

ATTORNEYS:

- STEPHEN R. NEHMAD
snehmad@ndglegal.com
- KEITH A. DAVIS
kdavis@ndglegal.com
- ERIC S. GOLDSTEIN
egoldstein@ndglegal.com
- ANTHONY M. BONGIOVANNI
abongiovanni@ndglegal.com
- RAYMOND J. WENT, JR.
rwent@ndglegal.com
- CHERYLLYNN WALTERS
cwalters@ndglegal.com
- STEPHANIE E. FARRELL
sfarrell@ndglegal.com
- WILLIAM J. KAUFMANN
wkaufmann@ndglegal.com
- MICHAEL J. LARIO
mlario@ndglegal.com
- JESSICA R. WITMER
jwitmer@ndglegal.com
- CHRIS D'ESPOSITO
cdesposito@ndglegal.com
- HON. MARK SANDSON
msandson@ndglegal.com
- SCOTT H. MARCUS
smarcus@ndglegal.com

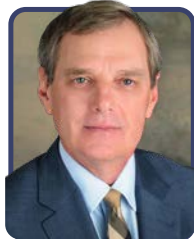
NEHMAD DAVIS & GOLDSTEIN EXPANDS WITH TWO NEW ATTORNEYS

Nehmad Davis & Goldstein is proud to announce the addition of two new attorneys. The addition of these new attorneys—each of whom demonstrate diversity in their background and practice areas—is a testament to the firm’s commitment to establishing itself with a broad statewide platform, representing Fortune 100 companies and small businesses alike.

The newest additions to the NDG team include:



Stephanie E. Farrell (Rutgers University School of Law, 1997) handles general and commercial litigation matters with a focus on employment law and litigation of every type, including claims of discrimination and wrongful termination, at the agency, state and federal levels, on behalf of public and private employers.



William J. Kaufmann (Catholic University of America-Columbus School of Law, 1987) handles a wide array of civil and criminal cases in both the trial divisions and appellate division of the Superior Court of New Jersey as well as before various State administrative agencies. Over the course of the past three decades, he has been a municipal prosecutor, a municipal public defender, a zoning board attorney, a planning board attorney and a utilities authority attorney.

- Nehmad Davis & Goldstein, P.C. welcomes Stephanie E. Farrell, William J. Kaufmann & Olivia E. Mendler to the firm
- New Jersey’s “Prompt Payment Act” is a Powerful Tool for Contractors
- COVID-19 Vaccines: To Mandate or Not to Mandate?
- Electric Vehicle Charging Stations Now Required for Majority of New Development
- Update Regarding Non-Residential Real Property Tax Assessment Appeals

NEW JERSEY’S “PROMPT PAYMENT ACT” IS A POWERFUL TOOL FOR CONTRACTORS

Under New Jersey’s Prompt Payment Act, *N.J.S.A. 2A:30A-2*, when a contractor has performed work in accordance with the provisions of a contract, the owner must make payment to the contractor within thirty (30) days after the billing date for the work. Subcontractors are protected even further and must be paid by the general contractor within ten (10) days after the billing date for the work performed. If payment is not timely made, contractors and subcontractors may seek the amount owed plus interest at a rate equal to the prime rate plus 1%. The Act also allows for an award of “reasonable costs and attorney fees” if the contractor or subcontractor prevails in litigation. In a recent published decision, the Appellate Division reiterated that the award of attorney’s fees and costs to a prevailing contractor or subcontractor does not have to be proportionate to the actual damages recovered. *JHC Industrial Services v. Centurion Cos.*, 469 N.J. Super. 306 (App. Div. 2021). In sum, the Act and its attorney fee-shifting mandate provide a strong weapon to contractors and subcontractors in litigation. If you are a contractor, subcontractor or owner having issues with your commercial or residential construction project, please call NDG trial attorney Ray Went at (609) 927-1177.

COVID-19 Vaccines: To Mandate or Not to Mandate?

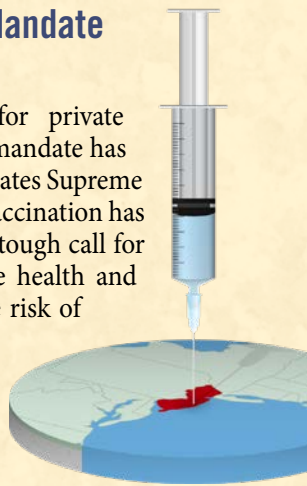
That really is the question for private employers now that the federal mandate has been invalidated by the United States Supreme Court. The issue of mandatory vaccination has been hotly debated, making it a tough call for companies that want to balance health and safety in the workplace with the risk of potentially losing employees in the time of the “Great Resignation,” which, in addition to call-outs related to COVID-19 infections and exposures, has resulted in significant labor shortages across many industries.

Subject to compliance with federal and state anti-discrimination laws, most¹ employers in New Jersey may adopt a mandate without other restrictions specific to COVID-19 vaccine mandates. For example, some other states such as Florida, have essentially banned COVID-19 vaccine mandates by conditioning an employer’s implementation of a mandate on allowing employees to opt out via a minimum of five exemptions.

Even when the state has not restricted an employer’s decision to impose a mandate, implementation of a COVID-19 vaccine mandate necessitates the preparation of a clear policy that specifically addresses exemptions for individuals who, for a reason protected by law, may not be able to get vaccinated (*i.e.* due to a sincerely held religious belief or a disability/medical condition that makes one unable to medically tolerate a vaccine). Employers also will need to consider whether to allow for an alternative to vaccination, such as regular testing and use of a protective masks or other protective equipment, or whether they will take disciplinary action against employees who do not fall within an exemption, yet refuse to be vaccinated.

Navigating potential legal pitfalls in the implementation of a COVID-19 mandatory vaccination policy can be tricky. Companies should have their proposed policies reviewed by counsel and ensure that their employees are familiarized with the policy, and specifically, any exemptions thereto in order to ensure compliance with anti-discrimination laws.

¹Excluded from the discussion of “most” employers are certain covered health care providers, which are mandated by the Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule, CMS-3415-IFC, issued by the Centers for Medicare & Medicaid Services (“CMS Final Rule”), to maintain a policy that requires covered workers to be vaccinated and provide proof that their COVID-19 vaccinations are up to date. Unlike the broader mandate that recently was blocked by the U.S. Supreme Court, the CMS Final Rule was upheld. Additionally, on January 19, 2022, Governor Philip Murphy entered Executive Order #283, extending this vaccine mandate to covered workers employed in certain health care settings to which the CMS Final Rule does not apply.



Electric Vehicle Charging Stations Now Required for Majority of New Development

On July 9, 2021, Governor Murphy signed into law S3223, amending the Municipal Land Use Law (“MLUL”) to require the majority of new development to include a mandated amount of parking spaces pre-wired for electric vehicle charging stations (“EVCS”).

Specifically, as a condition of preliminary site plan approval for multi-family dwellings of five (5) or more units, fifteen percent (15%) of parking spaces must be pre-wired for electric vehicles (defined in the law as “Make-Ready” spaces). 1/3 of the Make-Ready spaces must have electric vehicle charging equipment installed at the issuance of a Certificate of Occupancy, another 1/3 at the 3-year mark and the final 1/3 of spaces must be equipped after six (6) years. Five percent (5%) of all Make-Ready spaces must be accessible for people with disabilities.

All other development involving a parking garage or parking lot (excluding single-family homes and commercial development with less than 25 parking spaces) must have a number of “Make-Ready” spaces available prior to the issuance of a Certificate of Occupancy. The number of Make-Ready spaces is dependent on the overall number of spaces proposed.

- 1 Make-Ready space if the garage or lot has 50 or fewer spaces;
- 2 Make-Ready spaces if the garage or lot has between 51 and 75 spaces;
- 3 Make-Ready spaces if the garage or lot has between 76 and 100 spaces;
- 4 Make-Ready spaces if the garage or lot has between 101 and 150 spaces (at least one of which must be accessible for people with disabilities); and
- At least 4% of the total parking spaces if the garage or lot has over 150 spaces (at least 5% of which must be accessible for people with disabilities).

Notably, a Make-Ready spot shall count as no less than two (2) spots for purposes of complying with minimum parking requirement provided it does not result in a reduction of ten percent (10%) or more of overall space.

Update Regarding Non-Residential Real Property Tax Assessment Appeals

On January 18, 2022, Governor Phil D. Murphy signed into law A-862/S-926, which now gives municipalities the option to refund excess tax payments as credit towards future owed property taxes on non-residential real property when the owner successfully appeals their tax assessment.

Prior to the enactment of this law, *N.J.S.A. 54:3-27.2* required a municipality to repay the excess amount, plus interest, within 60-days of the final judgment if the amount owed on non-residential real property was less than \$100,000.00. If the amount owed was more than \$100,000, municipalities were permitted to repay the excess in equal payments over the course of a three (3) year period.

With the new law, municipalities will still be required to issue a refund within 60-days when the amount owed is less than \$100,000. However, if the amount owed is more than \$100,000, municipalities will now have the following options: [1] repay the excess in equal payments over the course of a three (3) year period or [2] credit the excess amount until it is fully returned against the balance of future property taxes that become due and payable as to non-residential real property parcel. *See, A-862/S-926*. If the excess is not credited fully within three (3) years, the municipality will be required to immediately pay the balance to the property owner.

This newsletter is an informational publication of the law firm of Nehmad Davis & Goldstein, P.C. and should not be considered formal legal advice or the establishment of an attorney-client relationship.

Nehmad Davis & Goldstein, PC | Counselors at Law

Atlantic County Office

4030 Ocean Heights Avenue ■ Egg Harbor Township, NJ 08234
t 609 927 1177 ■ f 609 926 9721

Cape May County Office

2123 Dune Drive, Suite 1 ■ Avalon, NJ 08202
t 609 927 1177 ■ f 609 926 9721

www.ndglegal.com