

NEWS & INSIGHTS

Pennsylvania gathering limits increased for most businesses - guidance for funeral homes and cemeteries unclear

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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.

October 8, 2020 Update – Today, the Governor’s office and the State Board of Funeral Directors confirmed to us

that the amended gathering limits described below will apply to funeral homes. As a result, the Department of Health (DOH) has updated [State Registrar Notice 2020-09 COVID-19 Prevention Methods for Funeral Directors](#) to align with the Governor's gathering limits based on a percentage of maximum occupancy. In the coming days, the Funeral Board will be updating its guidance in accordance with the DOH update. Attendance at most funeral homes is now limited to 20% of fire code maximum occupancy for indoor events and 25% for outdoor events. Guests and staff must continue to adhere to social distancing, masking, and other COVID-19 mitigation requirements.

Pennsylvania's limits on attendance at gatherings and events have been changed in a way that will mean an increase for most funeral homes and cemeteries. The following update explores those changes. However, there is some uncertainty about whether these amendments apply to funeral homes.

On July 15, 2020, Gov. Tom Wolf and Secretary of Health, Dr. Rachel Levine, issued orders limiting events and gatherings to 25 people if indoors and 250 if outdoors.

On October 6, 2020, [the governor](#) and the [secretary](#) amended those orders so that gathering limits are based on a percentage of a venue's maximum occupancy.

A venue must first determine its maximum occupancy as defined by the National Fire Protection Association (NFPA) Life Safety Code. When no fire code capacity is published or available, maximum occupancy should be calculated as 67 people per 1000 square feet. The orders advise venues to contact their local building code officials if they are unaware of their maximum occupancy. A [frequently asked question](#) on the Department of Health website states:

I do not know the occupancy of my event space. What do I do?

[Contact](#) your local building code official regarding your business's occupant load/capacity. Ninety-five percent of Pennsylvania municipalities enforce building codes through local building code officials or a certified third party; if your business is within a municipality that has relinquished its building enforcement authority to the Department of Labor & Industry, please contact the Bureau of Occupational and Industrial Safety at 717-787-3806.

Per the Order, when no fire code capacity is published for outdoor events or gatherings, an event organizer can consider their standard occupancy to be 67 people per 1,000 square feet and then must apply the Maximum Occupancy Calculator to that number.

Once maximum occupancy is determined, a venue's gathering limit is determined by applying the following calculators from the amended orders:

For indoor events

Maximum Occupancy Gathering Limit

0 – 2,000 people	20% of Maximum Occupancy
2,001 – 10,000 people	15% of Maximum Occupancy
Over 10,000 people	10% of Maximum Occupancy up to 3,750 people

For outdoor events

Maximum Occupancy Gathering Limit

0 – 2,000 people	25% of Maximum Occupancy
2,001 – 10,000 people	20% of Maximum Occupancy
Over 10,000 people	15% of Maximum Occupancy up to 7,500 people

The new gathering limits are effective starting October 9, 2020.

Venues must require attendees to comply with 6-foot social distancing requirements, to wear masks or face coverings and implement best practices such as timed entry, multiple entry and exit points, multiple restrooms and hygiene stations. The amended orders refer to the [CDC Events and Gatherings Readiness and Planning Tool](#) for additional information about best practices.

These amendments do not apply to businesses in the retail food services industry, including bars, restaurants, and private catered events, which continue to be subject to their own occupancy limits.

The Department of Health's FAQs explain that the new gathering limits also do not apply to religious gatherings or polling places, but weddings, school sports and non-classroom activities are covered by the order.

More restrictive orders put in place by county or local governments continue to apply.

These new limits apply to indoor and outdoor events – defined as any temporary grouping of individuals for defined purposes, that takes place over a limited timeframe, such as hours or days. However, it is uncertain whether they apply to funeral homes. A frequently asked question on the Department of Health (DOH) website states:

Does this Order, as amended, apply to funeral homes?

Licensed funeral homes should adhere to guidance circulated by the Board of Funeral Directors. Funeral Directors can refer to the State Registrar Notices for more information.

The last Funeral Board guidance, issued in March 2020, forwarded State Registrar Notice 2020-09, which noted a 10-person limit on funerals. That Notice was [amended](#) in May to track the Governor's color-coded reopening plan. For the green phase, the Notice directed funeral homes to follow CDC and DOH guidance. Presumably, that guidance would include the DOH's new gathering limits, but if that were so, the answer to the FAQ should simply be "yes."

We have reached out to the DOH and the Funeral Board for clarification and will update you after we receive more information. In the meantime, please contact us with any immediate questions.

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

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