

## New Jersey's "Road Back": Rules of the Road, Exits Reached, and the Way Ahead

June 12, 2020

By [Maxine Neuhauser](#), [Jennifer Barna](#), and [Yael Spiewak](#)

---

In March 2020, New Jersey Governor Phil Murphy issued Executive Orders [104](#) and [107](#), closing or restricting all but certain designated "essential" businesses, and generally requiring residents to stay at home (unless engaging in certain permissible activities). Approximately one month later, on April 27, under the banner "[The Road Back: Restoring Economic Health Through Public Health](#)" ("Road Back Plan"), Governor Murphy announced "Six Key Principles" and various metrics the state would follow to guide the reopening of businesses and other activities. On May 18, 2020, the governor announced a [three-stage process](#) for lifting restrictions, guided by the Road Back Plan's principles and metrics, to provide an "economic restart to put New Jersey on the road to recovery from COVID-19." Then, on June 9, in recognition that an increasing amount of business and activity is reopening, the governor issued [Executive Order 152](#), which (i) increased the number of people permitted to be present at indoor and outdoor gatherings, and (ii) lifted the part of Executive Order 107 that directed residents to stay home.

Below is a summary of New Jersey's current reopening guidelines applicable to businesses and nonprofits. Since Governor Murphy's first COVID-19-related executive order, the state's rules and guidelines have been subject to frequent updating and change, and they may be further modified as the COVID-19 epidemic in New Jersey continues to evolve.

### Generally Applicable Guidance

New Jersey generally follows federal guidance with respect to COVID-19-related health and employment matters. Accordingly, all businesses should follow both state and federal safeguarding guidelines, which can be found via the following links:

- NJ.Gov: [What State and Federal Guidelines Are Available for Reopening My Business?](#)
- New Jersey Guidance: [When and How Is New Jersey Lifting \[COVID-19\] Restrictions?](#)
- New Jersey Department of Health ("NJDOH"): [COVID-19: Information for Businesses](#)

- NJ.Gov: [FAQs: Coronavirus/COVID-19 Information for New Jersey Businesses](#). Note that this link includes not only FAQs but also a chat function that allows businesses (and others) to submit questions.
- New Jersey Department of Labor & Workforce Development (“NJDOL”): [NJDOL and the Coronavirus \(COVID-19\): Updated Information for Employers and Businesses](#)
- Centers for Disease Control and Prevention: [Guidance for Businesses & Workplaces](#) (this site provides both general and industry-specific guidance)
- Occupational Health and Safety Administration (“OSHA”): [Guidance on Preparing Workplaces for COVID-19](#)
- OSHA: [Industry-Specific Guidance](#)
- Equal Employment Opportunity Commission: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

The following summarizes the general criteria applicable to New Jersey businesses pursuant to the above guidelines and directives:

## **HYGIENE & PREVENTATIVE MEASURES**

- Provide masks to employees (mandatory).
- Be aware that there is no general requirement for employee screening/temperature checks, other than in some specific industries (e.g., child care, food service).
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.
- Educate staff and workers performing cleaning, laundry, and trash pick-up activities to recognize the symptoms of COVID-19, and provide instructions on what to do if they develop symptoms within 14 days after their last possible exposure to the virus.
- Develop policies for worker protection, and ensure that cleaning staff understand the proper methods for cleaning and sanitizing and that they know when and how to use and dispose of personal protective equipment.
- Maintain six feet of distance between employees, staff, and/or customers, and install a physical barrier, such as a shield guard, at cash registers and anywhere else where you cannot maintain six feet of distance.
- Consider wipeable covers for electronics.
- Discourage workers from using other workers’ phones, desks, offices, or other work tools and equipment, when possible.

- Encourage handwashing, and, where applicable, provide employees with break time for regular handwashing.
- Have hand sanitizer and wipes available for use.
- Encourage proper coughing and sneezing etiquette.
- Require wearing masks in public areas.
- Where possible, adopt practices that avoid or limit person-to-person contact.
- Minimize gatherings and avoid mass gatherings.

## **ACCOMMODATIONS**

- Be aware that clinically high-risk individuals who can stay at home should continue to be permitted do so, if feasible.
- Abide by federal and state disability laws, which do not allow employers to mandate that employees stay home only because they are or are perceived to be in a high-risk group, and which require an individualized case-by-case analysis of whether an employee who raises the issue can be reasonably accommodated.
- Be cognizant that, generally, regardless of accommodation needs or requests, work that can reasonably be done from home should continue to be done from home.

## **STAFFING, SIGNAGE & NOTIFICATIONS**

- Ensure that each facility has a sufficient number of workers or vendors to perform necessary cleaning properly and effectively.
- Immediately separate and send workers home who appear to have COVID-19 symptoms.
- Post [signage](#) stating that employees feeling sick with COVID-19 symptoms should return home.
- Place conspicuous signage regarding the need to maintain six feet of distance.
- Promptly notify workers of any known exposure to COVID-19, subject to confidentiality requirements, including those in the Health Care Insurance Portability and Accountability Act (or “HIPAA”) and the [Americans with Disabilities Act](#).

## **Which New Jersey Businesses Are Currently Permitted to Be Open?**

New Jersey is currently in Stage One of the Road Back Plan. Stage One covers business operations that were permitted to continue operations under Executive Orders 104 and

107. In addition, Stage One permits the gradual loosening of restrictions on some businesses and activities. Industries addressed so far include:

- *Retail*: Initially, only “brick and mortar” retail that was designated as “essential” was permitted, with restrictions (see Executive Orders [107](#) and [122](#)). Several follow-up orders have clarified and loosened these restrictions. See our related blog posts regarding [Executive Orders 107 and 108](#), [Administrative Order 2020-6](#), [Executive Order 122](#), [Administrative Order 2020-10](#), and [Executive Order 142](#).

Nonessential retail is now permitted, but for curbside pickup only.

All retail businesses must enact policies to protect customers and employees, such as occupancy limits (where applicable), hours of operation reserved for high-risk individuals, installation of physical barriers (e.g., shield guards between customers and cashiers/baggers), required mask wearing for employees (to be provided by the employer) and for customers, and regular cleaning/sanitizing.

- *Food and Beverage Establishments*: Since the issuance of [Executive Order 104](#) on March 16, restaurants and bars have been limited to food delivery and take out. As summarized below, limited outdoor dining is expected to be permitted to resume in Stage Two.
- *Manufacturing, Warehouse, and Other Work That Cannot Be Done Remotely*: Executive Order 107 recognized that some employees have duties that cannot be performed remotely (e.g., repair/maintenance or warehouse workers, information technology employees, janitorial and custodian staff, and certain administrative staff). In such cases, the employers were permitted to continue operations but were required to make best efforts to reduce their on-site staff to the “minimal number necessary to ensure that essential operations can continue.” See our related blog post [here](#). The directive to maintain minimum numbers of on-site staff remains in place.
- *Construction*: Initially, only essential construction was allowed, with restrictions. Since May 18, 2020, however, all construction business has been permitted to operate, but with the same restrictions, e.g., limits on the entry of nonessential visitors, limiting workplace meetings to fewer than 10 people, and staggering workers’ start and stop times. See our related blog posts [here](#) and [here](#).
- *Golf, Tennis, and Other Outdoor Businesses and Activities*: Beginning in early May, various executive orders have allowed the resumption of certain outdoor businesses and activities, such as golf courses and driving ranges, tennis courts, batting cages, and the use of public gardens and New Jersey state parks and beaches. (Local parks and beaches are generally governed by applicable municipal or county authorities.) In each case, there are guidelines for social distancing, mask wearing, and other protective measures. See our related blog posts [here](#) and [here](#).
- *Transportation Carriers*: Since mid-April, there have been restrictions and guidelines in place for private and public transportation carriers, including limiting

occupancy to 50 percent of maximum capacity, enhanced infection control practices, frequent sanitizing of high-touch areas, and contactless pay options. See our related blog post [here](#).

- *Elective Medical and Dental Surgeries and Invasive Procedures:* [Executive Order 109](#) suspended all elective surgeries and invasive procedures on adults to preserve essential equipment and hospital supplies. With the decrease in the incidence of COVID-19 hospitalizations, in his [Executive Order 145](#), Governor Murphy allowed these procedures to resume effective May 26, subject to [directives](#) issued by the Division of Consumer Affairs, in consultation with the NJDOH.
- *Child Care Centers:* Beginning in early April, pursuant to [Executive Order 110](#), child care centers were limited to providing care only to children of essential personnel, such as health care workers and law enforcement personnel. As summarized below, beginning June 15, 2020, child care centers will be permitted to provide care for all clients, as long as they follow required safety and hygiene procedures.
- *General Office Work:* [Executive Order 107](#), parts of which remain in place, directs that “all businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements.” Although not expressly addressed in any subsequent executive or administrative orders, such employees would appear to fall into Stage Three of the state’s Road Back Plan, as among those who should not return to the workplace yet.

[Executive Order 152](#), which increases the number of people permitted to be present at indoor gatherings, does not directly apply to people reporting to work but is instructive of what a return to office spaces could look like. For example, Executive Order 152 states that the number of individuals at an indoor gathering is limited to 25 percent of the capacity of the room in which it takes place (and, regardless, should not be more than 50 persons) and requires that attendees wear face coverings at all times except where doing so would inhibit the individual’s health, and that all attendees at the gathering be six feet apart from other attendees at all times.

Other businesses addressed in the various executive and administrative orders include, for example, realtors, gun shops, charter fishing boats, car dealerships, and stores selling religious items.

### **Which New Jersey Businesses Are Expected to Open in the Future?**

New Jersey is on track to enter Stage Two of the Road Back Plan on June 15, 2020.

During Stage Two, in addition to already operating businesses (discussed above), phased-in businesses and activities (with adherence to safeguarding and modification guidelines) will be permitted as follows:

### ***Beginning June 15***

- Outdoor dining (according to the rules set forth in [Executive Order 150](#), which we wrote about [here](#))
- Limited in-person retail (also according to the rules set forth in [Executive Order 150](#), which we wrote about [here](#))
- Child care for all clients (according to the rules set forth in [Executive Order 149](#), which we wrote about [here](#))
- The Motor Vehicle Commission (“MVC”) (for a variety of “pick-up and drop-off services”)

### ***Beginning June 22***

- Hair and nail salons, barber shops, and tattoo parlors (rules/guidance expected soon)
- Organized/youth sports (according to the rules set forth in [Executive Order 149](#), which we wrote about [here](#))
- Public and private pools (according to the rules set forth in [Executive Order 153](#))
- Cosmetology shops, day spas—not including saunas, steam rooms, or shared bathing facilities—massage parlors, tanning salons, braiding shops, electrology facilities, and medical spas that solely perform elective and cosmetic medical procedures (according to soon-to-be-released restrictions and standards, such as by appointment only, temperature checks and prescreening, and social distancing between staff-client pairs)

### ***Beginning June 29***

- Expansion of MVC services to behind-the-wheel road tests and the issuance of new licenses and permits

### ***Beginning July 6***

- Youth summer programs (according to the rules set forth in [Executive Order 149](#), which we wrote about [here](#))

### ***No Date Announced***

- In-person clinical research/labs
- Limited fitness/gyms
- Museums/libraries

Stage Three has not yet been assigned a start date, but it is expected that this stage will bring relaxed restrictions for most activities, provided that significant safeguarding is maintained. According to Governor Murphy's [May 18, 2020, announcement](#) of the Road Back Plan, Stage Three phased-in businesses and activities, with adherence to safeguarding and modification guidelines, may include:

- expanded dining,
- critical in-office work,
- limited entertainment,
- expanded personal care, and
- bars with limited capacity.

To date, [the governor has indicated](#) that the “new normal” involving full reopening across all industries, and allowing in-person work to resume, will take place only following “widespread use of vaccine or life-saving treatment.”

### **What New Jersey Employers Should Do Now**

- Designate a person or team with responsibility for overseeing opening/reopening, and develop a plan to guide reopening and ongoing health safeguarding.
- Prepare the workplace for a return of employees, including by cleaning and sanitizing, assessing the space for social distancing, and ensuring that there are sufficient quantities of cleaning/sanitizing supplies and face masks for staff and visitors.
- Become familiar with which businesses are now (or soon will be) allowed to open or expand operations, the specific rules applicable to those businesses imposed by executive or administrative order(s), as well as the state and federal guidelines and requirements applicable to all business.
- Establish necessary policies (e.g., required social distancing, mask wearing, hygiene and etiquette, no sharing of equipment, and requiring employees to wipe down/clean workspaces), and consider providing training to employees.
- Determine (i) which staff are needed to return and which can/should telework, (ii) which tasks can be done at home and which tasks must be done on premises, and (iii) whether jobs should be reconfigured.
- Consider whether to implement schedule changes (e.g., different shifts/starting times to reduce numbers of staff present in the workplace at any one time).
- Be cognizant that while the reopening guidelines state that employees in high-risk groups *should* continue to stay home, this is permissive and not mandatory. Follow federal and state age and disability discrimination laws, which do not allow

employers to mandate employees who are or perceived to be in high-risk groups to stay home, but require a case-by-case analysis of whether an employee who raises the issue can be reasonably accommodated. If you are faced with such return-to-work issues, seek expert legal advice.

\*\*\*\*

For more information about this Advisory, please contact:

**Maxine Neuhauser**  
Newark  
973-639-8269  
[mneuhauser@ebqlaw.com](mailto:mneuhauser@ebqlaw.com)

**Jennifer Barna**  
Newark  
973-639-5232  
[jbarna@ebqlaw.com](mailto:jbarna@ebqlaw.com)

**Yael Spiewak**  
Newark  
973-639-8258  
[yspiewak@ebqlaw.com](mailto:yspiewak@ebqlaw.com)

*This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.*

**About Epstein Becker Green**

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit [www.ebqlaw.com](http://www.ebqlaw.com).