Labor and Employment Alert: New Jersey Issues COVID-19 Employer Obligations in the Workplace, Effective Nov. 5, 2020

November 2, 2020

Most New Jersey employers now have clear guidance from the State of New Jersey on their workplace safety obligations relating to COVID-19 through Executive Order 192, issued October 28, 2020 and effective November 5, 2020. Below is a brief summary of the new requirements as well as the new enforcement regime and fines against non-compliant employers. We recommend that you contact your labor and employment lawyer today to modify your current policies to comply with this new Executive Order.

Workplace Safety Requirements

As of November 5, 2020 at 6:00 a.m., every business, non-profit, governmental, or educational entity (collectively "employers") is ordered to comply with the following minimum workplace requirements to protect employees, customers, and all others who come into physical contact with its operations:

- Make available to employees, at the employer's expense, face masks;
- Have employees maintain six feet of social distance to the extent possible, including when entering and exiting the workplace;
- Where social distancing is not possible due to the nature of the employee's work, or where the work area does not allow for six feet of social distancing, ensure that each such employee wears a face mask ***and*** install physical barriers between workstations wherever possible;
- Except for "school districts" defined and covered by EO 175, require mask wearing by employees, customers, visitors, and other individuals entering the worksite, except persons under two years of age or where it is impracticable for the individual to wear a face mask, such as when the individual is eating or drinking or where the service being rendered cannot be performed with a mask;
- Except for "school districts" defined and covered by EO 175, employers may deny entry to the worksite to employees who refuse to wear a mask, except where inconsistent with state or federal law. Employees who refuse to wear a mask because of a disability may be required by the employer to produce medical documentation to support the disability;
- Except for "school districts" defined and covered by EO 175, employers may deny entry to the worksite to customers and visitors who refuse to wear a mask except where inconsistent with state or federal law. Employers may ***not*** require customers and visitors who refuse to wear a mask due to a disability to produce medical documentation, unless required by state or federal law;
- Provide at the employer's cost, sanitization materials such as hand sanitizer and sanitizing wipes;
- Ensure employee hand hygiene, including providing handwashing break time and access to adequate handwashing facilities. Employers may require employees to wear gloves in addition to regular hand hygiene, with all gloves to be provided at the employer's expense;
- Routinely clean and disinfect high-touch areas;
- Conduct a daily health check of employees, such as temperature screenings, visual symptom checking, self-assessment checklists, and/or health questionnaires prior to each shift;
- Immediately remove from the workplace employees who appear to have COVID-19 symptoms;

- Promptly notify all employees of any known exposure to COVID-19 at the worksite; and
- Clean and disinfect the worksite when an employee at the site has been diagnosed with COVID-19.

According to the Executive Order, the provisions above ***do not*** apply "when they interfere with the discharge of the operational duties of first responders, emergency management personnel, emergency dispatchers, health care personnel, public health personnel, court personnel, law enforcement and corrections personnel, hazardous materials responders, transit workers, child protection and child welfare personnel, housing and shelter personnel, military employees, and governmental employees engaged in emergency response activities."

Enforcement Fines and Compliance

The State of New Jersey will have in place a formal mechanism to investigate nearly every workplace in the state for compliance with newly issued workplace COVID-19 safety requirements, and to fine and close non-compliant workplaces. Under the Governor's order, the New Jersey Department of Labor shall establish an "intake mechanism to receive" employee complaints and the New Jersey Department of Health shall investigate complaints by conducting workplace inspections and issuing subpoenas for documentation and information. Employers will have the opportunity to correct non-compliances, but the exact sequence of events and the extent of the opportunity to cure await the issuance of administrative rules.

Next Steps

While at first blush many of the above requirements may appear to mirror what you have already put in place, as the saying goes, the devil is in the details. The Executive Order also references a number of previously issued orders and incorporates anti-discrimination and safety guidance of the EEOC, the New Jersey Division on Civil Rights, the CDC, and the New Jersey Department of Health. Fully appreciating the extent of your obligations will require careful reading and a cogent synthesis of pre-existing laws, rules, regulations, guidance, and Executive Orders.

New Jersey employers should consider taking the following next steps:

- Review Executive Order No. 192 and make sure you fully understand each requirement;
- Adopt or modify your organization's written workplace COVID-19 safety policy, and include a statement prohibiting retaliation against an employee who makes a complaint;
- Consider ways to minimize complaints to the state, including publicizing compliance and creating an internal complaint channel;
- Maintain compliance documentation in anticipation of a workplace investigation or subpoena for your records; and
- Look out for the enforcement regulations and rules issues that will be coming from the NJ Departments of Health and Labor.

As always, we are here for you. If you have any questions about this alert or if we can assist in any other way, please reach out.

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