

COVID-19



## CORONAVIRUS: OPEN FOR BUSINESS – THE KANSAS AD ASTRA RE-OPEN PLAN (PHASE 1)

May 1, 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](#).*

Kansas' state motto – Ad Astra per Aspera (“to the stars through difficulties”) – inspired Gov. Laura Kelly’s name of “Ad Astra” for the four-phase Kansas Re-Open Plan (as of April 30, 2020). Phase One of the Re-Open Plan was announced and implemented April 30 by Kansas Governor’s Executive Order 20-29 (“Order 20-29”). In the future, as Kansas exits Phase One and enters other phases, the Re-Open Plan terms will adjust. To aid with interpretation of the plan, the Governor also provides these Kansas Re-Open Plan FAQs.

### **BUSINESSES AND VENUES PERFORMING “KEFF” ESSENTIAL FUNCTIONS AND ESSENTIAL ACTIVITIES ON AND AFTER MAY 4TH:**

Business and venue activities that were considered essential functions or activities under the state-wide “stay-at-home” Kansas Governor Executive Order 20-16 should continue to be allowed. “Should” means that starting May 4, the local county or municipality (instead of the state) will interpret whether an activity fits within the Kansas Essential Functions Framework (“KEFF”) included with Order 20-16. A business or venue may elect to eliminate local interpretation uncertainty by obtaining state-level confirmation of KEFF status prior to May 4.

### **ALL OTHER BUSINESSES, VENUES, ACTIVITIES, AND EDUCATIONAL FACILITIES:**

What about a business, venue, facility, activity or function that does not fit within KEFF? The lead purpose of Phase One is to allow many closed locations to open and many suspended activities to resume. As of May 4, only the following must remain closed:

- Bars and night clubs (excluding already-operating curbside and carryout);

# FOULSTON

## ATTORNEYS AT LAW

- Non-tribal casinos;
- Theaters, museums, trampoline parks, arcades, and other indoor leisure spaces;
- Fitness centers and gyms;
- Nail salons, barber shops, hair salons, tanning salons, tattoo parlors, and other personal service businesses where close contact cannot be avoided;
- Community centers;
- Outdoor and indoor entertainment venues if capacity is at least 2,000;
- Fairs, festivals, carnivals, parades, commencements, and graduations;
- Swimming pools (other than backyard pools);
- Organized sports facilities and tournaments;
- Summer camps; and
- K-12 facilities and also higher education facilities closed prior to May 4th (other than minimal operations pursuant to Executive Order 20-07 and other state guidelines).

### PHASE ONE RE-OPEN PLAN REQUIREMENTS AND RECOMMENDATIONS:

The trade-offs for so many businesses, venues, facilities and activities to remain open or to re-open include several state-level requirements and recommendations to follow:

- Prohibition on all mass gatherings of more than 10 people (a “mass gathering” occurs when at least 10 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);
- To re-open, a business must maintain at least six feet of distance between customers or groups of customers, and likewise a venue, facility, or activity must maintain at least six feet of distance between individuals or groups (except those who reside together);
- To re-open, a business, venue, facility or activity must also limit mass gatherings in areas and instances where physical distancing cannot be maintained, and avoid mass gathering instances;
- To re-open, a business must follow fundamental cleaning and health practices detailed on page 27 of the Re-Open Plan (plus, Section 5.a.ii. of Order 20-29 could be read to require any additional fundamental cleaning and health practices included here by KDHE, here by OSHA, and elsewhere within this state website containing the Re-Open Plan);
- A venue, facility or activity re-opening must also follow fundamental cleaning and public health practices;
- All businesses in operation “should follow” any relevant industry-specific guidance downloadable here (scroll to bottom);
- Businesses, employers and employees are strongly encouraged to follow the Guidance on page 7 of Order 20-29;
- A business, venue, facility, or activity is strongly encouraged to follow any additional sector-specific best practices guidance; and
- Travel other than essential business travel remains subject to the 14-day KDHE quarantine mandates.

Further COVID-19 response requirements or recommendations in Kansas regarding businesses, venues, facilities and activities might next source from a local county or municipality, provided that those local requirements may not significantly disrupt performance of an essential function. Some high-population local governments in Kansas have already adopted local-specific plans, in some cases more restrictive than the state Re-Open Plan, and others are considering similar actions. Stay tuned for local updates, since this summary discusses only the new state-level Ad Astra Re-Open Plan.

# FOULSTON

ATTORNEYS AT LAW

As always, these state and local-level COVID-19 responses layer over all federal and state laws and regulations, and common law duty of care applicable to a business. The entire Re-Open Plan remains subject to further interpretation and implementation guidance from the Governor, and subject to change that might occur by the Governor, legislature, judiciary, state agencies, local government, or federal law.

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

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:	Venues; Facilities; Activities:	Gathering Limit:	Remote Work:	Travel:	Personal:
<b>Phase One:</b>	May 4	Many non-essential businesses may open	Some may resume	10-person	Strongly encouraged	Avoid non-essential. KDHE travel quarantine.	6-feet distancing. Cloth masks strongly encouraged in appropriate public settings.
<b>Phase Two:</b>	May 18	All businesses may open	Very few remain prohibited	30-person	Strongly encouraged	Avoid non-essential. KDHE travel quarantine.	6-feet distancing. Cloth masks strongly encouraged in appropriate public settings.
<b>Phase Three:</b>	June 1		No prohibitions	90-person	Unrestricted on-site staffing	Unrestricted. KDHE travel quarantine.	6-feet distancing
<b>Phase Out:</b>	June 15			Pending further evaluation		Pending further evaluation	Maintain distancing where applicable

\*Overview summary only. See Re-Open Plan and Order 20-29 for specificity.

## 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

# FOULSTON

## ATTORNEYS AT LAW

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).

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

### RESOURCES

Sign up to receive these issue alerts straight to your inbox [here](#).

---

*This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship*

### PRACTICE AREAS

---

- Business & Corporate Law