



Pennsylvania Federal Judge Rules Governor's Shutdown Orders Unconstitutional

Insights

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A federal court judge in Pennsylvania just ruled that the governor's COVID-19 orders shutting down businesses and restricting gatherings are unconstitutional and therefore unenforceable. By striking them down, the judge set up a conflict between the court system and the governor's office – leaving employers caught in the middle. Although this current conflict will not have much of an impact on businesses at the current time, it needs to be resolved before any possible “second wave” of COVID-19 cases hits in the coming months and leads to further government orders impacting the business community. What do Keystone State employers need to know about the September 14 court decision?

[Ed. Note: On October 1, the 3rd Circuit Court of Appeals granted the Wolf administration's request to put the September 14 decision on hold while Governor Wolf and Secretary of Health Levine pursue an appeal. As a result, effective immediately, the crowd-gathering restrictions designed to prevent the spread of COVID-19 can stay in place ... for now.]

The Court's Decision: Governor Went Too Far

A federal judge in the Western District of Pennsylvania appointed by President Trump, Judge William Stickman IV, ruled that Governor Tom Wolf's shutdown orders and business closures are unconstitutional. The lawsuit leading to the ruling was initiated on behalf of Butler, Fayette, Greene, and Washington counties, four Republican lawmakers, and several small businesses. It targeted Governor Wolf and Rachel Levine, Secretary of the Pennsylvania Department of Health, seeking a declaration that their actions violated and continue to violate the First Amendment, as well as the Due Process and Equal Protection clauses of the Fourteenth Amendment. Specifically, the challengers took issue with the numeric limitations on the size of gatherings and components of the shutdown orders closing “non-life-sustaining” businesses and requiring Pennsylvanians to stay-at-home. After climbing the procedural hurdles – including whether all of the challengers had standing and what level of scrutiny was to be applied – the judge considered the substantive issues at hand.

Judge Stickman first considered Governor Wolf's July 15, 2020 Order imposing limitations on “events and gatherings” of 25 persons for indoor gatherings and 250 persons for outdoor gatherings. He held that while Governor Wolf's actions were undertaken in support of a significant government interest – namely, to combat COVID-19 – the congregate limits were not narrowly tailored. In other words, Judge Stickman found that the evidence did not establish that such limits were necessary to eliminate COVID-19. The judge also found the limits were not narrowly tailored in that “they do not

eliminate COVID-19. The judge also found the limits were not narrowly tailored in that “they do not address the specific experience of the virus across the Commonwealth.” Specifically, Judge Stickman took issue with the state’s “one-size fits all” approach to the orders, stating that they did not take into account the differences in urban versus rural communities.

Judge Stickman next considered whether the stay-at-home orders infringed upon the right to intrastate travel, and whether designating businesses as “non-life-sustaining” violate business owners’ rights to engage in the pursuit of their chosen profession. As to the first issue, the judge claimed that “broad population-wide lockdowns are such a dramatic inversion of the concept of liberty in a free society as to be nearly presumptively unconstitutional unless the government can truly demonstrate that they burden no more liberty than is reasonably necessary to achieve an important government end.” As to the second issue, Judge Stickman concluded that the governor’s advisory team failed to properly define “life-sustaining” versus “non-life-sustaining,” and that the manner in which the governor’s advisory team designed, implemented, and administrated the business closures was “shockingly arbitrary.”

Judge Distinguished His Decision From Earlier Rulings

This is not the first lawsuit challenging Governor Wolf’s orders – but it is the first to strike down any of the state’s restrictions. Earlier this year, another federal judge in Pennsylvania considered whether the governor’s orders exceeded the permissible scope of his police powers (*Benner v. Wolf*, M.D. Pa. Case No. 20-cv-775). In that case, the judge held that the challengers failed to establish that the orders were not “reasonably necessary” or “unduly burdensome” because they could not provide evidentiary support to contradict the governor’s broad policy decisions. Judge Stickman specifically distinguished this case stating that, unlike in *Benner*, the court had the benefit of a developed evidentiary record.

The Pennsylvania Supreme Court has also addressed some of the same constitutional issues raised in the present matter (*Friends of Danny DeVito v. Wolf*, 227 A.3d 872 (Pa. 2020)). Judge Stickman distinguished this case as well, reminding us that while the Pennsylvania Supreme Court is final on questions of Pennsylvania law, its’ decisions are not binding to a federal court when it comes to federal questions.

What Does This Mean For Employers?

The reality is that this decision may have little to no impact on employers for the immediate future. As an initial matter, many of Pennsylvania’s restrictions pertaining to business closures have already been lifted and the statewide stay-at-home order has been canceled. Further, Governor Wolf’s office has issued a statement that it intends to seek a stay of the court’s decision and file an appeal, so this ruling may be quickly wiped out or at least put on hold pending further legal proceedings. Additionally, many Pennsylvania counties, including Philadelphia county, have issued their own COVID-19 restrictions which were not the subject of this decision. There is an argument, however, that Judge Stickman’s decision invalidates any county-specific restrictions on indoor and outdoor gatherings.

To the extent we see a “second wave” of COVID-19 in the coming months, however, this decision may provide employers with some support to keep their businesses open and operable. We will have to wait and see the specific language and measures taken by Governor Wolf to curb any such “second wave” and how they address the issues raised by Judge Stickman in his ruling.

Finally, it is important to bear in mind that this decision does not address all of the COVID-19 restrictions in Pennsylvania. For example, restrictions on alcohol sales at bars and restaurants, restaurant capacity limits, mask mandates, or teleworking requirements are still in effect. For interim guidance, it is strongly suggested that you consult your Fisher Phillips attorney with respect to any questions relating to this decision, particularly with respect to what the decision does, and does not, invalidate.

[Ed. Note: Although Governor Wolf and Secretary of Health Levine asked Judge Strickland to put his ruling on pause while the matter is litigated, the judge denied their request on September 22, noting that his September 14 decision did not strip the governor of any and all authority to impose restrictions on gatherings. Governor Wolf and Levine still intend to appeal the court’s September 14 decision, and have until October 14 to do so.]

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