

COVID-19



CORONAVIRUS: COVID-19 GUIDANCE FOR RELIGIOUS INSTITUTIONS

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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](#).

Leaders of religious institutions may bear legal and spiritual responsibilities to parishioners during the COVID-19 pandemic. This alert provides an overview of the legal aspects you should be aware of as you balance protecting your congregation from harm and fulfilling your spiritual responsibilities. The key factors to consider are:

- Federal, state, and local restrictions on gathering size
- Exceptions or special considerations related to events such as weddings or funerals
- Mission trips and meetings outside your local area
- Providing a safe workplace for your employees
- Contractual obligations

STATUS OF THE LAW

Federal/National

While the federal government has not formally issued a ban on public gatherings, the Centers for Disease Control and Prevention (CDC) recommends that organizations (including religious groups) cancel or postpone social gatherings of more than 50 people. The President's current guidance is more restrictive, recommending a limit of 10 or fewer people. While these recommendations are not legally binding, we suggest following them for at least the next eight weeks or until new guidance is issued. Failure to follow these recommendations could create a risk of liability or bad press if it is later determined that someone contracted the virus while participating in an activity sponsored by your organization.

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Further recommendations or requirements on the national level might be forthcoming in the form of a Presidential executive order. The Surgeon General has the power to quarantine *individuals*, but not to shut down public gatherings. The President has the power to limit travel between the states and to limit entry into the US. He has already done so with respect to travel to and from certain foreign countries.

Regional/State

The Kansas legislature has given local health officials the power to prohibit public gatherings in order to control the spread of infectious and contagious diseases (KSA 65-119). "Public gathering" is not defined, but most agree that a ban made pursuant to the statute applies to religious gatherings. A violation of a ban issued pursuant to the statute could result in a fine between \$25 and \$100 for each offense.

On March 17, Kansas Gov. Laura Kelly issued Executive Order No. 20-04 banning gatherings of "50 or more people in a confined or enclosed space at the same time." The Order exempts many types of gatherings, including: (1) "Religious gatherings as long as attendees can engage in appropriate social distancing;" and (2) "Funeral or memorial services or ceremonies." Read Gov. Kelly's Order and all exemptions that may apply to your organization here. The term "social distancing" does not have a precise legal definition. The CDC, however, defines social distancing as it applies to COVID-19 to mean "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible." The governors of Nebraska and Colorado have issued similar bans and the governor of Missouri recommended cancelling or suspending gatherings of more than 50 people. While one may debate the legal strength of an Executive Order, this administration intends to use all of its muscle to prevent the spread of COVID-19, including limiting gatherings for the purposes of worship.

Local

In the Kansas City area, the CORE 4 partners of Jackson County, Missouri; Johnson County, Kansas; Kansas City, Missouri; and the Unified Government of Wyandotte County/Kansas City, Kansas agreed to ban public gatherings of more than 10 people effective March 16; however, exceptions are made for religious and faith-based activities, weddings, and funerals.

As of the morning of March 18, other local governments have issued guidance or restrictions, including (this list is not intended to be comprehensive):

- Sedgwick & Douglas Counties: gatherings of 50 or more people are banned
- Franklin County: Recommends cancellation of inside events of more than 100 people
- Seward County: Encourages public to follow CDC guidelines (gatherings of no more than 50 people)

RECOMMENDATIONS

All religious organizations should diligently monitor the CDC website for current information on the status of COVID-19 transmission risks and guidance for managing and preventing infection. The CDC's resources for religious institutions are here. Also, stay abreast of local and national recommendations and requirements. They change daily.

If your congregation is larger than 50, consider whether cancelling religious gatherings is the appropriate response, or restructuring the event or service to meet the spiritual needs of your congregation while also complying with the CDC recommendation or state and local bans. For example, if your organization has the space and technological capability, consider dividing the congregation into smaller groups and placing them in separate rooms to view a religious service. Alternatively, consider adding additional services and dividing the congregation into small groups so that everyone can attend, albeit in smaller settings.

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Develop a contingency plan now for unexpected or unplanned large events such as funerals or memorials that would allow you to meet the needs of your parishioners and simultaneously adhere to the law. Think through it now, rather than under time pressure and the scrutiny of a grieving family. One possibility is to hold a smaller “family-only” service in the short term and a larger celebration of life or funeral in the future after this crisis has passed. Discuss your concerns with the funeral home and contact the relevant law enforcement officers or health officials to make them aware that you are trying to find ways to comply with the all regulations. This could also be an opportunity to use Facebook Live and/or other social media applications.

As the need arises, contact your local health officials and elected officials to make sure you have access to the most current information and any resources that may become available.

If your organization sponsors foreign missionaries, assess their status and develop a plan to get them home if necessary. The President’s authority to limit international and interstate travel could impact your organization’s ability to conduct mission travel overseas or return home. Anticipate that for the foreseeable future, meetings and conferences outside your local area will be difficult to plan and execute due to travel restriction – whether imposed by law or because airlines are limiting flights. Consider substituting technology such as Zoom, GoToMeeting, Skype for Business, or Google Hangouts to conduct the meeting.

Your organization should consider and may need to take precautions to protect employees and provide a safe workplace. See Foulston March 12, 2020, COVID-19 Issue Alert for Employer Tips for Managing COVID-19. The law imposes a duty on owners of premises to exercise reasonable care to avoid injury to invited guests. The extent to which that duty would apply to exposure to infectious diseases depends on the circumstances. If possible, consistent with religious beliefs and practice, it is advisable to follow the available public health recommendations and governmental orders. Even though certain religious beliefs may motivate people to participate in religious gatherings despite the risk of exposure to disease, the well-being of one’s neighbors may depend as much or more on what we do not do as what we do.

Review your contracts! If you have conferences, concerts, and other types of events planned, and are concerned that you may need to cancel, read your contracts with venues, caterers, and other service providers and consult your legal advisor to determine whether the contracts contain provisions that would excuse you from performance. See Foulston March 13, 2020 COVID-19 Issue Alert regarding Contractual Obligations.

FOR MORE INFORMATION

If you have questions or want more information regarding monitoring and managing COVID-19 in your organization, 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. Foulston’s lawyers maintain a high level of expertise regarding federal and state regulations affecting the industry. At the same time, our diverse practice groups, including the taxation, general business, labor and employment, healthcare, and commercial litigation groups, enhance our ability to consider the legal ramifications of these situations. For more information, contact **C. Edward Watson, II** at 316.291.9589 or cewatson@foulston.com, or **Jeremy Koehler** at 316.291.9728 or jkoehler@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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RESOURCES

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PRACTICE AREAS

- Tax-Exempt/Not-for-Profit Organizations
- Healthcare