New Jersey Governor Phil Murphy issued Executive Orders last week increasing the permissible number of attendees for indoor and outdoor gatherings, lifting part of a prior Executive Order that had directed residents to stay home, and setting a date and requirements for the reopening of outdoor pools and other outdoor entertainment and recreation.

Executive Order 152 – Expanding the Limits on Indoor and Outdoor Gatherings

On June 9, 2020, Gov. Murphy signed Executive Order 152 (“EO 152”), which effective immediately, permits an increased number of people at indoor and outdoor
gatherings, under certain requirements.

**Indoor public or private gatherings**

Except for the face coverings requirements, the below rules do not apply to gatherings of 10 or fewer persons.

Public or private indoor gatherings must adhere to all of the following rules:

- The number of individuals may not exceed 25% of the capacity of the room in which it takes place; regardless of room capacity, however, gatherings shall never be larger than 50 persons;

- All attendees must wear face coverings at all times except where doing so would inhibit the individual’s health or where the individual is under two years of age;

- Individuals organizing or maintaining the gathering (if any), must wear face coverings whenever feasible, and must wear face coverings whenever they are within six feet of another individual, except where doing so would inhibit the individual’s health;

- All attendees are required to be six feet apart from others at all times, excluding immediate family members, caretakers, household members, or romantic partners, and excluding a limited number of individuals organizing or maintaining the gathering;

- There may be no contact between attendees, excluding immediate family members, caretakers, household members, or romantic partners, and excluding a limited number of individuals organizing or maintaining the gathering;

- Individuals organizing or maintaining the gathering (if any) should, where applicable, demarcate six feet of spacing in the area of the gathering to demonstrate appropriate spacing for social distancing, such as through the placement of cones, flags, or other markings;

- Any physical items, including equipment, may not be shared by multiple attendees of the same gathering except for immediate family members, caretakers, household members, or romantic partners, unless such physical items are sanitized before and after use by different individuals; and

- To the degree the gathering requires pre-payment, or seeks donations of any kind, contactless options for pre-payment or donation, such as online or by telephone, must be offered wherever feasible.

**Outdoor public or private gatherings.**

The following rules do not apply to (i) gatherings of 25 or few persons or fewer; or (ii) the outdoor gathering is a religious service or political activity (such as a protest).

Public or private outdoor gatherings must adhere to all of the following rules:
- The number of attendees must be limited to 100 persons or fewer; however, no individual shall be considered in calculating the total number of attendees at any time in which that individual is in a vehicle, so long as that vehicle is either (i) closed, meaning that the windows, doors, sunroofs, and tops of the vehicle are all closed, or (ii) more than six feet from any other vehicle or individual;

- All attendees at are required to be six feet apart from others at all times, excluding immediate family members, caretakers, household members, or romantic partners, and excluding a limited number of individuals organizing or maintaining the gathering;

- There may be no contact between attendees, excluding immediate family members, caretakers, household members, or romantic partners, and excluding a limited number of individuals organizing or maintaining the gathering;

- Individuals organizing or maintaining the gathering (if any), should, where applicable, demarcate six feet of spacing in the area of the gathering to demonstrate appropriate spacing for social distancing, such as through the placement of cones, flags, or other markings;

- Any physical items, including equipment, may not be shared by multiple attendees of the same gathering except for immediate family members, caretakers, household members, or romantic partners, unless such physical items are sanitized before and after use by different individuals;

- Open-air rain tarps, tents, and other outdoor structures shall be allowed solely for the purpose of protecting against foul weather or for shade;

- All attendees should wear face coverings at all times where other social distancing measures are difficult to maintain, in accordance with CDC recommendations, except where doing so would inhibit the individual’s health or where the individual is under two years of age, and all attendees must wear such face coverings where required by another Executive Order; and

- To the degree the gathering requires pre-payment, or seeks donations of any kind, contactless options for pre-payment or donation, such as online or by telephone, must be offered wherever feasible.

Nothing in EO 152 will prevent a person at a gathering from coming within six feet of another person, coming into contact with another person, going indoors, or leaving their vehicles, if it is done to protect an individual’s health or safety. Furthermore, it is permissible for a person at a gathering to momentarily remove their mask to place or receive an item in their mouth, including food or beverage, or if done for religious purposes or for their health or safety.

EO 152 expressly permits gatherings at State Parks and Forests, county and municipal parks, public and private beaches, boardwalks, lakes, and lakeshores. Relatedly, available parking at all State Parks and Forests at all county and municipal parks may reopen to their full maximum capacity. EO 152 reiterates that, pursuant to prior Executive Orders, counties and municipalities may continue to
impose additional restrictions at county and municipal parks in response to COVID-19.

Finally, EO 152 supersedes certain prior Executive Orders to the extent they are inconsistent, including the portion of Executive Order 107 (“EO 107”) that prohibited gatherings.

**Executive Order 153 – Lifting the Stay At Home Order, and Setting a Date and Requirements for Opening Pools and Certain Outdoor Recreational and Entertainment Business**

Also on June 9, 2020, Gov. Murphy signed Executive Order 153 (“EO 153”), which lifts his prior “stay at home” and sets the date and requirements for opening outdoor pools and other outdoor entertainment and recreational businesses (with several exceptions).

**Lifting the Prior Stay at Home Order**

On March 21, 2020, Gov. Murphy issued Executive Order 107 (“EO 107”), which, among other things, required residents to stay at home unless engaging in certain specific activities that were then permissible (e.g., obtaining goods and services from limited essential businesses, or obtaining medical care). Recognizing that more businesses and activities have recently been permitted to reopen, in EO 153, Gov. Murphy rescinds the “stay at home” portion of EO 107 (and expressly rescinds or supersedes portions of other prior Executive Orders that are inconsistent with EO 153). Of note, however, it continues to be the governor’s directive that work that can be done from home (e.g., office work) should continue to be done from home.

**Outdoor Swimming Pools and Certain Outdoor Entertainment and Recreational Businesses**

Effective 6:00 a.m., Monday, June 22, 2020, outdoor swimming pools are permitted to open, provided that the pool facility complies with all standards issued by the New Jersey Department of Health (“DOH”), which can be found here. EO 153 permits pool facilities to open for lifeguard training and swimming lessons prior to June 22, 2020.

In addition, EO 153, with limited exception (discussed below), permits the reopening of all outdoor recreational and entertainment businesses and spaces that were previously closed to the public by EO 107, provided that such businesses adopt policies that include, at minimum, the following requirements:

- The public is permitted only in such outdoor spaces, except that members of the public may enter the indoor premises of the recreation business when entering or exiting the establishment in order to access the outdoor area, or to use the restroom;

- Limit total capacity to a number that ensures that all individuals can remain six feet apart;
• Open-air rain tarps, tents, and other outdoor structures shall be allowed solely for the purpose of protecting against foul weather or for shade;

• Require that reservations, cancellations and pre-payments be made via electronic or telephone reservation systems to limit physical interactions (with the caveat that such policies shall, wherever possible, consider populations that do not have access to internet service or credit cards);

• Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;

• Limit the use of equipment rented or otherwise provided by the business to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;

• Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;

• 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;

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

• Limit occupancy in restrooms that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, attendants to monitor capacity;

• Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:

  1. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;

  2. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and

  3. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff.

• Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and to facilitate appropriate social distancing;
Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;

Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;

Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness; and

Continue to follow guidelines and directives issued by the DOH, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.

Restaurants, cafeterias, dining establishments, food courts, bars, concessions, snack bars, and food trucks (with or without a liquor license) that are located at pool facilities and recreational businesses, may operate, provided that they comply with the requirements applicable to food and beverage establishments set forth in Executive Order 150, which we wrote about here.

EO 153 makes clear that any type of event at an outdoor recreational and entertainment business that involves individuals who are there at a specific time and for a common reason, such as a movie, a concert, a sporting event, or a trip on a chartered vessel, must comply with the rules and restrictions on outdoor gatherings in EO 152 (summarized above).

Further, the rules set forth in EO 153 apply to public and private social clubs, as well as any recreational and entertainment businesses that were already permitted to reopen their outdoor spaces to the public, including outdoor archery ranges, batting cages, golf courses, golf driving ranges, shooting ranges, tennis clubs, and chartered vessels.

The following however, remain closed to the public at pool facilities and all recreational businesses:

- Aquatic recreation facilities (i.e., water parks);
- Indoor recreational areas;
- Playgrounds; and
- Recreational water fountains (not those for drinking).

However, a business may operate an amusement game outdoors, such as a game on a boardwalk, provided the game does not take place in an amusement park and an employee is present and adheres to all of the requirements of EO 153, including sanitizing all equipment before and after each use.

Finally, EO 153 provides that total capacity at State Parks and Forests, as well as county and municipal parks, shall be limited to a number that ensures that all individuals can remain six feet apart.