

New Jersey Suspends Non-Essential Construction Projects, Requires Continuing Businesses to Implement Policies

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New Jersey Governor Phil Murphy has signed [Executive Order 122](#) (EO 122), suspending all non-essential construction projects effective April 10, 2020, at 8:00 p.m.

EO 122 also requires businesses that continue to operate during the state's expansive closure order (e.g., affecting essential retail, manufacturing, warehousing, and essential construction) to implement policies designed to prevent the spread of COVID-19.

Moreover, under EO 122, with limited exceptions, certain workers must wear gloves and cloth face coverings, provided at the employer's expense.

Suspension of Non-Essential Construction Work

EO 122 requires suspension of all non-essential construction projects. "Essential construction projects" is defined to include:

- Projects necessary for the delivery of health care services (hospitals, health care facilities, and pharmaceutical manufacturing facilities);
- Transportation projects;
- Utility projects;
- Residential projects designated exclusively as affordable housing;
- Projects involving pre-K to 12 schools and projects involving higher education facilities;
- Projects already underway involving individual single-family homes, or an individual apartment unit where an individual already resides, with a construction crew of up to five individuals (inclusive of additions to single-family homes such as solar panels);
- Projects involving facilities where the manufacture, distribution, storage, or servicing of goods or products that are sold by online retail businesses or essential retail businesses;
- Projects involving data centers or facilities critical to a business's ability to function;
- Projects necessary for the delivery of essential social services;
- Projects necessary to support law enforcement or first responders in their efforts to combat COVID-19;
- Projects for the government (federal, state, county, or municipal);
- Any work required to physically secure or ensure the structural integrity of a non-essential construction project; and
- Emergency repairs necessary to ensure the health and safety of residents.

EO 122 suspends work on all other, non-essential construction projects.

Protocol Requirements for Essential Retail Businesses

While many essential retail businesses have already implemented policies designed to prevent the spread of COVID-19, EO 122 expressly requires these establishments (e.g., grocery stores, pharmacies, banks, and the like; see our article, [New Jersey Closes Non-Essential Retail Businesses, Directs Stay-at-Home, Sets State Response to COVID-19](#)) to adopt the following minimum requirements:

- Limit occupancy to 50 percent of maximum capacity;
- Establish hours of operation that provide access solely for high-risk individuals;
- Install physical barriers for cashiers/baggers where feasible or otherwise ensure six feet of distance, except at the moment of payment or exchange of goods;
- Require infection control practices, e.g., regular hand washing, coughing, and sneezing

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- etiquette and proper tissue usage and disposal;
- Provide employee breaks for repeated handwashing throughout the workday;
- Provide contactless pay options, pickup or delivery of goods where feasible (such policies, where possible, must consider populations without internet access);
- Provide sanitization materials to staff and customers;
- Require frequent sanitization of restrooms, credit card machines, keypads, counters, shopping carts, and other high-touch areas;
- Signage alerting staff and customers of the required six-foot distancing protocol;
- Demarcate six feet of spacing on checkout lines; and
- Require workers *and customers* to wear cloth face coverings and workers to wear gloves when in contact with customers or goods.

Businesses must provide workers with gloves and facial coverings at the expense of the business. If a customer refuses to wear the required cloth face covering for non-medical reasons, the business *must* refuse entry to the customer. However, to the extent the business provides medication, medical supplies, or food, the business should provide alternate means for pickup or delivery of the goods.

Policy Requirements for Manufacturing, Warehousing, Essential Construction

EO 122 also requires businesses in manufacturing, warehousing, or essential construction (defined above) to implement policies that, in many respects, overlap those placed upon essential retail businesses, including:

- Prohibit non-essential visitors from entering the worksite;
- Limit worksite meetings or groups to 10 or fewer individuals;
- Require six feet of social distancing wherever possible;
- Stagger work start and stop times where practicable;
- Stagger lunch breaks where practicable, while utilizing the least number of individuals possible at the site;
- Restrict the number of individuals who can access common areas (*e.g.*, restrooms and breakrooms);
- Require workers to wear gloves and cloth face coverings (at the employer's expenses), except if a medical reason would prevent a worker from wearing them;
- Require visitors to wear cloth face masks (except for medical reasons);
- Require infection control practices (*e.g.*, regular hand washing, coughing, and sneezing etiquette, and the like);
- Limit sharing of tools, equipment, and machinery;
- Provide sanitization materials to workers and visitors; and
- Require frequent sanitization of high-touch areas.

Much like the requirements for essential retail businesses, these covered businesses must provide workers with gloves and facial coverings at the expense of the company. If a visitor refuses to wear the required cloth face covering for non-medical reasons, the business *must* refuse entry to the visitor. While many businesses likely have instigated these protocols already, EO 122 mandates implementation of these policies with potential penalties for violations.

Mandatory COVID-19 Response Policies

To the extent a business was not already following the Centers for Disease Control and Prevention's (CDC) guidance with respect to actual and suspected COVID-19 cases, EO 122 mandates a response protocol for all essential retail, essential construction, warehousing, and manufacturing businesses as follows:

- Immediately separate and send home workers who appear to have COVID-19 symptoms;
- Promptly notify workers of any known exposure to COVID-19 at the worksite (consistent with confidentiality requirements under applicable law);
- Clean and disinfect the worksite in accordance with CDC guidelines; and
- Follow New Jersey Department of Health, CDC, and Occupational Health and Safety Administration guidelines.

Commercial Landlord, Building Owner Obligations

For any business permitted to continue operations under the Governor's previous Executive Orders, the owners or landlords of those buildings must adopt policies and protocols that must include, at a minimum, the following:

- Clean and disinfect high-touch areas routinely in accordance with CDC guidelines;
- Maintain cleaning procedures in all areas of the facility; and
- Ensure sufficient staffing to perform the protocols.

To the extent landlords or building owners have not already implemented disinfectant procedures, EO 122 mandates implementation of these protocols.

Violations

Failure to adhere to the requirements of EO 122 may result in a disorderly person's offense punishable with a civil fine of up to \$1,000, imprisonment up to six months, or both.

Jackson Lewis will continue follow and apprise you of developments that affect your business as the COVID-19 crisis continues. Please contact a Jackson Lewis attorney if you have questions.

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