



MEMORANDUM
PRIVILEGED AND CONFIDENTIAL / ATTORNEY WORK PRODUCT

To: Utility & Transportation Contractors Association of New Jersey

From: Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC

Date: October 22, 2021

Re: **COVID-19 Vaccination Mandate for Contractors and Subcontractors in New Jersey**

The following memorandum provides an analysis on Governor Murphy's vaccination mandate for State contractors and subcontractors. Specifically, this provides an examination of Governor Murphy's vaccination and/or testing mandate for contractors and subcontractors contracting with the State.

You specifically asked who will monitor the weekly testing required by Executive Order 271. You also asked what authority is responsible for overseeing the recordkeeping of vaccination and testing information. Moreover, you inquired as to how to interpret the requirement that the covered workers undergo testing at a minimum one or two times a week. Lastly, you asked about the liability for contractors and the consequences for not following the testing requirements.

A. Governor Murphy's Executive Order 271

On October 20, 2021, Governor Murphy signed E.O. 271, requiring contractors and subcontractors (at any tier) that enter into contracts with the State to either provide proof that the covered workers received the COVID-19 vaccination or mandate that their workers submit to COVID-19 testing at a minimum one time a week. In particular, E.O. 271 requires "[e]xecutive departments and agencies, including an independent authority" to ensure that contracts and agreements include a clause that the contractor or subcontractors comply with vaccination and/or testing requirements in the E.O.

Governor Murphy's E.O. 217 specifically applies to:

new contracts, new solicitation for a contract, extension or renewal of an existing contract, and exercise of an option on an existing contract, if it is a contract for services, construction, including demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property, and the cost or contract price thereof is to be paid, in whole or in part, with or out of executive department or agency funds.

In addition to the recordkeeping requirements, the contractors are expected to submit a certification with the bid proposal or prior to executing the contract stating that it will comply with E.O. 271, if awarded the contract. The contractors must also certify, when submitting an invoice for a covered contract, that they have complied with E.O. 271 during the period of time covered by the invoice.

E. Liability and Consequences for Violations of the Vaccination and/or Testing Requirements under E.O. 271

E.O. 271 provides that penalties for violations of this Order may be imposed under N.J.S.A. App. A:9-49 and -50. N.J.S.A. App. A:9-49 states that “[a]ny person who shall . . . [v]iolate any order, rule or regulation adopted by the Governor and promulgated as provided by this act . . . shall be adjudged a disorderly person and shall be subject to imprisonment for a term not to exceed 6 months or shall pay a fine not to exceed \$1,000.00 or both a fine and imprisonment, in the discretion of the court.” N.J.S.A. App. A:9-49. Moreover, N.J.S.A. App. A:9-50 prohibits “[a]ny person from knowingly aiding and abetting another in the violation of [N.J.S.A. App. A:9-49].” As such, there are relatively serious repercussions for violating the testing and vaccination requirements set forth in E.O. 271.