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NJ Department of Health Issues Directives to Restaurants Seeking to Comply with Governor Murphy's Executive Order 150; Overview of Related CDC Updated Guidance

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On June 3, 2020, New Jersey Governor Phil Murphy issued Executive Order 150 (EO 150), which will lift certain restrictions on restaurants, cafeterias, dining establishments, and food courts by allowing for in-person service in outdoor areas effective Monday, June 15, 2020.

Also on June 3, the New Jersey Department of Health (DOH) issued very specific directives to restaurants seeking to comply with EO 150. Pursuant to the DOH's directives, restaurants offering outdoor in-person service must adhere to the following protocols:

- Obtain all required municipal approvals and permits before offering food and/or beverage consumption at outdoor areas;
- Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 should enter the food or beverage establishment;
- Limit seating to a maximum of eight (8) customers per table and arrange seating to achieve a minimum distance of six feet (6 ft) between parties;
- Rope off or otherwise mark tables, chairs and bar stools that are not in use;
- Demarcate 6 feet of spacing in patron waiting areas;
- Provide physical guides, such as tape on floors, sidewalks, and signage on walls to ensure that customers remain at least 6 ft apart in line for the restroom or waiting for seating;

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- Eliminate self-service food or drink options such as buffets, salad bars, and self-service drink stations;
- Disinfect all tables, chairs and any other shared items (menus, condiments, pens) after each use;
- Install physical barriers and partitions at cash registers, bars, host stands and other area where maintaining physical distance of 6 ft is difficult;
- Ensure 6 ft of physical distancing between workers and customers, except at the moment of payment and/or when employees are servicing the table;
- Require infection control practices, such as regular handwashing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- Require frequent sanitization of high-touch areas like credit card machines, keypads, and counters to which the public and workers have access;
- Place conspicuous signage at entrance alerting staff and customers to the required 6 ft of physical distance; and
- Require all food or beverage establishments to have an inclement weather policy that, if triggered, would require the food or beverage establishment to adhere to Executive Order No. 125 (2020) and offer takeout or delivery service only.

Additionally, restaurants must impose the following requirements with respect to employees:

- Require employees to wash and/or sanitize their hands when entering the food or beverage establishment;
- Conduct daily health checks (e.g. temperature screening and/or symptom checking) of employees safely and respectfully, and in accordance with any applicable privacy laws and regulations;
- Require employees with symptoms of COVID-19 (fever, cough, or shortness of breath) be sent home;
- Require all employees to wear face coverings, except where doing so would inhibit the individual's health, and require employees to wear gloves when in contact with customers and when handing prepared foods or serving food, utensils, and other items to customers;
- Provide all employees with face coverings and gloves;
- Provide employees break time for repeated handwashing throughout the workday; and
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes to staff.

Finally, restaurants offering outdoor in-person service must adhere to the following policies with respect to customers:

- Inform customers that safety measures such as social distancing, wearing face coverings when they are away from their table and unable to social distance or when they are inside the indoor portion of the premises of the food or beverage establishment (unless the customer has a medical reason for not doing so or is a child under two years of age), and hygiene practices must be adhered to while in the food or beverage establishment;

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- Encourage reservations for greater control of customer traffic/volume;
- Require customers to provide a phone number if making a reservation to facilitate contact tracing;
- Recommend customers wait in their cars or away from the food or beverage establishment while waiting for a table if outdoor wait area cannot accommodate social distancing;
- Alert customers via calls/texts to limit touching and use of shared objects such as pagers/buzzers;
- Encourage the use of digital menus;
- Decline entry to the indoor portion of the establishment to a customer who is not wearing a face covering, unless the customer has a medical reason for not doing so or is a child under two years of age; and
- Provide a hand sanitizer station for customers.

The DOH's guidance closely mirrors recently published updated guidance from the U.S. Centers for Disease Control (CDC) for restaurants seeking to resume operations while doing their part to prevent the spread of COVID-19. As explained in our previous Client Alert, the CDC generally considers restaurants to be an industry at medium risk of exposure due to consistent interaction with the public within an enclosed space.

The CDC's most recent guidance delineates the level of risk associated with individual restaurant establishments based upon the extent of their relative exposure to the public along a spectrum ranging from Lower Risk establishments (primarily offering drive-thru, delivery and take out) to Highest Risk establishments (primarily offering on-site dining and outdoor seating without 6-foot demarcation between tables). The guidance offers three broad categories of advice, including promotion of behaviors that reduce spread of COVID-19, maintenance of healthy environments and operations, and preparation for handling sick employees.

The CDC has also reiterated its recommendation that restaurant owners continue to stay abreast of state and local policies, ordinances and recommendations related to group gatherings.

New Jersey restaurants would be well advised to waste no time ramping up their preparation efforts to successfully comply with the comprehensive federal, state, and local guidance and directives necessary to remain open as of June 15.

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