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Memorandum Summarizing NJ Governor's COVID-19 Related Executive Orders

The Governor has issued over 13 executive orders relating to COVID-19. No executive order expressly addresses the obligations of state, county or local governments or of independent public authorities or public universities. However, the protocols in place for retail businesses and non-profits, identified as essential and non-essential, should apply with equal force to public employers.

The following memo summarizes certain provisions of the Executive Orders issued by Governor Murphy relative to the COVID-19 pandemic, which union leaders may find useful in protecting the health and safety of their members.

1. EO 102 (2/3/20) – Creates a Coronavirus Task Force

- * Creates a Coronavirus Task Force (CFT), chaired by the Commissioner of the Department of Health and consists of the agency heads or designees from Human Services, Law and Public Safety, State Police, Education and Homeland Security.
- * Responsibilities of the CFT include coordination of the COVID-19 response with other agencies of state government, local health departments and the federal government. The CFT will also work with hospitals to manage preparation for the treatment of COVID-19 patients.

2. EO 103 (3/9/20) – Declaration of State of Emergency and Public Health Emergency

- * This EO empowers the State Director of Emergency Management, who is the Superintendent of the State Police, in conjunction with the Commissioner of

DOH, to implement the State Emergency Operations Plan and to activate county and municipal operations plans.

- * Pursuant to the declared State of Emergency and the declaration of a Public Health Emergency, the Governor is authorized to take necessary actions to protect public health.
- * This EO also authorizes the head of any agency to promulgate rules or suspend or modify a rule “where the enforcement . . . would be detrimental to the public welfare during this emergency” subject to the Governor’s prior approval in consultation with the State Director of Emergency Management and the Commissioner of DOH.

[Comment: This provision of the EO could be subject to abuse. However, it does not authorize changes in rules, including work rules, absent approval by the Governor in consultation with the Director of Emergency Management and the DOH Commissioner.]

- * The Director of Emergency Management has the authority to order the evacuation of all persons from any area where their continued presence poses a danger to public health.

[Comment: This is a potentially useful provision. Although there are no fleshed out procedures for how to make a request that the Director evacuate a public building or an area within a public building, if we believe that there is a danger to the health of workers or the public because proper safety protocols are not being followed, or for other compelling reasons, it may be possible to request that that Director of Emergency Management evacuate the area. The threat of such a request might impel management to take corrective action.]

- * No local government can enact any rule, regulation, ordinance, or order that conflicts with or might conflict with any provision of this EO or that interferes with or impedes the achievement of the purpose of this order.

[Comment: Again, this is language that may be useful if we believe that a State or local government entity is not implementing measures that are consistent with the declared State of Emergency. While there are no formal procedures established for lodging a complaint, I’d submit a complaint to the Governor’s office and to the Director of Emergency Management.]

3. **EO 104 (3/16/20) – School, Restaurant and other Closures**

- * This EO was effectively superseded by EO 107, which we discuss below.

4. **EO 105 (3/19/20) – Elections**

- * Petition signatures on-line accepted; suspends notarized oath of allegiance; certain local elections postponed.
- * Vote by mail in accordance with a schedule prepared by Secretary of State.

5. **EO 106 (3/19/20) – Evictions and Foreclosures**

- * No person may be removed from residential properties as a result of eviction or foreclosure proceedings. Court proceedings may continue, but shall not be implemented, unless a court determines that it is in the interests of justice.
- * Sheriffs and court officers shall not remove persons from residential properties – hotels, motels, guest houses are excluded.

6. **EO 107 (3/21/20) Supersedes EO 104**

[Comment: Although certain provisions of EO 107 do not expressly apply to public employers, and in certain instances appear to focus primarily on retail businesses and non-profits, it is the position of the Governor’s Office that all provisions of EO 107 apply to public employers. In addition, violations of EO 107 may be reported using a form available at <https://covid19.nj.gov/violation>.]

- * Directs that all residents shall remain home unless they are (a) obtaining goods or services from essential retail businesses; (b) obtaining food from restaurants; (c) seeking medical attention; (d) visiting family and or other individuals with whom the resident has a close personal relationship; (e) reporting to or performing their jobs; (f) engaging in outdoor recreational activities by themselves or with family members, but remaining 6 feet apart; (g) leaving the home for an educational, religious or political purpose; or (h) leaving due to a reasonable fear for one’s health or safety.

[Comment: This stay at home directive has limited exceptions, one of which is reporting to work. However, in light of the scope, letter and spirit of this EO with respect to essential and non-essential businesses, we should seek to narrowly apply this exception in the public sector, arguing that all workers should stay home, other than those performing essential functions.]

- * Persons must stay six feet apart in public, except family members

[Comment: Again, this directive does not distinguish between public and private workplaces. We should interpret the phrase “in public” to mean anywhere outside of one’s home, including work. That means that all persons, except family members, if outside their home, must maintain a distance of six feet from any other individual. If this directive is not being followed in workplaces with respect to either clients or workers, a complaint may be lodged with the Director of Emergency Management and a request made to evacuate the premises until there is compliance with this social distancing directive.]

- * Persons should only use public transportation if there is no other option.
- * All gatherings are prohibited – weddings, funerals etc.
- * All non-essential retail businesses must close – Essential services can remain open, but must take all feasible steps to prevent unnecessary social interaction.
- * Essential retail stores that remain open shall abide by social distancing practices to the extent practicable, including frequent use of sanitizing products on common surfaces

[Comment: In keeping with the scope, letter and spirit of this EO, essential government services, whether at the local or state level, should be held to this same standard. These protocols are in place for essential retail businesses to protect the health and safety of the public and therefore apply with equal force to government workplaces.]

- * Restaurants/bars – only take out and deliver service may be offered.
- * All recreational and entertainment businesses must close, including casinos, racetracks, gyms, shopping malls, amusement parks, hair and nail barbershops, libraries and computer labs.
- * If employees of an essential business cannot work from home, then the business or non-profit should make best efforts to reduce staff on site to the minimum number necessary to ensure that essential operations can continue.

[Comment: Again, this same standard logically applies to government operations. Essential government employees should be permitted to work from home if at all possible and if not possible, best efforts should be made to reduce staff to the minimum number necessary to ensure that essential operations can continue. Further, social distancing protocols should remain in place – six feet distance between all persons – and proper cleaning and sanitizing protocols must be followed.]

- * All schools shall remain closed; higher education instruction shall be remote; public school home instruction is directed

7. EO 108 (3/21/20)

- * This EO contains a general prohibition on counties and local government entities enacting or enforcing rules, regulations or ordinances that might interfere with or impede the achievement of any of the Governor's EOs.

[Comment: This is similar language to that found in EO 103 and discussed above.]

8. EO 109 (3/23/20) (all elective surgeries delayed)

- * Elective means any surgery that can be delayed without undue risk to the current or future health of the patient as determined by the patient's treating physician.

9. EO 110 (3/25/20) (access to emergency childcare services)

- * The Commissioner of DCF, in consultation with DOE and DHS, shall implement a plan permitting access to childcare for children of essential persons.
- * Plan must include appropriate social distancing, hand washing, cleaning and other public health prevention strategies.
- * Applications to be designated as an Emergency Child Care Center are to be submitted to the Commissioner of DCF by March 27, 2020.
- * Essential workers are defined as follows:
 - * Healthcare workers
 - * Law enforcement personnel
 - * Individuals employed at emergency childcare centers
 - * Staff working for entities that provide essential social services, including group home and shelter staff
 - * Essential government employees unable to work from home, including CPS workers, child welfare workers, foster care workers, unemployment processing staff, and public health employees

- * Critical workers as defined by the Commissioner of DCF, at essential retail businesses as defined in EO 107
- * The Director of Emergency Management shall determine if there are adequate emergency centers in each county to meet the needs of essential persons. If not sufficient centers the Director, in consultation with the county office of education will identify schools capable of serving as emergency child care center sites.
- * The Commissioner of DCF authorized to identify funding sources for such programs.

[Comment: Presumably, the intent is to make emergency childcare free for essential workers who are required to report to work. It will likely be challenging to workers to find available slots in emergency childcare centers. The Commissioner of DCF will have a list of certified centers in each county. We can obtain those lists and make them available to essential workers. It appears from the EO that childcare will on be available for children ages 0-13.]

11. EO 111 (3-28-2020)(reporting of PPE and other supplies)

- * Health care facilities, including licensed acute care facilities, long-term care facilities, hospital systems and all emergency modular field treatment facilities, are required to report to the New Jersey Office of Emergency Management their capacity and supplies, on a daily basis by 10 a.m.
- * Supplies and capacity to be reported include bed capacity, ventilators and PPE, in addition to any other supplies and capacity specified by the NJ Office of Emergency Management in consultation with the Commissioner of DOH.

12. EO 122 (4-8-2020) (additional protocols to prevent the spread of COVID-19)

- * Although EO 122 does not expressly apply to public employers, it is CWA's position that the following measures required by this Executive Order, to prevent the spread of COVID-19, should be followed by public employers:
 - * Employers should have mandated infection control practice in places, including regular hand washing, coughing and sneezing etiquette and proper tissue usage and disposal;
 - * Ensure that there are a sufficient number of workers to effectively perform sanitization protocols.

- * High-touch areas such as restrooms, counters, keypads should be frequently sanitized;
 - * Employees should be provided with breaks for repeated handwashing throughout the day;
 - * Sanitization materials should be provided to employees and clients/customers;
 - * Signage should alert employees and clients/customers to six feet distancing requirements and demarcate six feet as necessary;
 - * Require employees and clients/customers to wear cloth face masks while at the workplace and require employees to wear gloves when in contact with clients/customers;
 - * Stagger work start and stop times to limit the number of individuals entering and leaving the worksite concurrently;
 - * Stagger lunch breaks;
 - * Restrict the number of employees who can access common areas, such as restrooms and breakrooms;
 - * Limit the sharing of tools, equipment and machinery;
 - * Physical barriers, such as shield guards, should be installed between workers and clients/consumers;
 - * Hours of operation should be established, when possible, to permit access solely by high-risk individuals, as defined by the CDC;
 - * There should be contactless options for clients/customers to pay fees etc.
- * In addition, EO 122 establishes protocols to be followed when workers manifest COVID-19 symptoms or test positive:
- * Workers who appear to have COVID-19 symptoms should be immediately separated from other workers and sent home;
 - * Workers should be promptly notified of any known exposure to COVID-19, consistent with the confidentiality requirements of the ADA and other applicable laws;

- * The worksite should be cleaned and disinfected in accordance with CDC guidelines when a worker has been diagnosed with COVID-19; and
- * In general, all employers should follow all guidelines and directives issued by the New Jersey Department of Health, the CDC and OSHA, for maintaining a clean, safe and healthy work environment.

This memo is intended to offer guidance with respect to the Executive Orders issued by Governor Murphy concerning the COVID-19 pandemic. Although, not every EO issued by the Governor applies directly to State and local government employers, the directives in the EOs collectively establish important health and safety protocols that have broad application and should be followed by all employers in the both the public and private sectors.

Other important sources of worker rights are found in the health and safety provisions of our collective bargaining agreements and in the PEOSHA statute for NJ public workers and in the OSHA statute for private workers.

In addition, employers have an obligation to bargain over changes in work rules and practices impacting the terms and conditions of our members, including work-at-home rules, social distancing rules, alternating work schedules and protocols to ensure that workplaces are properly cleaned and sanitized.