



## Application of Executive Orders 145 and 192 to Healthcare Practices

- I. **Executive Order No. 192** - signed October 28, 2020; goes into effect November 5, 2020
  - Imposes strict COVID-19 mitigation protocols on businesses to protect the health of workers and of the community
  - Applies to all retail businesses
  - Healthcare practices are already subject to the protocols set forth in Executive Order No. 145 “Healthcare Services in Office Practices” with respect to their office practices.

- II. **What is new for Healthcare Practices:**

Executive Order No. 192 includes a whistleblower provision and sets forth penalties for violations of the protocols. The whistleblower provision and penalties apply to healthcare practices.

- A. **Whistleblower Provisions**

Enforcement of the protocols imposed shall be supported by the Department of Labor and Workplace Development. The DOLWD shall:

- establish an intake mechanism to receive complaints from individuals
- coordinate with relevant licensing agencies to refer complaints
- create a process for reviewing complaints, including employee and employer interviews
- establish a process for addressing complaints with employers, which process shall at a minimum provide the employer with an opportunity to correct any alleged deficiency

- B. **Penalties**

Any employer that fails to adhere to these protocols is subject to, among other things:

- closure of the business by the DOH (pursuant to N.J.S.A. 26:13-8)
- N.J.S.A. 26:13-8a (2)A specifically addresses health care facilities

- III **The requirements of Executive Order No. 145 “Healthcare Services in Office Practices” remain in effect**, most notably:

- Establishing rigorous protections for staff
  - teleworking to the greatest extent possible
  - wearing cloth face coverings except when impractical
  - requiring clinical staff to wear PPE consistent with the level of risk
  - staggering schedules
- Deferring/ Postponing elective surgeries and procedures
  - for patients COVID-19 positive or symptomatic
  - for asymptomatic patients where postponement unlikely to result in an adverse outcome

See New Jersey Division of Consumer Affairs Advisory “Healthcare Services in Office Practices”  
<https://www.njconsumeraffairs.gov/COVID19/Pages/Healthcare-Services-in-Office-Practices.aspx>

**IV. Order No. 192 mandates that employers who require or allow their workforce to be physically present at a worksite must:**

1. (a) Require individuals to keep 6 feet apart; when not possible, the employer must ensure that each employee wears a mask as provided in subsection (b).
- (b) Require individuals entering the workplace to wear cloth or disposable masks except where impractical (eating, drinking, providing a service that cannot be performed while wearing a mask).
- (c) Provide EPA approved sanitation materials, such as hand sanitizer and sanitizing wipes containing at least 60% alcohol, at the employers' expense.
- (d) Ensure that employees practice regular hand hygiene, particularly when interacting with the public, allow break time and provide facilities for hand washing, and otherwise adopt policies to promote hygiene, such as providing gloves (at the employers' expense).
- (e) Routinely clean and disinfect all "high touch" areas.
- (f) Conduct daily health checks prior to the start of each shift.
- (g) Immediately separate and send home any employee who appears to have any symptoms consistent with COVID-19, as defined by the CDC. Employers must continue to compensate such employees in accordance with the Family Leave Act and any other applicable federal or state law.
- (h) Promptly notify all employees of any known exposure to COVID-19 at the workplace, as defined by the CDC consistent with the protections of the ADA.
- (i) Clean and disinfect the worksite when a known COVID-19 exposure occurs.
- (j) Follow and adhere to all guidelines and directives issued by the CDC, DOH and OSHA.

*Note: These provisions do not apply when they would interfere with the discharge of the operational duties of first responders, emergency management personnel, emergency dispatchers, healthcare personnel, public health personnel ... engaged in emergency response activities*

**V. Masking Requirements:**

For Employees

1. May permit employees to remove masks when at workstations and more than 6 feet apart, or alone in a walled office.
2. Must make masks available at no cost.
3. May deny entry to the workplace to any employees who decline to wear a mask, consistent with the ADA and NJLAD. Employers can require employees to produce medical confirmation of any condition or disability that prevents the employee from wearing a mask.

For Customers/Visitors

1. May deny entry to the workplace to any customers or visitors who decline to wear a mask, consistent with the ADA and NJLAD. Employers cannot ask for production of medical confirmation from a customer or visitor unless otherwise required by law.

Catherine J. Flynn, Esq.  
Flynn Watts LLC  
1 Gatehall Drive  
Suite 103  
Parsippany, NJ 07054  
[cflynn@flynnwattslaw.com](mailto:cflynn@flynnwattslaw.com)

Michael A. Moroney, Esq.  
Flynn Watts LLC  
1 Gatehall Drive  
Suite 103  
Parsippany, NJ 07054  
[mmoroney@flynnwattslaw.com](mailto:mmoroney@flynnwattslaw.com)