New Jersey Governor Sets Dates and Guidelines for Re-Opening of Child Care Centers, Day Camps, Some Organized Sports, Outdoor Dining and Indoor Non-Essential Retail

Tuesday, June 9, 2020

Child care centers, day camps, some organized sports, outdoor dining and indoor non-essential retail are the latest business and activities that soon can start reopening (with limitations) pursuant to two Executive Orders signed last week by New Jersey Governor Phil Murphy.

Executive Order 149 – Child Care Centers, Day Camps, Organized Sports

On May 29, 2020, Gov. Murphy signed Executive Order 149 ("EO 149") , to allow the re-opening (with restrictions and guidelines) of all child care centers and other child
care facilities, day camps and the operation of non-contact organized sports. EO 149 rescinds Executive Order 110 ("EO 110") (which closed most childcare centers) and supersedes all prior executive and administrative orders to the extent they conflict with EO 149.

Child Care Centers

Since April 1, 2020, pursuant to EO 110, child care centers and other child care facilities (collectively, "child care centers") have been limited to providing care only to children of essential personnel, such as health care workers and law enforcement personnel. EO 149 permits, as of 6:00 a.m., June 15, 2020, the reopening of child care centers for all clients, provided that they comply with the COVID-19 Child Care and Youth Summer Camp Standards and other applicable statutes, regulations, and Executive Orders. Specifically, all child care centers (including those that have been operating pursuant to EO 110), must submit an attestation to the Department of Children and Family ("DCF") no later than 24 hours prior to the anticipated opening date, or in the case of currently operating emergency child care centers, within fourteen days of May 29, 2020, attesting that it will follow all applicable health and safety standards in the COVID-19 Child Care and Youth Summer Camp Standards ("COVID -19 Child Care & Camp Standards"), which is currently under development. On May 29, 2020, however, the DCF issued "Guidance For New Jersey Child Care Facilities On COVID-19 Related Health and Safety Requirements," which can be found here, and directs:

- Screening children and staff each day, prior to entry; anyone exhibiting symptoms or with a fever over 100.4 must be prohibited from entering;
- Limiting the size of classes and groups, and spacing them out throughout the center; staff members may not move between groups;
- Requiring staff to wear cloth masks, and encouraging them for children over the age of 2, whenever feasible; however, masks are prohibited during nap time for children under the age of 2, due to suffocation risks; and.
- Enhanced cleaning and sanitation practices.

EO 149 expressly permits child care centers to engage in pre-operational activities prior to June 15, 2020.

Of note, the reopening of child care centers may impact the availability of COVID-19 related federal and state paid sick leave for employees who have been unable to work due to prior government mandated closures of child care facilities for non-essential workers.

Day Camps

New Jersey youth summer day camps ("camps") are permitted to operate on or after July 6, 2020, provided they comply with the COVID-19 Summer COVID -19 Child Care & Camp Standards and other applicable statutes, regulations, and Executive Orders. To operate, camps , must submit; (a) an attestation to the New Jersey Department of Health ("DOH") no later than 24 hours prior to the anticipated opening date,
attesting that they will follow all applicable health and safety standards, as detailed in the COVID-19 Camp Standards., and (b) an application to the DOH for a certificate of approval, or renewal thereof, to operate the camp, as required by N.J.S.A. 26:12-6 and -7 at least 14 days prior to the camp start date; for camps wishing to open on July 6, the application must be submitted by June 15, 2020. (See here for DOH guidance regarding Youth Camps). Day camps may engage in pre-operational activities prior to July 6, 2020.

Residential and overnight camps remain prohibited from operating. EO 149 does not, prohibit youths from stay overnight in recreational campgrounds as permitted by prior Executive Order 148 (which allows private recreational campgrounds to reopen to the public, with restrictions)

**Organized/Youth Sports**

Effective June 22, 2020, outdoor sporting activities, including organized sporting activities, are permitted settings only, provided they do not involve person-to-person contact or routinely entail individuals interacting within six feet of one another. In addition, all activities must comply with all applicable laws, regulations, and Executive Orders, including restrictions on gatherings in place at the time the sporting activities occur. Prior to June 22, 2020, the DOH Commissioner will issue health and safety standards regarding permissible sporting activities.

As of June 30, 2020, high school sporting activities under the jurisdiction of the New Jersey State Interscholastic Athletic Association (“NJSIAA”) may resume in accordance with reopening protocols issued by NJSIAA, which shall consider DOH guidance in issuing these protocols.

**Executive Order 150 – Outdoor Dining and Indoor Non-Essential Retail**

**Outdoor Dining**

Pursuant to Executive Order 150 ("EO 150") effective 6:00 a.m., June 15, 2020, New Jersey food and beverage establishments may offer in-person service in outdoor areas, provided that the establishment complies with the following requirements:

- Ensure all areas designated for food or beverage consumption are in conformance with applicable local, State, and Federal regulations;
- Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
- Satisfy all health and safety standards for use by food or beverage establishments to serve patrons that shall be issued by the DOH consistent with Executive Order 150;
- Ensure that tables seating individual groups are six feet apart in all directions and that individual seats in any shared area that is not reserved for individual
groups, such as an outdoor bar area, are also six feet apart in all directions;

- Prohibit patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom (or to place an order for or pick up take out);

- Require patrons to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age; and

- Prohibit smoking in any outdoor areas designated for the consumption of food or beverages (the smoking restriction will automatically sunset once food or beverage establishments are permitted to offer in-person service in indoor areas)

EO 150 also reopens public picnic areas and pavilions at all State Parks and Forests.

In addition, EO 150 permits municipalities to use their existing authority to allow food or beverage establishments to expand their footprint to outdoor areas, both within their property and among municipally-governed areas, including but not limited to sidewalks, streets, or parks. However, if a municipality seeks to close off a roadway for which it would need county or State approval, it still must obtain that approval. EO 150 instructs municipalities that make outdoor, shared spaces available for use by food or beverage establishments to equitably divide these spaces among those food or beverage establishments that can feasibly use it.

**Indoor Non-Essential Retail**

As of 6:00 a.m., June 15, 2020, the brick-and-mortar premises of non-essential retail businesses that were closed to the public by Executive Order 107 may reopen to the public, provided that the businesses adopt policies that include, at minimum, the requirements that were applied to essential retail businesses in Paragraph 1 of Executive Order 122 ("EO 122") (which we wrote about [here](#)). To summarize, those requirements are as follows:

- Limit occupancy at 50% of the stated maximum store capacity, if applicable, at one time;

- Establish hours of operation, wherever possible, that permit access solely to high-risk individuals, as defined by the CDC;

- Install a physical barrier, such as a shield guard, between customers and cashiers/baggers, wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment and/or exchange of goods;

- Require infection control practices, such as, regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;

- Provide employees break time for repeated handwashing throughout the
workday;

- Arrange for contactless pay options, pickup, and/or delivery of goods wherever feasible and, wherever possible, consider populations that do not have access to internet service;

- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;

- Require frequent sanitization of high-touch areas such as restrooms, credit card machines, keypads, counters and shopping carts;

- Place conspicuous signage at entrances and throughout the store, if applicable, alerting staff and customers to the required six feet of physical distance;

- Demarcate six feet of spacing in check-out lines to demonstrate appropriate spacing for social distancing; and

- Require workers and customers to wear cloth face coverings while on the premises, except where doing so would inhibit that individual’s health or where the individual is under two years of age, and require workers to wear gloves when in contact with customers or goods.

In addition, as provided in EO 122, businesses must provide, at their expense, the mandated face coverings and gloves for their employees. In addition, if a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual, unless the business is providing medication, medical supplies, or food, in which case the business policy should provide alternate methods of pickup and/or delivery of such goods. When an individual declines to wear a face covering on store premises due to a medical condition that inhibits such usage, neither the essential retail business nor its staff may require the individual to produce medical documentation verifying the stated condition.

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