to comply with the sanitation requirements if employees are allowed to stay? How do these policies interact with your leave and healthcare insurance programs?

Conclusion

Your company needs to be ready to deal with this ever-changing landscape of Executive Orders, advisory directives, guidance, and memoranda. It is imperative that you are aware of changes as they happen, and that you understand the potential implications of these documents to best respond to them.

BCLP is actively tracking new developments regarding COVID-19 shutdown orders, and associated guidance, so please contact the [COVID-19 Shutdown Team](#) if you have specific jurisdictional questions or if it would be helpful to have a portfolio audit so that your team can more effectively manage these changes across jurisdictions as they occur.

1. <https://www.cdc.gov/coronavirus/2019-ncov/downloads/critical-workers-implementing-safety-practices.pdf>

2. <https://www.nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>

3. <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

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