



COVID-19 Update

October 2020

Murphy's Law – Literally

The adage goes, “anything that can go wrong will go wrong.” Earlier this week, Murphy’s law – Governor Phil Murphy’s law, that is – took on a new meaning for New Jersey employers.

On October 28, New Jersey Governor Phil Murphy signed Executive Order 192 that requires employers to follow a laundry list of new COVID-19 safety protocols as of 6 a.m. on Thursday, November 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.
- Employers to routinely clean and disinfect frequently touched areas in accordance with state and federal guidelines.

Among other enforcement measures, the New Jersey Department of Labor 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 next week. A business found to be in violation of the Executive Order may be subject to penalties, including closure by the Commissioner of the Department of Health.

The Executive Order also calls on the Department of Labor to provide compliance and safety training for companies and employees. 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 Department of Labor will effectively enforce, this Executive Order. Notably, this Executive Order is separate from federal laws enforced by the U.S. Occupational Safety and Health Administration (OSHA) 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 have one week to procure enough required equipment – such as face masks and thermometers – to provide to, and with which to screen, all employees and visitors entering their worksites. The Executive Order also directs businesses to enforce vague procedures like “visual symptom screenings” and distancing “to the maximum extent possible.” With respect to these seemingly subjective procedures, it is not clear what metrics the Department of Labor 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 Department of Labor’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,” the Executive Order 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 Department of Labor’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, from extending the date taxes were due to modifying telemedicine and employee benefits regulations, to help its citizenry cope with the impacts of the COVID virus across the state. The state legislature has not ventured into the abyss of transforming

every New Jersey business, regardless of size, into a COVID monitor for its employees and customers.

Thompson Hine is closely monitoring developments pertaining to this Executive Order. For additional information regarding its impact on employers, as well as other recommended steps for addressing COVID-19 concerns.

FOR MORE INFORMATION

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Additional Resources

We have assembled a firmwide multidisciplinary task force to address clients’ business and legal concerns and needs related to the COVID-19 pandemic. Please see our [COVID-19 Task Force](#) page for additional information and resources.

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