

Proposed Executive Order for Pandemic Protections for Essential Workers

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, on April 7, 2020, I issued Executive Order No. 119 (2020), which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, on March 16, 2020, through Executive Order No. 104 (2020), the facts and circumstances of which are adopted by reference herein, I established statewide social mitigation strategies for combating COVID-19; and

WHEREAS, Executive Order No. 107 (2020) closed non-essential retail businesses to the public, but permitted essential retail businesses and other businesses that require an in-person workforce to continue to operate; and

WHEREAS, essential retail businesses continue to deliver critical goods like food and medical supplies to the State's residents; and

WHEREAS, the State's manufacturing and warehousing businesses, where essential goods are made and/or stored before delivery to the retail business or consumer, continue to provide a vital service to the public by fueling our supply chain and continue to contribute to New Jersey's response to the present pandemic; and

WHEREAS, U.S. Occupational Safety and Health Administration (OSHA) has no existing standard on COVID-19 and has only issued recommended guidelines and many employers need clear mandates that will be enforced to deter inadequate worker protections;

WHEREAS, as of April 27, 2020, according to the World Health Organization, there were more than 2,800,000 confirmed cases of COVID-19 worldwide, with over 198,000 of those cases having resulted in death; and

WHEREAS, as of April 28, 2020, according to the Centers for Disease Control, there were more than 1,005,147 confirmed cases of COVID-19 in the United States, with over 57,500 of those cases having resulted in death; and

WHEREAS, as of April 29, 2020, there were over 116,200 positive cases of COVID-19 in New Jersey, with at least 6,770 of those cases having resulted in death; and

WHEREAS, essential workers are continually exposed to coworkers and members of the public, increasing their risk of exposure to COVID-19; and

WHEREAS, more New Jerseyans have died because of coronavirus than died in World War I, the Korean War, the Vietnam War, both Gulf Wars, the wars in Afghanistan and Iraq, Superstorm Sandy, and September 11th, combined;

WHEREAS, effective enforcement of worker protections is critical to increasing compliance. Given the unprecedented enforcement challenges created by COVID-19 and enhanced enforcement of worker protections crucial; and

WHEREAS, the State has finite capacity to enforce worker protections;

WHEREAS, for enforcement to be effective during this crisis, government agencies must work with community stakeholders who have strong relationships with workers of essential businesses experiencing unsafe working conditions and violations of worker protection requirements and who are in a position to report and better prevent such violations; and

WHEREAS, Partnerships between regulators, workers, nonprofit organizations, and businesses can increase worker safety by educating workers about their rights, collecting evidence, reporting violations, identifying non compliant employers, and modeling good practices; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A:9-33, N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-36, N.J.S.A. App. A:9-45, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. NJLWD shall, in consultation and coordination with worker centers, worker rights' organizations, non-profit legal services organizations, and unions in the State (hereinafter "partner organizations", with preference given to organizations that have at least two or more of the following: multi-lingual capacity, intake and outreach staff or organizers, access to community networks that are culturally relevant to workers in traditionally low-wage industries, and access to a legal clinic), expeditiously create a 24-hour "worker rights protections" hotline as follows:

A. Pursuant to N.J.S.A. App. A:9-45, all workers, regardless of immigration status and including employees, part-time workers, independent contractors, domestic workers, farmworkers and other temporary and seasonal workers, can call the hotline to request information regarding their rights and/or to report a violation of any "pandemic protection";

i. "Pandemic protections" as used in this Order include the right to New Jersey Earned Sick Leave (N.J.S.A. 34:11D-1), retaliation protections under all New Jersey Wage and Hour Laws (N.J.S.A. 34:11-56a24; N.J.S.A. 34:11D-4; N.J.S.A. 34:11-4.10; N.J.S.A. 34:11-56.6; N.J.S.A. 34:6B-8), the Right to Refuse Work, and New Jersey Essential Worker Emergency Paid Sick Leave;

- a. Both client-employer and temporary employment agencies will be held jointly and severally liable for all violations of pandemic protections.
- b. The Right to Refuse Work shall mean: A worker including employees, part-time workers, independent contractors, domestic workers, farmworkers and other temporary and seasonal workers, regardless of their immigration status, shall have the protected right to refuse to work under conditions that the worker reasonably believes would expose them, their workers, and/or the public to COVID-19. Such conditions include, but are not limited to situations where an employer:
 - i. Refuses to implement or ignores good hygiene and infection control practices;
 - ii. Pressures workers to work when they are sick and/or fails to require exposed workers to quarantine for 14 days when the employer has reason to know workers have been exposed to COVID-19 on or off the worksite(s);
 - iii. Refuses to implement policies and procedures for frequent and thorough hand washing that includes providing workers, customers, and worksite visitors with a place to wash their hands and if soap and running water are not immediately available, providing alcohol-based hand rubs containing at least 60% alcohol;
 - iv. Refuses to establish and enforce policies and practices that promote flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts) to increase the physical distance among employees and between employees and others (social distancing strategies);
 - v. Ignores or refuses to implement regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment;
 - vi. Fails to isolate workers from hazards, e.g., installing high-efficiency air-filters, increasing ventilation rates, physical barriers, drive through windows for customers, and isolation rooms;
 - vii. Fails to provide employees with the NIOSH-recommended personal protective equipment needed to keep them safe while performing their jobs; or
 - viii. Fails to take proper steps to sanitize, install health and safety systems and/ or allow workers time off as required by federal or state law or company policy,

should workers should a worker(s) test positive or show symptoms of COVID-19.

1. The right to refuse work is a protected activity. An employer shall not discriminate or take adverse action against a worker for a good faith refusal to work if:
 1. The worker has requested that the employer correct such a condition and the condition remains uncorrected; and
 2. While the dispute process described in Paragraph 2(B) below of this Order is ongoing.
 2. If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this Order. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.
 3. New Jersey Essential Worker Emergency Paid Sick Leave shall mean all essential workers during a state of emergency, in addition to Earned Sick Leave (ESL) provided under N.J.S.A. 34:11D-1 et seq., shall have the right to 15 paid sick days for any reason covered under the ESL law including self-quarantining.
 4. Employers shall not discriminate or take adverse action against a worker who uses Essential Worker Emergency Sick Leave.
 5. Retaliation protections provided under N.J.S.A. 34:11D-4 shall apply to absences covered by Essential Worker Emergency Sick Leave.
- ii. The worker rights protection hotline shall be staffed by partner organizations. Staffing and other associated costs will be paid by the State.
- B. When a worker reports a violation of a pandemic protection to the hotline described in Paragraph 1:
- i. For complaints pertaining to violations of the right to refuse work the call will be transferred to the COVID19 Safety Liaison on duty who will follow the procedure as described in Paragraph 2(B);
 - ii. For complaints pertaining to all other pandemic protections, hotline staff will conduct an intake interview with the worker to obtain information regarding the allegations and employer, which will be expeditiously conveyed to the Division of Wage and Hour Compliance (W&H). W&H shall:
 - a. Prioritize pandemic protection complaints;
 - b. Contact the employer(s) with 48 hours of receiving intake information and attempt to promptly resolve the complaint; and
 - c. Where the complaint cannot be resolved within three business days of contacting the employer, W&H will initiate a fast-tracked

investigation that prioritizes swift resolution of the complaint that makes the worker(s) whole.

1. Partner organizations may represent workers throughout the fast-tracked investigation.
2. If the employer(s) fails to respond to W&H within three business days of proper service, or fails to maintain and provide records that establish compliance with the relevant law(s), and the employer(s) has been properly served, the Commissioner may enter a Default Order that the employer(s) has violated pandemic protections as alleged.
 1. A Default Order shall have the force and effect of an Order of the Commissioner. The Commissioner may seek to enforce a Default Order in a court of competent jurisdiction.

2. Deputizing COVID-19 Safety Liaisons to Resolve COVID-19 Disputes

A. There is hereby established a COVID-19 Safety Liaisons Deputization Process that shall be administered by NJLWD such that:

- i. NJLWD shall receive recommendations for COVID-19 Safety Liaisons from partner organizations.
 - a. COVID-19 Safety Liaisons will receive 30 hours of training that shall include components covering state and federal health and safety laws and recommendations, best employer practices regarding COVID-19, and facilitation/communications/group problem-solving. The training shall be administered over five consecutive days.
- ii. NJLWD's Division of Public Safety and Occupational Safety and Health (PSOSH) shall collaborate with the Rutgers Occupational Training and Education Consortium (OTEC), in partnership with New Labor and other worker centers to create and administer the training. Every COVID-19 Safety Liaison will be assigned a coach.
 - a. The State shall provide emergency funding to compensate OTEC and organizations involved for their time developing and delivering the training.
- iii. Upon completion of the training, PSOSH shall sign an agreement that deputizes COVID-19 Safety Liaisons such that they are empowered to respond to workers who have concerns about the risk of potential exposures to COVID-19.
- iv. PSOSH shall provide a badge and necessary safety equipment to all deputized COVID-19 Safety Liaisons and assign investigators to work with COVID-19 Safety Liaisons.
- v. The State shall provide emergency funding to compensate COVID-19 Safety Liaisons for training time and time spent responding to worker complaints.

B. There is hereby established a COVID-19 Dispute Resolution Process, which NJLWD shall support, as follows:

- i. Step 1: Where a worker(s) reasonably believes an employer(s) actions or inaction exposes them, their workers, and/or the public to COVID-19 the

worker(s) is protected in raising their concerns with the immediate supervisor. When such concerns are raised, the employer(s) must in good faith work with the worker(s) to take reasonable measures to eliminate or reduce the potential harm.

- a. If the worker(s) and employer(s) cannot resolve their COVID-19 dispute, the worker(s) has the protected right to refuse the assigned work.
 - b. In such circumstances, until the dispute is resolved:
 1. The worker(s) refusing to work retains the right to continued employment and shall continue to be paid for the hours that would have been worked;
 2. The assigned work cannot be reassigned to a different worker.
- ii. Step 2:
- a. Where the worker(s) has union representation, they should immediately contact their union representative.
 - b. All workers not represented by a union should immediately contact the pandemic protection hotline to speak with the COVID-19 Safety Liaison on duty, who will contact the management of the facility and/or go to the job site, and, in consultation with the worker(s) and the management of the facility, attempt to resolve the dispute in a manner that ensures that any potential exposure to COVID-19 is adequately reduced or eliminated.
 - c. If the dispute cannot be resolved at Step 2, Paragraphs 2(b)(i)(a)-(b) above continue to apply.
- iii. Step 3: The COVID-19 Safety Liaison shall immediately contact a PSOSH investigator assigned to them. Either remotely or in person, the Safety Liaison and PSOSH investigator will:
- a. Document the unresolved dispute indicating the time, location, individuals and conditions and/or recommended resolutions in dispute.
 - b. Attempt to resolve the dispute.
 1. If the dispute cannot be resolved at Step 3, Paragraphs 2(b)(i)(a)-(b) above continue to apply.
- iv. Step 4: The assigned job(s) in dispute will continue to be halted until the dispute has been reviewed by the NJ COVID19 Health and Safety Dispute Resolutions Panel, which NJLWD shall administer.
- a. The Panel shall:
 1. Consider the facts of the dispute and make a determination;
 2. Produce written findings as to how to resolve the dispute.
 - b. If the Panel finds the employer subjected the worker(s) to unsafe working conditions, the employer is in violation of this Order and is subject to all pandemic protections damages, fines, and penalties as described in Paragraph 5.
 - c. The Panel's findings shall be binding on all parties

1. Where the Panel assesses damages, fines, or penalties, the employer(s) shall have the right to a hearing under (2) below.
 2. No administrative penalty shall be levied pursuant to this subparagraph unless the Panel provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 business days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.
 - d. All Panel processes and considerations may be conducted virtually;
 - e. The Panel shall be appointed by the NJLWD Commissioner and include:
 1. A representative of senior leadership from PSOSH;
 2. A representative of senior leadership from W&H;
 3. A representative from the partner organizations;
 4. A union representative;
 5. A representative from a legal advocacy organization; and
 6. An employer representative.
 - f. Worker(s) may be represented through the Panel process by a union representative; or, where the worker(s) asks for a worker center or legal representative.
3. Notice of Pandemic Protections
 - A. Pursuant to N.J.S.A. App. A:9-45, essential employers shall provide all essential workers with notice of their pandemic protections within 14 calendar days of this Order taking effect. The notice shall include prohibitions against retaliation and provide contact information for the pandemic hotline and NJLWD.
 - B. NJLWD shall immediately create and distribute a model notice that employers may use to comply with this Paragraph.
 - i. The State shall expeditiously provide funding to partner organizations to translate the notice into Spanish and any other language that the NJLWD Commissioner determines is the first language of a significant number of workers in the State.
 4. Trainings
 - A. Essential Worker Trainings
 - i. Know your rights training for all essential workers - Pursuant to N.J.S.A. App. A:9-34, NJLWD shall coordinate with partner organizations to create a training that can be accessed remotely within 14 calendar days of this Order taking effect to provide workers with information about their rights under this Order, and resources for obtaining additional information or reporting a violation.
 - a. Employers shall have 14 calendar days from the date NJLWD makes the training available to:

1. Require all essential workers complete the training during paid work time; and
 2. Send NJLWD certification that all essential workers have completed the training.
- ii. Mandatory compliance training – Where a violation of a pandemic protection has been established by the COVID-19 Health and Safety Dispute Resolutions Panel or NJLWD, violating employers shall allow a partner organization to provide essential workers an additional training on their rights during paid time, either remotely or in person.
 - a. Per Paragraph 5(D), the violating employer shall bear the cost of this training by way of a fine assessed by the Panel or NJLWD payable to the partner organization.
- B. Essential Employer Management Trainings - NJLWD shall coordinate with partner organizations to create a training that can be accessed remotely within 14 calendar days of this Order taking effect to create a training that can be accessed remotely to educate managers and supervisors or essential workers on employers' obligations to comply with rights under this Order;
- i. Employers shall have 14 calendar days from the date NJLWD makes the training available to:
 - a. Require all supervisors and managers overseeing the work of essential workers complete the training during paid work time; and
 - b. Send NJLWD certification that all required supervisors and managers have completed the training.
- C. NJLWD shall provide employers with information as to how to submit certifications required by this paragraph.
5. Enhanced Remedies for Violations of Pandemic Protections - In addition to all remedies provided in the laws administered by the NJLWD Commissioner, the following may be assessed for violations of pandemic protections as defined by this Order:
- A. Damages to impacted workers: \$120 in damages to each worker whose rights were violated for that each day the violation occurred or continued;
 - B. Civil penalties: \$50 for each day and for each worker whose rights were violated for that each day the violation occurred or continued;
 - C. Fines payable to the State:
 - i. Retaliation: \$1000 per aggrieved party
 - ii. Failure to provide notice of pandemic protections or investigation: \$500
 - D. Fines payable to partner organizations to cover the cost of administering mandatory compliance education for the employer's essential workers;
 - E. Notices
 - i. Notice of ongoing investigation – Employers under investigation by W&H for allegations of a pandemic protection violation are required to post a notice stating the employer is being investigated;
 - a. NJLWD shall create such a notice and include information regarding retaliation protections;
 - ii. Notice of a finding of retaliation – Employers found to have retaliated are required to post a notice informing workers of the violation, stating retaliation

is illegal, and providing contact information for NJLWD and pandemic protections hotline.

- F. Compliance monitoring - Employers found to be in violation of “pandemic protection” shall be required, pursuant to authority granted by N.J.S.A. App. A:9-36, to provide workers’ phone numbers to designated partner organizations and allow such organizations to follow up with workers after the investigation is concluded
 - i. NJLWD shall consult with partner organizations to determine which has the capacity and is best suited to conduct compliance monitoring.
6. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of NJLWD, as appropriate.