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NJ Governor Murphy Signs Executive Order 192 in Response to Latest Spike in COVID-19 Cases: New Protective Workplace Requirements for Employers Are Effective November 5

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On October 28, 2020, New Jersey Governor Phil Murphy signed Executive Order 192, which will impose a series of workplace protections in response to an increase in COVID-19 cases in New Jersey. The Order goes into effect on November 5, 2020 and will apply to all workplaces that require or permit employees to be physically present at a worksite in New Jersey.

In addition to COVID-19-related requirements imposed under previous Executive Orders (including those related to telework accommodations and indoor capacity limitations), Executive 192 states that employers will now have to:

- Require all employees to maintain a social distance of at least six feet from one another on premises. If not possible, employers must install physical barriers where feasible and require the use of face masks.
- Require employees to wear face masks (provided at the employer's expense) that can only be removed when employees are situated at least six feet apart, when solitary in a walled office, or when wearing a mask is not practical (e.g., when eating or drinking).
- Require anyone entering the worksite premises to wear masks, including customers and visitors.
- Accommodate employees and others entering the worksite with disabilities that prevent them from wearing a mask, consistent with the requirements of the Americans with Disabilities Act (ADA) – absent undue hardship to the employer. However, employers can only request medical documentation supporting the existence of a

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disability and the need for an accommodation from employees.

- Provide sanitation materials, such as hand sanitizer and sanitizing wipes to employees, customers, and visitors at no cost.
- Encourage employees to practice regular hand hygiene and provide break time for handwashing.
- Routinely clean and disinfect all high-touch areas including restrooms, handrails, doorknobs, other common surfaces, safety equipment, and ensure proper cleaning procedures consistent with Centers for Disease Control (CDC) guidance following known or potential exposure.
- Conduct daily health checks of employees prior to each shift, such as temperature screenings, visual symptom checking, self-assessment checklists, and/or health questionnaires. While Executive Order 192 does not require any specific method for health checks, screenings must be conducted in a manner consistent with CDC and Equal Employment Opportunity Commission (EEOC) guidance, and consistent with the ADA and the New Jersey Law Against Discrimination's (NJLAD) confidentiality requirements.
- Immediately send employees home if they are exhibiting symptoms of the COVID-19 virus.
- Promptly notify employees of known exposure to COVID-19 at the worksite consistent with the confidentiality requirements of the ADA, EEOC guidance, and other applicable laws.
- Clean and disinfect the worksite in accordance with CDC guidance when an employee at the worksite has been diagnosed with COVID-19 illness.
- Continue to follow guidance and directives issued by the New Jersey Department of Health (DOH), the CDC, and the Occupational Safety and Health Administration (OSHA), as applicable, for maintaining a clean, safe and healthy work environment.

Executive Order 192 does not apply to first responders, healthcare personnel, public health personnel, law enforcement, and individuals in similar positions. The Commissioner of the DOH is granted the ability to develop additional health and safety standards for employers. The Order also enlists the New Jersey Department of Labor (DOL) and the DOH to implement an employee complaint system. Complaints covered by the Public Employees Occupational Safety and Health (PEOSH) will be shared with that office. Finally, the DOL is tasked with establishing a training program for employers and employees.

It is hoped that adherence to these new requirements by all employers will be very helpful in controlling the recent increases in reported cases and hospital admissions throughout our region.

KEY TAKE-AWAYS FROM EXECUTIVE ORDER 192:

- Although many employers already conduct them, daily health screenings will now be required of every employee. In addition, if an employee works multiple shifts in a single day, the Order appears to require a separate health screening prior to each shift.
- As indicated above, there are no specifically mandated ways to perform a daily health check. Temperature screenings and questionnaires are two very common and expedient methods currently

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in use that would appear to comply with the Order.

- Whereas previous Executive Orders discouraged employers from seeking medical documents to support the existence of an employee's disability and need for an accommodation, employers now have an explicit green light to do so.
- Employees do not have a private cause of legal action under the Order but will have access to a complaint system to report an employer's violations.
- Violations of the Order are punishable by fines of up to \$1,000, imprisonment for up to six months, and/or closure of the business at the direction of the DOH.

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