

Client Alert **Employment & Labor**

Big Changes for New Jersey Employers: COVID-19 Policy Developments and Alignment with New York Guidelines

Governor Murphy signed a bill into law today ending the state's public health emergency, which will go into effect in 30 days. This comes on the heels of Governor Murphy issuing back-to-back executive orders on May 24th and 26th, which fundamentally changed guidance about mask mandates, social distancing, and telework. These steps toward the new "normal" for employers in New Jersey follow changes to CDC and New York State COVID-19 policy made in mid-May, and bring guidance for New Jersey workplaces more in line with those already implemented in New York, and relief to employers operating in both states.

Changes in CDC Guidance and New York State Policies

The first seismic shift for the workplace landscape came from the [CDC's May 13th guidance](#) advising that fully vaccinated people could forgo masks "in any setting," with a few exceptions. New Jersey initially paused to assess this new guidance. However, New York almost immediately announced major reforms to masking requirements for all New York businesses beginning on May 19th. The initial divergence between the two states' approaches presented challenges for employers with offices in both states. Under New Jersey's newest executive orders, those challenges have lessened as the new guidance is more closely aligned with New York's.

Highlights of [New York's guidance for employers](#), effective May 19th, are as follows:

- Fully vaccinated individuals do not need to wear masks or social distance in most settings, including commercial settings. Excluded from this guideline, however, are Pre-K through 12 schools, public transit, homeless shelters, correctional facilities, nursing homes and healthcare settings.
- For businesses that operate with less than 250 persons indoors or less than 500 outdoors, they may require proof of vaccination status, either by paper, digital application, the State's Excelsior Pass (digital proof of COVID-19 vaccination or negative test results), or the honor system.

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- For businesses with more than 250 persons indoors or 500 people outdoors (“large capacity”) such as sporting venues, catering halls and conventions, business capacity is no longer limited by any other criteria than the ability of unvaccinated people to remain six feet apart. If all patrons within an establishment (or a separate part of an establishment) are able to present proof of full vaccination those fully vaccinated individuals need not wear a mask or social distance. Proof of vaccination by the honor system is insufficient in large capacity businesses.

New Jersey’s Guidance for Employers

New Jersey began integrating the new CDC guidelines for fully vaccinated persons by passing Executive Order 241 on May 17th, which removed masking requirements for outdoor worksites.

With the passage of Executive Orders 242 and 243, for most indoor workplaces, whether or not open to the public, employees who *are fully vaccinated* are not required to wear masks or social distance indoors. However, for those employees whose vaccination status is unknown or for unvaccinated employees, employers must continue to require those employees to wear masks and practice social distancing in indoor spaces, with a few exceptions (i.e. when alone in a walled office).

For workplaces open to the public, customers and visitors to the workplace are permitted to enter the workplace without a mask, regardless of vaccination status because of the difficulty for employers to ascertain the vaccination status of such individuals.

Importantly, employers are explicitly permitted to continue to require masking for all employees (with possible exception for sincerely held religious beliefs and disabilities), regardless of vaccination status. And of course, employers may not retaliate against employees who choose to continue to wear a mask, regardless of vaccination status.

Executive Order 243 suggests employers follow the EEOC’s guidance with respect to obtaining vaccination status for employees. In sum, the EEOC has said employers may ask for employee vaccination status and not run afoul of the Americans with Disabilities Act. The employer’s inquiry should end there, however, and not ask follow up questions that may be considered to inappropriately inquire into the employee’s disability status. Employee vaccination record information remains confidential for purposes of storing and securing records, and should be stored separately and securely from the employee’s personnel file.

Executive Order 243 also explicitly rescinds the prior requirement that employees be permitted to telework.

Although certain portions of prior executive orders are expressly superseded as discussed above, the requirements of Executive Order 192 that employers conduct health screenings of employees entering the workplace and provide PPE, among others, remain in force for now.

Other Changes on the Horizon for New Jersey Employers

In January 2020, amendments to the New Jersey “mini WARN Act” were signed into law. These amendments to the mini WARN Act provide new requirements for mass layoffs where fifty or more employees are laid off, including:

1. mandating severance of one week’s pay per year of employment, which covered employers¹ must pay to laid off employees;
2. increasing notice requirement to employees for layoffs from 60 to 90 days; and
3. imposing a penalty of four additional weeks of pay for non-compliance with the notice requirement.

The effective date for the amendments was originally set to be July 19, 2020, but was delayed upon the outset of COVID-19 until ninety days after there no longer is a state of emergency in effect. As Governor Murphy signed [Assembly Bill No. 5820](#) today, the public health emergency will end in thirty days, on July 4, 2021. Accordingly, the amendments to the New Jersey WARN Act will go into effect on October 2, 2021.

¹ Employers with 100 employees at any or all of their New Jersey locations are covered.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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