

Employment Law Update: In New Jersey, Executive Orders 242 and 243 Permit a Return to the Workplace, But Create New Questions for Employers

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In a major step toward the reopening of New Jersey, Governor Phil Murphy has issued Executive Orders [No. 242](#) and [No. 243](#), now in effect. These new orders lift major COVID-19 restrictions, including mask wearing in the workplace and in public spaces. As employers shift their attention to getting their employees to return to their office or workplace, they confront new challenges to understand and comply with these new orders, and to bring their workers back safely. This legal blog post covers some of the pressing employment-related concerns, designed to help employers navigate these new reforms.

Indoor Public Space vs. Office Space

A key point from these latest Executive Orders concerns the definition of “indoor public spaces” vs. office space. For New Jersey employers, compliance is not simply saying that: “masks are no longer required except if an individual is unvaccinated.” (which *is* permitted for indoor public spaces^[1]). An office workplace must require employees to wear masks unless the employee provides “proof” of vaccination. However, employers are permitted to allow customers, visitors, and other authorized individuals to enter the office space without requiring the use of a mask or adherence to social distancing, regardless of their vaccination status. Notwithstanding the aforementioned, employers may maintain a mask mandate. The following FAQs help to break down the employer-focused sweeping reforms of both Executive Orders.

Employment FAQ: Executive Orders 242 and 243

1. Do employers have to require masks for those returning to the workplace?

Yes, certain industries must continue to wear masks: child care centers, other child care facilities, youth summer camps, and public, private, and parochial preschool program premises and elementary and secondary schools, including charter and renaissance schools, health care settings, including long-term care facilities and office-based settings, public transportation, correctional facilities and homeless shelters.

If an employer operates an indoor public space, individuals, including employees, are not required to wear masks, regardless of their ability to maintain six feet of distance from other individuals or groups. In accordance with CDC recommendations, individuals who are not fully vaccinated should continue to wear masks in indoor public spaces.

If an employer is not on the aforementioned list or an indoor public space, employees must still wear masks unless an employee provides proof of being fully vaccinated. And yes, employers can request to see an employee’s vaccination card.

2. Do Executive Orders 242 and 243 continue to mandate that employers permit remote work whenever practicable?

No, on June 4, 2021, paragraph 10 of Executive Order 107^[2], which required accommodation of remote work whenever practicable, was rescinded.

3. **Are employers expected to maintain daily health checks?**

Yes.

4. **Can an employer require vaccinations for employees working in the workplace?**

Yes.

5. **Is there a requirement for employers to provide accommodation for employees that cannot receive a vaccine?**

An employer must engage in the interactive process to determine if a reasonable accommodation can be provided to the employee which would allow the employee to safely return to work without a vaccine. For more information, see this [Employment Law Resource post](#).

Compliance

The Executive Orders provide that individuals who violate or “aid and abet” the violation of the Executive Orders can be charged as a disorderly person and shall, in the discretion of the court, be subject to imprisonment for a term not to exceed 6 months, or shall pay a fine not to exceed \$1,000.00 or both a fine and imprisonment.

TAKEAWAY: Employers are advised to review the mask requirements imposed on their workplace and develop protocols regarding same.

If you are an employer with questions about Executive Orders 242 and 243, or about asking employees to return to the workplace, please contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law Team](#).

Resources:

[1] “indoor public spaces” do not include indoor worksites of employers, as defined in [Executive Order No. 192](#) (2020), that do not open their indoor spaces to the public for purposes of sale of goods, attendance at an event or activity, or provision of services.

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

Attorney

- Tracy Armstrong

Practice

- Employment Law