

New Jersey: Daycare Shutdown, Except for ‘Essential Persons’ at Certified Emergency Care Centers

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New Jersey Governor Phil Murphy has ordered the shutdown of daycare facilities, effective April 1, 2020, except for certified emergency childcare centers that provide services only to “essential persons.”

Executive Order No. 110 notes that many daycare centers already elected to cease operations, explaining that such facilities present challenges to coronavirus (COVID-19) prevention, *e.g.*, social distancing. Accordingly, EO 110 sets a procedure by which daycare centers can remain operational through the duration of state of emergency.

Designation as Emergency Child Care Center

By March 27, 2020, any daycare center that seeks to remain open through the duration of the crisis must submit a certification to the Department of Children and Families (DCF) requesting designation as an Emergency Child Care Center using the DCF provided “Certification Form for Centers Seeking to Provide Child Care to Essential Persons During the Public Health Emergency.” Any such Emergency Child Care Center must follow DCF standards on appropriate social distancing, hand washing, cleaning, and other public health prevention strategies to maintain the designation. Failure of a center to submit the certification for the Emergency Child Care Center designation by the March 27 deadline means the center must cease operations effective April 1, 2020.

Compared with EO 107

The extent of available childcare services appears limited under EO 110 and narrower than the businesses permitted to operate under EO 107 (see our article, [New Jersey Closes Non-Essential Retail Businesses, Directs Stay-at-Home, Sets State Response to COVID-19](#)). While EO 107 expressly limited business shutdowns to non-essential retail operations (with additional restrictions and accommodations obligations upon other businesses), EO 110 appears to limit Emergency Child Care Center services only to employees deemed “essential persons.”

New Jersey defines the following as “essential persons” entitled to daycare services at Emergency Child Care Centers:

1. Health care workers, including staff working in health care facilities and in community-based services including home health and behavioral health;
2. Law enforcement personnel, firefighters, emergency services personnel, and staff at correctional facilities;
3. Individuals employed at the Emergency Child Care Centers;
4. Staff working for entities that provide essential social services, including but not limited to, group home and shelter staff;
5. Essential government employees who are unable to work from home; and
6. Certain critical workers, as defined by the Commissioner of DCF, at essential retail businesses, as defined in EO 107 and subsequent Administrative Orders.

EO 110 makes no mention of the availability of Emergency Child Care services to individuals employed in positions not subject to the shutdown order, *e.g.*, construction workers, utility workers, warehouse workers, repair workers, janitorial staff, and so on. The Commissioner of DCF, in conjunction with the State Director of Emergency Management, may revise the list of “essential persons” based on need and capacity of the Emergency Child Care Centers.

Ultimately, EO 110 may result in additional workers utilizing Earned Sick Leave and additional benefits

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if the unavailability of daycare services results in an employee's inability to work. Additional information and clarification from the Commissioner of DCF may follow.

Jackson Lewis attorneys will provide updates as the COVID-19 response develops. Please contact a Jackson Lewis attorney if you have any questions.



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