

New Jersey Closes Non-Essential Retail Businesses, Directs Stay-at-Home, Sets State Response to COVID-19

By James M. McDonnell and Justin B. Cutlip

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On March 21, 2020, New Jersey Governor Phil Murphy issued Executive Order No. 107, which directs additional closures of non-essential retail businesses (with certain exceptions) and establishes uniformity in the state's response to the coronavirus (COVID-19).

In a separate Order (EO 108) the state invalidated all county and municipal COVID-19 executive orders that conflicts with the state's. Therefore, except for certain factual findings in the Governor's EO 104, EO 107 serves as the operative Executive Order with respect to COVID-19 restrictions in New Jersey.

The newly announced restrictions on business operations in EO 107, however, appear to maintain the status quo and remain limited to retailers, restaurants, and other entertainment establishments.

Stay-at-Home Order

Effective March 21, 2020, EO 107 requires New Jersey residents to remain at home, except to obtain or engage in the following:

1. Purchases from essential retail businesses;
2. Takeout food or beverages;
3. Medical attention, social services, law enforcement assistance, or emergency services;
4. Visits to family or those with whom the individual has a close personal relationship;
5. *Reporting to or performing their job*;
6. Outdoor walking or other exercise;
7. Educational, political, or religious activities;
8. Leaving because of a reasonable fear for health or safety; or
9. Leaving at the direction of law enforcement or a government agency.

In general, the EO's restrictions on restaurants, bars, and foodservice establishments remain in place, with the EO expressly permitting takeout and delivery services. Similarly, with few exceptions, all recreational and entertainment businesses remain closed to the public as long as the EO is in effect. These aspects of the EO are discussed in more detail below.

Notwithstanding the above, New Jersey residents' ability to travel to or from work for an "essential retail business" (one not subject to the Non-Essential Retail Business Closure, discussed below) to report to work as regularly scheduled likely is not limited by EO 107. In addition, all other businesses or non-profits in the state, whether closed or open to the public, can remain open. However, they must accommodate their workforce, wherever practicable, with telework arrangements, or make "best efforts" to limit those employees who cannot perform their functions by telework "to the minimal number necessary to ensure that essential operations continue." Ultimately, many aspects of the newly issued order remain vague or not defined. Further clarification on the scope of the businesses affected by the closures may follow.

Non-Essential Retail Business Closure

EO 107 directs the closure of the "brick-and-mortar premises of all non-essential retail businesses[.]" However, it fails to define "non-essential" and appears to permit non-essential retailers to maintain operations outside of typical brick-and-mortar locations (*e.g.*, online offerings, delivery offerings, and pickup services), allowing retail businesses to continue operations outside of certain store locations.

Moreover, EO 107 permits non-essential retail businesses located within malls (provided they maintain

Meet the Authors



James M. McDonnell

Principal
Berkeley Heights 908-795-5208
Email



Justin B. Cutlip

Of Counsel
Berkeley Heights 908-795-5136
Email

points of ingress/egress separate from those of the mall) to remain open if the entrances and exits to the common area of the mall remain closed.

Exceptions: Restaurants, Recreation, Entertainment, Non-Essential Retail Operations

EO 107 maintains the previously issued restrictions on restaurants, bars, food courts, cafeterias, and foodservice establishments (*i.e.*, normal operations limited to delivery or takeout), as well as casinos, gyms, fitness centers and entertainment centers. (See our article, [New Jersey Governor Executive Order Requires Shutdown of Gaming, Racetracks, Gyms, Entertainment Centers.](#))

Additionally, incorporated the New Jersey Office of Emergency Management's March 17, 2020, Administrative Order is incorporated, closing places of public amusement and the indoor common areas of retail malls, subject to exceptions for restaurants and retail stores with separate entrances from the mall common areas. The EO provides:

Restaurants and other stores located within shopping malls that have their own external entrances open to the public, separate from the general mall entrance, *may remain open pursuant to the terms and directives of this Order* for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

Accordingly, non-essential retail operations with separate entrances and exits from common indoor mall entrances arguably may continue normal operations, while stand-alone brick-and-mortar locations would be subject to the shutdown. The state may further clarify the extent of this restriction. The shutdown restriction, however, unequivocally applies to barber shops, spas, hair salons, bowling alleys, tanning salons, tattoo parlors, and social clubs. The restrictions remain in place until lifted by the Governor.

Essential Retail Business Operations

Essential retail businesses may operate, but are restricted from providing any services, to the extent practicable, other than pick-up services, delivery services, and online ordering, so long as the establishment maintains the appropriate authorization to conduct business in that fashion.

EO 107 identifies 16 exempted, essential retail business operations:

1. Grocery stores, farmer's markets, farms that sell directly to customers, and other food stores;
2. Pharmacies;
3. Medical marijuana dispensaries;
4. Medical supply stores;
5. Gas stations;
6. Convenience stores;
7. Ancillary stores within healthcare facilities;
8. Hardware and home improvement stores;
9. Retail functions of banks and other financial institutions;
10. Retail functions of laundromats and dry-cleaning services;
11. Stores that principally sell supplies for children under five-years-old;
12. Pet stores;
13. Liquor stores;
14. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
15. Printing and office supply shops; and
16. Mail and delivery stores.

These essential retail business operations must comply with social distancing guidelines to prevent the spread of COVID-19.

Work-from-Home Accommodations, Social Distancing in Workplace

EO 107 requires all businesses and non-profits to accommodate work-from-home or telework arrangements for their employees "wherever practicable." To the extent that a business has employees who cannot perform their functions by telework or work-from-home arrangements, the business "should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue."

The EO does not elaborate on what it means by "the minimal number necessary." However, it provides broad examples of employees who may need to be physically present at their worksite to perform their duties include:

- Cashiers
- Store clerks
- Construction workers

- Utility workers
- Repair workers
- Warehouse workers
- Lab researchers
- Information technology maintenance workers
- Janitorial and custodial staff
- Certain administrative staff

County, Municipal Restrictions

Following local executive actions in Hoboken, Paterson, Newark, and Bergen County, the Governor expressly invalidated all local restrictions to the extent they conflict or interfere with the EO 108.

EO 108 invalidates county or municipal restrictions that:

1. Add or delete essential retail businesses;
2. Restrict any business's scope of service or hours of operation;
3. Include density or social distancing requirements;
4. Relate to gatherings of individuals; and
5. Restrict the freedom of movement including curfews.

Therefore, EO 108 provides much needed uniformity in the effort to combat the spread of COVID-19 by eliminating the patchwork of restrictions throughout New Jersey.

EO 107 provides “[i]t shall be the duty of every person or entity in this State or doing business in this State ... to cooperate fully in all matters concerning this Executive Order.” Governor Murphy’s most recent orders largely limit closures to certain industries (*e.g.*, non-essential retailers, bars, restaurants, and entertainment). While requiring other businesses to take affirmative steps to combat COVID-19, through social distancing, work-from-home, and minimal on-site staffing, these entities are allowed to maintain operations.

The COVID-19 situation remains fluid. If you need guidance in handling the complicated issues pertaining to COVID-19, please contact a Jackson Lewis attorney.

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