

Kansas Governor Signs Executive Order Detailing Essential Functions Framework, Requires Use by Counties That Issue Stay-At Home Orders

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On Tuesday, March 24, 2020 Kansas Governor Laura Kelly issued two executive orders, including **Executive Order #20-14,** which reduces the mass gathering limit in Kansas from 50 to 10, and **Executive Order #20-15,** which provides an "essential functions framework" that must be used by counties that issue stay-at-home orders.

To date, at least ten Kansas counties have issued "stay-at-home" orders which generally direct: 1) individuals to stay at home (subject to certain exceptions); and 2) non-essential businesses to cease all in-person activities. Additionally, these orders list a number of businesses and industries that are "essential" and are exempt from certain directives in the orders.

How Does Executive Order #20-15 Impact Local Stay-at-Home Orders?

The Executive Order, which is a distinct departure from other statewide orders issued across the country, supersedes or preempts the provisions of any local "stay-at-home" or similar order that fails to exempt the Kansas Essential Functions Framework ("KEFF") essential functions listed in paragraph 11 of the Executive Order. However, the Executive Order does not prevent a local issuing authority from adding essential functions or specific subcategories to the KEFF essential functions.

KEFF is a framework for identifying and continuing essential functions that must remain operational and focuses on four functional areas: 1) Connect; 2) Distribute; 3) Manage; and 4) Supply. The four functional areas are broken down in more detail in the Executive Order. Local issuing authorities are required to distribute the KEFF framework to companies and other organizations in their jurisdiction.

Perhaps the most significant change created by the Executive Order is the mandate that companies or

other organizations in a jurisdiction subject to a “stay-at-home” order, and that may qualify as an essential function, “should contact the local issuing authority (the county) and request exemption from the restrictions of the local order for its personnel.” If the exemption is granted, the company may continue essential functions. Further, in its request, the company “should identify by number the categories of essential functions it performs and provide any brief necessary explanation to establish that it performs those functions.” The local issuing authority should then quickly determine which functions are exempt and which are not.

It is unclear how this directive will be interpreted by the various counties that have issued “stay-at-home” orders, but Johnson County and Wyandotte County have suggested, in calls to their respective COVID-19 hotlines, that they will not require businesses to contact the county to request an exemption. Rather, representatives through the counties’ COVID-19 hotlines suggest companies will be allowed to self-determine whether they are exempt as an essential business, under the Executive Order or the local “stay-at-home orders.” We will provide an update should this change. Meanwhile, potentially exempt companies in other counties are encouraged to contact the local issuing authority’s COVID-19 hotline to determine whether they are taking the same approach as Johnson County and Wyandotte County or whether the companies will need to submit a request for an exemption to their respective local authority.

If you need assistance in requesting an exemption or contacting a local issuing authority, please contact a Seigfreid Bingham attorney.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance. Readers with legal questions about how these orders apply to your business and your employees should consult the authors, Mark Opara (MOpara@sb-kc.com), Christopher Tillery (CTillery@sb-kc.com), or Curry Sexton (CSexton@sb-kc.com), or any other shareholder in Seigfreid Bingham’s Employment Law Group, including: John Vering, John Neyens, Brenda Hamilton, Shannon Johnson, or Julie Parisi, or your regular contact at Seigfreid Bingham at 816-421-4460.

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