

COVID-19: GOVERNOR MURPHY SIGNS EXECUTIVE ORDER NO. 192 MANDATING HEALTH AND SAFETY PROTOCOLS FOR NEW JERSEY WORKSITES

Date: 30 October 2020

Labor, Employment, and Workplace Safety Alert

By: Vincent N. Avallone, Joshua D. Rinschler

On 28 October 2020, as part of the state's ongoing response to the COVID-19 pandemic, New Jersey Governor Phil Murphy signed Executive Order No. 192 (EO 192), which mandates that New Jersey employers abide by certain health and safety standards in an effort to protect employees and other individuals at workplaces during the pandemic.

EO 192 does the following:

1. Establishes health and safety standards that apply to both public and private sector workplaces;
2. Directs the New Jersey Department of Health (NJDOH) and Department of Labor and Workforce Development (NJDOL) to establish enforcement mechanisms to ensure that employee complaints and reports of noncompliance with EO 192 are addressed; and
3. Directs the NJDOL to develop and provide compliance materials and safety training related to the requirements of EO 192.

WORKPLACE HEALTH AND SAFETY STANDARDS

EO 192 requires that, beginning at 6:00 a.m. on 5 November 2020, all employers that require or permit all or part of their workforce to be physically present at a worksite to perform work must follow the health and safety protocols set forth in the Order. These protocols include:

- Conducting daily health checks of employees, such as temperature screenings, visual symptom checking, self-assessment checklists, and/or health questionnaires, consistent with both CDC guidance and the confidentiality requirements of applicable state and federal laws;
- Requiring that individuals at the worksite (including employees, customers, visitors) maintain at least six feet of distance from one another to the maximum extent possible;
- Where the nature of an employee's work or the work area does not allow for six feet of distance to be maintained at all times, ensuring that employees wear a mask and installing physical barriers between workstations wherever possible;
- Requiring individuals at the worksite to wear face masks, with certain limited exceptions, though employees may be permitted to remove face masks when they are situated at their workstations and are more than six feet from other individuals, or alone in a walled office;

- Permitting employers to deny entry to the worksite to employees or visitors who decline to wear a face mask unless doing so would violate applicable laws such as the Americans with Disabilities Act and/or the New Jersey Law Against Discrimination;
- Requiring employers to make available, at their expense, face masks to their employees, although employees may use their own face mask if they prefer;
- Requiring employers to make available sanitization materials, such as hand sanitizer to employees, customers, and visitors at no cost to those individuals;
- Ensuring that employees practice regular hand hygiene and provide employees break time for repeated handwashing throughout the workday;
- Routinely cleaning and disinfecting all high-touch areas such as restrooms, hand rails, door knobs, and other frequently touched surfaces;
- Excluding from the workplace employees who appear to have symptoms consistent with COVID-19 and following the requirements of applicable leave laws;
- Promptly notifying all employees of any known exposure to COVID-19 at the worksite, while maintaining the confidentiality of the infected individual(s) and cleaning and disinfecting the worksite when an employee has been diagnosed with COVID-19.

EO 192 provides a limited exclusion for specified business operations (such as first responders, health care personnel, and law enforcement) when the protocols interfere with the discharge of operational duties. In addition, the protocols do not apply to the United States government or to religious institutions if doing so would prohibit the free exercise of religion.

While many New Jersey employers conducting on-site operations are likely following many of these protocols already, going forward, employers must ensure they are complying with all of the protocols set forth in EO 192 at all worksites in the State.

COLLABORATIVE ENFORCEMENT MECHANISM TO ADDRESS COMPLAINTS

EO 192 requires the Commissioner of the NJDOL, in consultation with the Commissioner of the NJDOH to establish: 1) a mechanism to receive complaints from individuals regarding deficiencies in employer compliance with the requirements of EO 192; and 2) a process for consideration of such complaints which may include employee and employer interviews; and 3) a process to address complaints, including permitting employers to correct deficiencies.

TRAINING PROGRAMS FOR EMPLOYERS AND EMPLOYEES

EO 192 also requires that the Commissioner of the NJDOL provide compliance and safety materials and training for both employers and employees regarding the protocols set forth in the Order.

PENALTIES FOR NON-COMPLIANCE

Penalties for non-compliance with the mandates of EO 192 include the potential closure of worksites, fines of up to US\$1,000 and up to six months in prison.

KEY CONTACTS



VINCENT N. AVALLONE
PARTNER

NEWARK, NEW YORK
+1.973.848.4027
VINCENT.AVALLONE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.