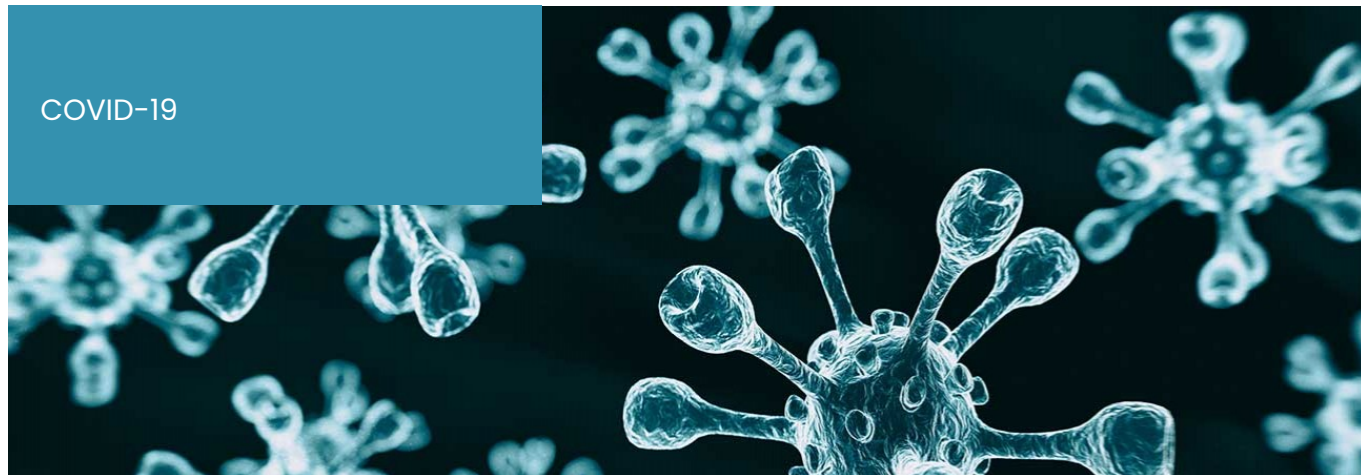


COVID-19



## **BUSINESS GUIDE TO THE KANSAS AD ASTRA RE-OPEN PLAN (PHASE 2.0)**

May 19, 2020

By: Trish Voth Blankenship

*Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).*

### **EXECUTIVE SUMMARY OF THE KANSAS AD ASTRA RE-OPEN PLAN PROVISIONS TO CONDUCT BUSINESS DURING PHASE 2.0**

- On May 22, all businesses may operate except five types which remain prohibited.
- When businesses operate, certain operating terms are mandatory, and additional operating terms are encouraged.
- Additional requirements and suggested operations beyond the Plan terms might exist for a business.
- Next Plan phase commences no sooner than June 8.

### **PLAN INTRODUCTION AND UPDATE**

On May 22, Kansas will advance to Phase 2.0 of the governor's statewide Ad Astra Re-Open Plan, named with a nod to Kansas' state motto – Ad Astra per Aspera ("to the stars through difficulties"). The Plan's Phase 1 commenced on May 4, and a phasing timeline is shared below. The business operating terms of the Plan will continue to adjust as Kansas exits Phase 1.5 and enters Phases 2 and 3, and then Phase Out targeted for June 22. Additionally, since inception the governor's Plan along with the Plan's related Executive Orders leave open the possibility for the Plan to be revised as the governor might determine appropriate. To aid with interpretation of the Plan, the Governor also provides these FAQs.

### **BUSINESS AND FACILITIES OPERATIONS PROHIBITED IN PHASE 2.0 OF THE PLAN**

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During Phase 2.0, Kansas is “open for business” except the Plan provides for these five types of businesses and facilities to remain closed:

- Bars and night clubs (excluding already operating curbside and carryout).
- Entertainment venues if capacity is at least 2,000.
- Swimming pools (excluding physical therapy or first responder training uses).
- Professional organized sports facilities, tournaments, games and practices.
- Summer camps (excluding any licensed child care facility or program).

The Plan includes clarification that if a business or facility involves or operates more than one activity or function, only permitted activities and functions may occur (for example, a swimming pool cannot operate even if located within a facility conducting permitted business).

## **BUSINESSES AND FACILITIES PERMITTED TO OPERATE -- OPERATING LIMITS**

First, three types of businesses may only operate under limited terms:

- Recreational, youth and other non-professional organized sports facilities, sports tournaments, sports games, and sports practices must comply with additional Kansas Recreation & Park Association guidelines posted on [covid.ks.gov](https://www.covid.ks.gov).
- Non-tribal casinos must comply with additional KDHE guidelines.
- Personal service businesses (including nail salons, barber shops, hair salons, tanning salons, and tattoo parlors) may only take pre-scheduled appointments or online check-in appointments.
- Fitness centers and health clubs may not offer in-person group classes greater than 15 people, or locker room facilities (except to use restroom facilities).
- K-12 facilities, and also higher education facilities closed prior to May 4, may only conduct minimal in-person learning, events or operations (further consult Executive Order 20-07 and other state guidelines).

Second, each business that the Plan authorizes to operate may only operate by implementing these mandatory terms:

- Prohibition on all mass gatherings of more than 15 people (a “mass gathering” occurs when at least 15 people who do not reside together are in one location and are unable to maintain six feet of distance except during infrequent or incidental moments of closer proximity).
- Maintain at least six feet of distance between customers or groups of customers; likewise, a venue, facility, or activity must maintain at least six feet of distance between individuals or groups (except individuals who reside together). Dining areas may satisfy this requirement with physical barriers sufficient to prevent virus spread between seated groups of customers.
- Avoid instances when groups of more than 15 individuals are unable to maintain six feet distancing from others with only infrequent or incidental moments of closer proximity. This means limiting mass gatherings in areas (examples: entrances, lobbies, check-out areas, break rooms) where physical distancing cannot be maintained.
- But, essential businesses operating on May 1 might be able to operate under the Plan without avoiding mass gatherings of more than 15 people, when social distancing is difficult to maintain.
- Follow fundamental cleaning and health practices, which for businesses are detailed on [covid.ks.gov](https://www.covid.ks.gov).
- Travel other than essential business travel remains subject to the 14-day KDHE quarantine mandates.
- All additional local county or municipality mandatory terms that are not less restrictive than the Plan terms and that do not significantly disrupt performance of an essential function.

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Third, the Plan encourages additional vigilance:

- All businesses in operation “should follow” any relevant industry-specific guidance provided on covid.ks.gov; likewise, a venue, facility, or activity is strongly encouraged to follow any additional sector-specific best practices guidance.
- Businesses, employers and employees are strongly encouraged to follow the guidance on page seven of Order 20-31.
- Nonessential business travel should be minimized or eliminated.
- Remote work is strongly encouraged when possible.
- Cloth masks are strongly encouraged in public settings.
- Certain businesses should consider prohibiting or restricting in-person visits (such as care facilities).

## ADDITIONAL BUSINESS CONSIDERATIONS

This Business Guide identifies terms within the Re-Open Plan that are pertinent to doing business in Kansas. The Plan remains subject to further legal interpretation of its terms. The Plan is supplemented by any other applicable federal, tribal, state or local laws and regulations, and by the common law duty of care applicable to a business.

## BEYOND BUSINESS

Plan Phase 2.0 terms beyond business implications include:

- Community Centers may open.
- Limitations on commencement and graduation ceremonies.
- Fairs, festivals, carnivals, and parades may not operate.
- Some business types discussed above also double as community, non-profit, or public, activities or facilities: swimming pools (backyard pools are allowed), camps, organized sports, indoor leisure spaces, and large entertainment venues.

## AD ASTRA KANSAS RE-OPEN PLAN PHASING TIMELINE FOR BUSINESSES\*

Businesses and facilities may consult this timeline summary (below or in this PDF) of all phases of the Kansas Re-Open Plan.

Phase:	Phase Starts Not Before:	Business Types Allowed To Operate:	Gathering Limit (without distancing):	Distancing and Masks:	Business On-Site Staffing:	Business Travel:
Phase 1	May 4	Many non-essential businesses may open	10-person	6-feet distancing. Cloth masks strongly encouraged in appropriate public settings.	Remote work strongly encouraged	Avoid non-essential. Travel quarantine.

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<b>Phase 1.5</b>	May 18	All but seven	10-person	6-feet distancing. Cloth masks strongly encouraged in appropriate public settings.	Remote work strongly encouraged	Avoid non-essential. Travel quarantine.
<b>Phase 2</b>	May 22	All but five	15-person	6-feet distancing. Cloth masks strongly encouraged in appropriate public settings.	Remote work strongly encouraged	Avoid non-essential. Travel quarantine.
<b>Phase 3</b>	June 8	All	45-person	6-feet distancing	Unrestricted	Unrestricted. Travel quarantine.
<b>Phase out</b>	June 22	All	Pending	Maintain distancing where applicable	Unrestricted	Pending

\*Overview summary only. See Re-Open Plan and Executive Orders for specificity. Additional business-specific best practices exist.

## FOR MORE INFORMATION

If you have questions or want more information regarding the Kansas Ad Astra Re-Open Plan, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Trish Voth** at 316.291.9767 or [pvoth@foulston.com](mailto:pvoth@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

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## RESOURCES

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## PRACTICE AREAS

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- Business & Corporate Law