

Pennsylvania Governor’s and Secretary of Health’s COVID-19 Mitigation Orders Apply to Local Governments

By: Patrick J. Harvey, Esq. & Robert Vernon, Esq.

Over the past weeks, the Pennsylvania Governor and Secretary of Health have issued a series of Orders in an effort to curtail the spread of the COVID-19 virus across the Commonwealth. These Orders place restrictions on schools, extracurricular events, gatherings of people, and most notably businesses operating within Pennsylvania. Although these Orders do not directly designate municipalities and other government bodies within their text, both the Pennsylvania Department of Health and Department of Community and Economic Development have issued a series of Frequently Asked Questions (FAQ’s) recognizing that the mitigation rules applicable to businesses should also apply to government and public buildings. Because of this guidance, it is important for municipal leaders to familiarize themselves with the extensive regulations, and enact rules and policies that satisfy these orders.

Most notable among the rules is the directive that those employees who can telework, must telework. The Department of Health’s guidelines maintain that there is no “life-sustaining” or “essential” business exception to the requirement to telework unless it is not possible to do so. If it is impossible for employees to telework, they are permitted to work in their normal place of business, provided that the mitigation measures set forth in the orders are followed.

The first such measure is set out in the Secretary of Health’s November 11, 2020 Order Requiring Universal Face Coverings. This Order requires all employees working indoors or in an enclosed space where other persons are present to wear a face covering that covers both their nose and mouth. There are some permitted exceptions to this rule for employees who “work alone,” isolated from interaction with other people, such as in an enclosed office with a door or alone in the cab of a vehicle, who have medical restrictions, or where wearing a face covering would create an unsafe condition. It is encouraged to explore the use of alternative face coverings, such as face shields, before exempting any employee or member of the public from wearing a face covering.

Second, the Governor and Secretary of Health’s November 25, 2020 Orders for Mitigation, Enforcement, and Immunity Protections require a number of mitigation protocols, including:

- cleaning and disinfecting — demanding more stringent measures in areas visited by a person infected with COVID-19;
- temperature screenings for all employees prior to the start of each shift;
- staggered shift start times and break times to minimize gatherings of employees; and
- employee isolation and quarantine for persons becoming sick and those they came into contact with.

For those government buildings serving the public, additional measures are to be implemented to ensure that visitors to the building maintain safe social distancing, have access to hand sanitizing stations, and the wearing of face coverings while in the building.

Finally, the Governor and Secretary of Health's December 11, 2020 Orders Directing Limited-Time Mitigation from December 12, 2020 through January 4, 2021 limits all in-person businesses and public buildings to 50% of their maximum capacity as stated in their certificate of occupancy. Further, all indoor gatherings are limited to no more than 10 persons. Both the Department of Health and Department of Community and Economic Development advise that "gatherings" include municipal meetings, and encourage government bodies to explore alternative means of hosting these meetings, such as by video conference.

Municipal managers should carefully review these orders to determine how to best implement mitigation measures and adjust their employment policies to comply with those mitigation efforts. Managers should also work with labor counsel to carefully review any collective bargaining agreements for potential concerns with implementing these mitigation practices, such as changes to schedules, place and nature of work, and any concerns with reductions in the workforce related to these measures.

Links to full copies of these orders, as well as the Department of Health and Department of Community and Economic Development's FAQ's can be found on the COVID-19 page of Campbell Durrant's website, www.cdbl.com. There, you will also find links to previous guidance on potential labor and employment concerns with implementing COVID-19 mitigation orders. Campbell Durrant's attorneys are closely monitoring these rules as they change, and are happy to assist you in answering any questions and helping you implement your mitigation protocols. We strongly recommend that you use the resources provided on this page, and feel free to contact Campbell Durrant attorneys if you have any questions about these issues.