

NEWS & INSIGHTS

Federal court denies stay during appeal of ruling on gathering limits - impact for funeral homes and cemeteries

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions. A federal court in western Pennsylvania, which struck down the commonwealth's COVID-19 gathering limits, denied Gov. Tom Wolf's request to stay ruling while it is on appeal. This means that, for now, the limits are not enforceable.

Last week, a federal court declared the gathering limits to be unconstitutional, along with the governor's now-suspended stay-at-home and non-life-sustaining business closure orders. Gov. Wolf intends to appeal that ruling and asked the court to grant a stay, which would have left the 25-person limit on indoor events and the 250-person limit on outdoor events in place during the appeal.

[Federal court declares Pennsylvania gathering limits unconstitutional](#)

On September 22, 2020, the court [denied the governor's stay request](#). The court held that the governor was not likely to succeed on appeal and distinguished other cases which have upheld the governor's COVID-mitigation orders on the ground that those rulings were not based on a full factual record like the one developed in this case.

The court also rejected the governor's argument that irreparable harm would occur without a stay because the uncertainty created by the conflicting court rulings makes it difficult to manage the pandemic and because eliminating the gathering limits will result in people's deaths. The court held that the governor's position "is simply not supported by the record," and noted that the governor's other orders – such as mask and social distancing requirements and business restrictions based on a percentage of occupancy – remain in place.

For now, funeral homes and cemeteries in Pennsylvania are not limited to 25 people at indoor services or 250 people at outdoor services. The governor may still ask the court of appeals for a stay, which, if granted, would reinstate the limits while the case was on appeal.

In a press conference shortly after issuance of the order denying the stay was issued, the governor acknowledged that "for the moment," the gathering limits are not in effect. Gov. Wolf and Secretary of Health Dr. Rachel Levine emphasized, however, that while gatherings above the limits may be legal, they are "very concerned" about the potential for larger gatherings to spread the coronavirus and impact people's health.

Funeral homes and cemeteries may legally choose to host gatherings above the limits, but other requirements, such as masks and social distancing, remain in effect. Gathering limits imposed by local governments – such as Philadelphia's 25-person indoor and 150-person outdoor limits and Allegheny County's 25-person indoor and 100-person outdoor limits – are not immediately affected by the court's order and also remain in place.

Saxton & Stump attorney [Jason Benion](#) is available to assist death care professionals with these and other issues regarding operations during the COVID-19 pandemic.

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