

New Jersey Adopts COVID-19 Executive Orders as Part of Regional Responses

March 21, 2020

Client Advisory

March 21, 2020 by Alexander G. Malyshev

As part of a coordinated response with New York and Connecticut to the spread of the COVID-19 virus, New Jersey Governor Phillip D. Murphy adopted two Executive Orders on March 21, 2020. Unlike New York and Connecticut,[1] which physically shut all “non-essential” businesses, Executive Order 107 targets certain “brick and mortar” consumer facing businesses for closure, in addition to ordering residents to remain home (subject to rather broad exceptions that include travelling to work).[2]

Executive Order 108 invalidates all local ordinances that in any way conflict with Executive Order 107 (with the exception of stricter restrictions on “Airbnb” type businesses, and the closure of county or municipal parks).[3] Both orders become effective at 9 P.M. on Saturday, March 21, 2020.

A. Non-Essential Brick and Mortar Stores Must Close

According to Executive Order 107 the brick-and-mortar premises of all non-essential retail businesses must close to the public as long as the order remains in effect. The following brick-and-mortar stores may remain open so long as, whenever practicable, they offer curbside pickup or adopt other procedures to encourage social distancing:

1. Grocery stores, farmer’s markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
 2. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
 3. Medical supply stores;
 4. Retail functions of gas stations;
 5. Convenience stores;
 6. Ancillary stores within healthcare facilities;
 7. Hardware and home improvement stores;
 8. Retail functions of banks and other financial institutions;
 9. Retail functions of laundromats and dry-cleaning services;
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10. Stores that principally sell supplies for children under five years old;
11. Pet stores;
12. Liquor stores;
13. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
14. Retail functions of printing and office supply shops; and
15. Retail functions of mail and delivery stores.

See EO 107, Paragraphs 6-7.

The State Director of Emergency Management has the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list.

B. Recreational and Entertainment Businesses Must Close

All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as Executive Order 107 remains in effect:

1. Casinos and Racetrack services that are not offered virtually;
2. Gyms and fitness centers and classes;
3. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs;
4. All indoor portions of retail shopping malls;
5. Restaurants and other stores located within (with the exception of restaurants that have their own external entrance);
6. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions;
7. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines (including but not limited to cosmetology shops, barber shops, beauty salons, and social clubs), excluding any health facilities that provide medically necessary or therapeutic services; and;
8. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

See EO 107 Paragraph 9.

The State Director of Emergency Management has the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list.

C. Restaurants and Bars May Remain Open, But Only for Takeout

All dining establishments and bars are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. This includes restaurants attached to malls, so long as they have a separate entrance that is used exclusively, and otherwise comply with social distancing guidelines. See EO 107 Paragraph 8.

D. Other Businesses Are Expected to Accommodate Telework

Unlike New York and Connecticut, New Jersey does not directly try to decide which professional and other service businesses are essential to the extent that they are not open to the public. However, all businesses and non-profits must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of Executive Order 107, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. See EO 107 Paragraph 10-11.

A non-exhaustive list of employees who need to be physically present at their work site in order to perform their duties includes law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

Schools and universities will remain physically closed (except to provide meals as necessary).

E. The Order Makes Clear That It is Not Meant to Apply to Truly Essential Services

Executive Order 107 contains explicit language making clear that it does not apply to (1) the provision of health care or medical services to the public, (2) essential service for low income residents (including food banks), (3) news media, (4) law enforcement, or (5) the operations of the Federal Government. See EO 107, Paragraphs 17-21.

As New Jersey, in cooperation with surrounding states, continues its efforts to limit the rapid increase in COVID-19 caseload, the rules governing business operations are changing rapidly. The Carter Ledyard team is monitoring developments in this area and expects to issue updates as the situation evolves.

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For more information concerning the matters discussed in this publication, please contact the author **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), or your regular Carter Ledyard attorney.

[1] For our analysis of New York's corresponding order see "On-Site Workforce Restrictions for "Non-Essential" Businesses in New York State," available at <https://www.clm.com/publication.cfm?ID=5684>. For our analysis of Connecticut's order see <https://www.clm.com/publication.cfm?ID=5686>.

[2] Available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>.

[3] Available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-108.pdf>.

Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com) and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.

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