

Complying With NJ's New Workplace Virus Safety Protocols

By **Rebecca Brazzano, Scott Young and Hannah Caldwell** (November 3, 2020)

On Oct. 28, New Jersey Gov. Phil Murphy signed Executive Order No. 192, which requires employers to follow a laundry list of new COVID-19 safety protocols as of 6 a.m. on Nov. 5. Giving just eight days to comply, the executive order mandates that private and public employers implement uniform health and safety standards in response to the recent surge in coronavirus cases.

Despite most businesses already having protective safeguards in place, the executive order has left employers scratching their heads and opening their pocketbooks.

What We Do Know

Recognizing that some businesses have begun requiring their employees to return to work, the executive order mandates:

- Workers to keep at least 6 feet from each other, to the maximum extent possible;
- Workers and visitors to wear face masks, with limited exceptions;
- Employers to provide masks to workers at the company's expense;
- Employers to provide workers, customers and visitors with sanitizing materials at the company's expense;
- Employers to conduct daily health checks of workers, such as temperature screenings, visual symptom checks and more;
- Employers to notify workers when there is possible exposure to the virus;
- Employers to provide workers with breaks throughout the day to wash their hands; and
- Employers to routinely clean and disinfect frequently touched areas in accordance with state and federal guidelines.



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Among other enforcement measures, the New Jersey Department of Labor and Workforce Development will create an online complaint submission process that workers can use if employers do not follow the executive order's safety guidelines. To ensure compliance, the governor stated that the online complaint intake form will go live this week. However, it is not yet live. A business found to be in violation of the executive order may be subject to penalties, including closure by the commissioner of the New Jersey Department of Health.

The executive order also calls on the New Jersey Department of Labor to provide compliance and safety training for companies and employees regarding the protocols set forth in the

order. The department is tasked with providing materials including worksite notices, training programs and other resources regarding the executive order and mandatory safety standards.

What We Don't Know

There is no clear guidance on how businesses will be expected to comply with, nor how the New Jersey Department of Labor will effectively enforce, this executive order. Notably, this executive order is separate from federal laws enforced by the Occupational Safety and Health Administration applicable to maintaining employment environments that are safe for employees, including with respect to COVID-19. Because this is a state executive order, OSHA will not be responsible for enforcing its directives as to private sector employers.

The executive order mandates significant and virtually immediate burdens but provides no financial support and lacks clarity regarding employer compliance obligations. Sourcing may be a serious issue given that employers had one week from the date the order was signed to procure enough required equipment — such as face masks and thermometers — to provide to, and with which to screen, all employees entering their worksites.

The executive order also directs businesses to enforce vague procedures like visual symptom screenings of employees, visitors and customers, and distancing to the maximum extent possible. With respect to these seemingly subjective procedures, it is not clear what metrics the labor department will use to judge compliance and the legitimacy of complaints. While the executive order speaks to a complaint and investigation process, it is silent on the timing or even the ability of an employer to submit a written response.

It is also unclear exactly who will have standing to bring complaints online under the labor department's enforcement scheme. While the executive order states that complaints will be accepted from employees, or "individuals working in the State that are subject to the COVID-19 specific health and safety protocols outlined in this Order," it does not clarify whether other individuals such as customers or contractors may file a complaint.

We also do not know the extent or timing of the labor department's mandatory compliance materials and safety training for New Jersey employers and employees. It is uncertain how extensive the training will be, who will qualify to train and how long businesses will have to implement it.

Since March, the New Jersey Legislature has passed numerous laws concerning COVID-19 — from extending the date taxes were due to modifying telemedicine and employee benefits regulations — to help its citizenry cope with the impacts of COVID-19 across the state. The state Legislature has not ventured into the abyss of transforming every New Jersey business, regardless of size, into a COVID-19 monitor for its employees and customers.

What Employers Should Do

The practical effects of the governor's executive order are difficult to measure considering its vague compliance and enforcement instructions. And while the executive order provides that employers will be given "an opportunity to correct the alleged or confirmed deficiency," it still fails to provide definitive compliance guidance nor a time within which an employer will have to remedy any alleged deficiency.

Though many New Jersey employers conducting on-site operations already have some safety standards in place, every New Jersey employer should implement the following procedures:

- Securely maintain a COVID-19 screening questionnaire[1] and documentation of the screening process, and/or institute preshift health checks or temperature screenings for all employees.
- Document and consistently log employee hand-washing break time.
- Provide gloves, at no cost to employees, for any workers that are required to wear them.
- Document and consistently log all disinfection efforts and types of cleaning products used.
- Provide sanitizer that contains at least 60% alcohol for employees, customers and visitors.

New Jersey's positive COVID-19 tests continue to spike for the second straight week. As the cold weather blankets the Northeast, it will be increasingly difficult to screen employees outside to comply with the executive order.

Employers should consider staggering staff arrivals, lunch breaks and departures to avoid social distancing violations. The New Jersey COVID-19 Information Hub[2] includes a soon-to-be-live link for reporting a safety violation. Penalties for noncompliance with the mandates of this executive order include the potential closure of worksites, fines of up to \$1,000 and up to six months in prison.

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[1] The CDC version can be found here <https://www.cdc.gov/screening/paper-version.pdf>.

[2] <https://covid19.nj.gov/pages/safe>.