

EXECUTIVE ORDER NO. 243

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 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, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, 222, 231, 235, and 240, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, October 24, 2020, November 22, 2020, December 21, 2020, January 19, 2021, February 17, 2021, March 17, 2021, April 15, 2021, and May 14, 2021, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey, I have issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act ("EHPA"), to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187, Nos. 189-198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223, No. 225, Nos. 228-235, and Nos. 237-242 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed certain businesses and required that businesses and non-profits accommodate their workforce for telework wherever practicable; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, because of the progress we had made in our fight against the COVID-19 pandemic in New Jersey, I was able to announce a series of reopening steps over the course of several months; and

WHEREAS, Executive Order No. 192 (2020) instituted baseline health and safety protocols for employers with employees working on-site, including requiring masking of employees in indoor and outdoor spaces, with limited exceptions; and

WHEREAS, in the past year, we have gained critical knowledge regarding COVID-19, including a better understanding of the risks associated with certain activities, the activities that are most conducive to spread of the virus, and the safeguards that can be implemented to mitigate those risks; and

WHEREAS, this information, together with expanded access to testing, personal protective equipment, and other materials necessary to protect individuals from spread of the virus, as well as the ongoing COVID-19 Vaccination Plan ("Plan") discussed below, allows for certain activities to continue subject to more limited restrictions; and

WHEREAS, over the last six weeks, the number of hospitalized patients has gone from over 2,300 to under 700, the number of patients in intensive care has gone from over 450 to under 140, and the number of ventilators in use has gone from over 230 to under 100; and

WHEREAS, over the last six weeks, the number of individuals testing positive for COVID-19 has gone from approximately 3,000 per day to approximately 500-700 per day, and the weekday spot positivity of COVID-19 tests has gone from 7-8 percent to under or slightly above 2 percent; and

WHEREAS, the rate of transmission in the State has remained below 1 for the past two weeks, and has consistently trended downward over the past two months; and

WHEREAS, the COVID-19 Activity Level Report ("CALI Report") issued by the Communicable Disease Service in the New Jersey DOH calculates COVID-19 activity levels throughout the State using the case rate, percent of COVID-like illness, and percent positivity; and

WHEREAS, the CALI Report for the week ending May 15, 2021, presented an activity level of moderate throughout most of the State, with the southeast region showing low activity level, down from high as recently as mid-April; and

WHEREAS, the State has not experienced a low activity level in any region since September of 2020; and

WHEREAS, given the decisive decreases in key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, and the rate of transmission, and the continuation of the State's Plan, described more fully below, the State can take more significant steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, as part of the State's response to COVID-19, DOH has created a comprehensive Plan to manage the receipt, administration, and tracking of the vaccines developed to inoculate the State's residents and workforce against COVID-19; and

WHEERAS, as part of that Plan, New Jersey set an initial goal of fully vaccinating 70 percent of the eligible adult population in New Jersey by June 30, equating to approximately 4.7 million individuals; and

WHEREAS, the State has thus far administered over 8.7 million doses of COVID-19 vaccines, with over 4.7 million New Jerseyans having received at least one dose of a vaccine and over 4 million having been fully vaccinated; and

WHEREAS, vaccine supply was previously constrained, but is now sufficient to permit every eligible individual within the State reasonable access, and every individual age 16 and over has been eligible for five full weeks, meaning they have had time to get both doses of a two-shot vaccine; and

WHEREAS, because of the State's significant progress in vaccine administration and substantial improvement in its COVID-19 metrics, as highlighted in Executive Order No. 242 (2021), it is reasonable to lift the requirement that businesses and non-profits minimize their in-person workforce where they continue to abide by the applicable health and safety protocols outlined in Executive Order No. 192 (2020); and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") recently stated that fully vaccinated individuals may be able to safely forgo masking and social distancing in certain indoor and outdoor environments; and

WHEREAS, on May 12, 2021, the Governor issued Executive Order No. 239, which rescinded the requirement that employees wear masks at outdoor worksites; and

WHEREAS, given the decisive decreases in key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, and the rate of transmission, and the continued success of the State's vaccination program, I issued Executive Order No. 242 (2021), which rescinded the

mask mandate in indoor public spaces, but retained the mandate in worksites subject to Executive Order No. 192 (2020) that are closed to the public; and

WHEREAS, though unvaccinated individuals, in accordance with CDC recommendations, should continue wearing masks and social distancing, without knowing an individual's vaccination status it is not practicable to continue mandating such practices for a portion of the population; and

WHEREAS, certain employers are better positioned to determine the vaccination status of their employees than they are to determine the status of customers, visitors, and other authorized individuals to their premises, while others may be prepared to ascertain status of all individuals entering their premises; and

WHEREAS, the Equal Employment Opportunity Commission has issued extensive guidance for employers to manage inquiries related to an employee's receipt of a COVID-19 vaccine; and

WHEREAS, similarly, businesses that are generally closed to the public and have limited visitors may reasonably be prepared to ascertain an individual's vaccination status, or to craft a policy that handles such visitors on a more individualized basis, as compared with a business that is generally open to the public and has the potential for high foot traffic in the normal course of its operations; and

WHEREAS, the CDC considers an individual fully vaccinated two weeks after their second dose in a two-dose series, or two weeks after a single-dose vaccine; and

WHEREAS, it is reasonable to permit employers who determine that an employee is fully vaccinated to allow that employee to enter the worksite without a mask, and to allow employers that oversee businesses that are not open to the public to establish their own policy regarding customers, visitors, and other authorized individuals to their premises; 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 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 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. Paragraphs 10 and 11 of Executive Order No. 107 (2020) are hereby rescinded. Businesses and non-profits that require staff to report to a physical worksite must continue to follow the provisions of Executive Order No. 192 (2020), as applicable.

2. It is hereby clarified that employers, as defined in Executive Order No. 192 (2020), in workplaces that are not open to the public per Executive Order No. 242 (2021) are not mandated to require employees to wear face masks or social distance at the worksite where the employee provides proof that they are fully vaccinated, as defined by the CDC, and in accordance with federal and State law. Where an employer is unable to determine the individual's vaccination status or the individual is not fully vaccinated, employers must continue to require those employees to wear masks and practice social distancing in indoor spaces in accordance with Paragraph 3 of Executive Order No. 242 (2021) and Paragraph 1 of Executive Order No. 192 (2020). Employers in settings where masking and social distancing is no longer required pursuant to the provisions of this Paragraph are permitted to impose stricter requirements regarding mask-wearing and social distancing in indoor settings for employees, where otherwise consistent with federal and State law. Employers shall not restrict individuals from wearing masks in those

settings and shall not in any way penalize or retaliate against individuals who elect to wear a mask.

3. It is hereby clarified that employers, as defined in Executive Order No. 192 (2020), in workplaces that are not open to the public per Executive Order No. 242 (2021) are permitted to allow customers, visitors, and other authorized individuals to enter the worksite without requiring use of a mask or adherence to social distancing, regardless of their vaccination status. Employers may establish a policy that requires customers, visitors, and similar individuals entering a worksite to wear a mask and/or social distance, but such policy on masking must comply with the requirements of Paragraph 1(b)(ii) of Executive Order No. 192 (2020). Employers shall not restrict individuals from wearing masks in those settings and shall not in any way penalize or retaliate against individuals who elect to wear a mask.

4. It is hereby clarified that Executive Orders No. 239 and 242 (2021) and this Order do not supersede all other requirements on employers outlined in Executive Order No. 192 (2020), including the daily health checks described in Paragraph 1(f).

5. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

6. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

7. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other

governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

8. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

9. This Order shall take effect at 6:00 a.m. on Friday, June 4, 2021, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
26th day of May,
Two Thousand and Twenty-one,
and of the Independence of
the United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor