

WHAT TO DO ABOUT SUMMONSES TO MANUFACTURERS, CONTRACTORS AND SMALL BUSINESS FOR VIOLATING GOVERNOR MURPHY EXECUTIVE ORDERS 107, 108

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I. Overview of Executive Orders: Local Police are fining manufacturers and workers for allegedly violating Governor Murphy’s Executive Orders (“EOs”) 104, 107, 108. EO 104 Paragraph one (1) specifically exempts “normal operations at airports... medical facilities, office environments, factories, assemblages for the purpose of industrial or manufacturing work, construction sites, mass transit, or the purchase of groceries...” from the Order limiting gatherings to “50 persons or fewer.” EO 107 closed non-essential retail business and cites that the White House recommends limiting groups to ten people or less. However, Paragraph 11 references the essential businesses of manufacturing and construction under the category of “a business... has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue”. This paragraph cites examples of essential jobs including but not limited to “first responders, construction workers, warehouse workers, lab researchers, certain administrative staff...”. EO 108 invalidates any municipal or county restriction that conflicts with EO 104 or EO 107 cited above.

II. Newark Police Issue Summons to Newark-Based Manufacturers: Despite the EOs, the Newark Police Department has issued summonses to Newark-based manufacturers and their employees for having too many employees on the floor and at the work place. During one visit, the police told the manufacturer the company could not have over 50 employees on the warehouse floor. At another manufacturer, the manufacturer was told it could not have over 10 employees working at one time. Both times the Newark Police incorrectly interpreted and applied Executive Orders 104, 107, and 108. These Orders and their guidelines identify manufacturing companies as essential and can remain open during the COVID-19 pandemic provided manufacturers reduce staff to the minimum staff required to perform essential functions.

III. Takeaways:

- **Accept the summonses**--Do not fight with the police. Even if their interpretation of the EOs is incorrect, the summonses are effective and have the force of law until a court rules otherwise. If the police shut down your operations, you can sue to overturn the decisions.
- **Act**—call NJMEP, call Alan Zakin, call Porzio, and call your local elected officials. You need to register the summons with someone to fight on your behalf.
- **Document**—save all documents confirming the number of employees on site when the summonses was issued, and photograph locations of hand sanitizers, social distancing, and other practices you implement. These documents can be used later when you challenge the summons and fine.

- **Follow**—CDC and state health guidelines for safe working environments, and the Executive Orders—minimum staff only. And practice CDC healthy working practices—social distancing, handwashing, hand sanitizers, etc.
- **Understand employee benefit laws**—new federal laws have been passed and recent state laws on family leave and paid sick apply to the COVID-19 pandemic. Know what your obligations and your employees' rights are before you act.
- **Be Prepared**—no one knows what will happen next. Have a plan in place if you have to curtail business operations, furlough employees, cut back on shifts, or close. Prepare now so you can address the next Executive Order.
- **Reach Out**—Get Help! Please contact NJMEP, Alan Zakin Associates or Porzio. They have the resources to guide you through these times.

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