



Pennsylvania COVID-19 Rules Held Unconstitutional: What Does This Mean For Your Business?

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In response to COVID-19, the Wolf administration had issued orders through the Governor's office and through the Commonwealth's Secretary of Health that forced the closure of 'non-life-sustaining' businesses and forbade gatherings of more than 25 people for indoor events and 250 people for outdoor events. On September 14, 2020, a federal judge in western Pennsylvania found that these restrictions were unconstitutional.

The Problem: What impact does this decision have on your business in the Commonwealth of Pennsylvania?

The Short Answer: As the Wolf administration's order regarding closures of 'non-life-sustaining' businesses had already been suspended, that part of the judge's order has no immediate impact on Pennsylvania businesses. However, a suspension is not termination, so if the COVID-19 pandemic worsens this winter as predicted, the Wolf administration will not be able to reinstate and enforce the order without a successful appeal. What is not overturned are occupancy limits for businesses currently in effect, mask orders, and worker and building safety orders.

Issues to Plan For: To the extent that the order allows childcare facilities to increase capacity or reopen, some employees may lose the right to paid leave under the Families First Coronavirus Response Act. An appeal is likely but may take months and be decided after the 2020 flu season is over – and the judge's order may itself be suspended during the appeal. A significant issue for the court was the unequal effect that the Wolf administration's rules had on small businesses, and advantaged large businesses (i.e. small hardware stores had to close while large box stores remained open). Therefore, the Wolf administration may craft new rules that address these issues.

It remains to be seen exactly how this ruling will impact Pennsylvania businesses – expect rapid developments over the next few weeks. If you have questions or need assistance planning to deal with this uncertain contingency, contact the Wisler Pearlstine COVID-19 Response Team of Christopher Ezold and Rhonda Grubbs at (610) 825-8400 to discuss your concerns and get started addressing your business issues.

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