

**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 10, 2020

**Effective April 10, New Jersey Imposes
Operational Requirements on Essential Retail and
Other Businesses, Closes Non-Essential
Construction Projects**

On April 8, 2020, as part of New Jersey’s efforts to address the Coronavirus Disease 2019 (COVID-19) pandemic, Gov. Phil Murphy signed [Executive Order No. 122](#), (a) imposing additional requirements on the operations of “essential retail businesses” such as grocery and home improvement stores, (b) ordering the closure of all “non-essential construction projects,” and (c) imposing additional requirements on the operations of businesses engaged in essential retail, construction, and related operations. Executive Order No. 122 builds upon earlier Executive and Administrative Orders, in particular Executive Order No. 107 (New Jersey’s current “Shelter-in-Place” Order), and is the latest modification to the parameters of those earlier Orders.

Background – Executive Order No. 107

Issued on March 21, 2020, Gov. Murphy’s Executive Order No. 107 directed that, effective 9:00 p.m. that same date, “the brick-and-mortar premises of all non-essential retail businesses must close to the public” until further Order. “Essential businesses” exempted from this edict included, among others:

- Grocery stores;

- Pharmacies;
- Gas stations and convenience stores;
- Hardware and home improvement stores;
- Retail banks and financial institutions;
- Stores primarily selling goods for children under five years old;
- Liquor stores; and
- Mail and delivery stores.

Essential retail stores permitted to remain open under Executive Order No. 107 were directed to “abide by social distancing practices to the extent practicable while providing essential services.” The parameters of these “social distancing practices,” however, were not clearly defined at the time.

Executive Order No. 122 now more clearly defines them – and does more.

Operational Requirements Imposed on Essential Retail Stores

Under Executive Order No. 122, effective 8:00 p.m., Friday, April 10, those retail businesses “permitted to maintain in-person operations” under Executive Order No. 107 and its subsequent clarifying Administrative Orders must “at minimum”:

- Limit occupancy – including evidently both employees and customers – “at 50% of the stated maximum store capacity” at any given time;
- Designate “wherever possible” hours of operation for “high-risk individuals” as defined by the Centers for Disease Control and Prevention (CDC);
- Install physical barriers “wherever feasible” between customers, cashiers, and/or baggers to ensure six feet of distance “except at the moment of payment and/or exchange of goods”;
- Require infection control practices, including such things as frequent hand washing and safe cough/sneeze protocols;
- Provide employees “break time for repeated handwashing throughout the workday”;
- Offer “contactless pay options, pickup, and/or delivery of goods wherever feasible”;
- Provide sanitizing wipes and similar products to employees and customers;
- Ensure “high-touch areas” such as restrooms, payment machines, and shopping carts are frequently sanitized;
- Place “conspicuous signage” reminding employees and customers to maintain distances of at least six feet;
- Mark six-foot spots for waiting and check-out lines; and
- Require (with limited exceptions) that both employees and customers wear “cloth face coverings” while on the premises. Employers “must provide, at their expense, such face coverings and gloves for their employees.” (Emphasis added). Moreover, where a customer refuses to wear these items, the business may need to refuse that customer entry depending upon certain delineated circumstances.

Those who have gone on a necessary grocery run in New Jersey lately may be familiar with some of these practices, as some essential retail stores – particularly larger chains – have already adopted them. Now, they are required of all essential retail stores.

Non-Essential Construction Comes to a Halt

Executive Order No. 122 next directs that “physical operations of all non-essential construction projects shall cease” at 8:00 p.m., Friday, April 10. Those construction projects exempted from this statewide stop-work order generally include: (i) hospitals and other projects “necessary for the delivery of health care services”; (ii) “physical infrastructure” such as roads, mass transit, and ports; (iii) utility projects; (iv) select housing and educational projects; (v) a variety of work required to ensure the “structural integrity” or safety of ongoing projects; and (vi) other “projects necessary for the delivery of essential social services.”

Operational Requirements Expanded Across-the-Board

Finally, Executive Order No. 122 imposes upon all essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing essential construction projects a varied list of “minimum” safety requirements, including among others and where applicable:

- Prohibiting “non-essential visitors” from entering a construction or warehouse site and limiting attendance numbers at on-site meetings;
- Staggering shifts and breaks to minimize personnel onsite or gathered at any given time;
- Requiring the use of “cloth face coverings” for all those onsite (as before, “Businesses must provide, at their expense, such face coverings and gloves for their employees”);
- Immediately separating and sending home any “workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day”;
- Promptly notifying employees of “any known exposure to COVID-19 at the worksite,” consistent with existing anti-disability discrimination laws;
- Conducting CDC-compliant disinfecting procedures “when a worker at the site has been diagnosed with COVID-19 illness”; and
- Ensuring “a sufficient number of workers to perform the above protocols effectively.”

Conclusion

Some earlier Executive Orders have already been modified by subsequent Orders, or clarified by Administrative Orders. Essential businesses that have not already adopted the practices described in the Order voluntarily will now be required to do so.

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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