

RETURN TO WORK: BEST PRACTICES TO KEEP YOUR WORKPLACE SAFE

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Wisconsin's Safer at Home Litigation

- On March 24, 2020, Wisconsin Governor Tony Evers mandated a “Safer at Home Order” that mandates all non-essential employers and their suppliers to shut down operations until Friday April 24, 2020.
- On April 16, 2020, the Safer at Home Order was extended until May 26, 2020 with few changes.
- On April 21, 2020, the Wisconsin Legislature filed suit challenging the extension of the Safer at Home Order alleging it exceeded the authority of the executive branch.
- On May 4, 2020, two private citizens filed suit challenging the Safer at Home Order alleging it violated peoples’ rights to freedom of worship, speech and travel under the Wisconsin Constitution.
- A gradual process of re-opening has begun broadening the list of employers that may operate under the Order.
 - Winnebago, Outagamie & Brown enacted local orders in response; Fond du lac elected not to do so.

Wisconsin Supreme Court Decision

- Wisconsin Legislature v. Secretary-Designee Andrea Palm, et. al.,
 - Chapter 323 - Governor's Emergency Powers - 60 days.
 - Chapter 252.02(3) - DHS authority to prevent spread of communicable diseases - DHS "may close schools and forbid public gatherings in schools, churches and other places to control outbreaks and epidemics.
 - Chapter 252.02 - DHS rule making authority.
 - Chapter 227.24(1) - Emergency rules making process.

Wisconsin Supreme Court Decision

- Wisconsin Legislature v. Secretary-Designee Andrea Palm, et. al., (4-3 Decision)
 - Secretary Palm broke the law when she issued Order 28 by failing to follow the statutorily required emergency rule making procedures.
 - Even in emergency rule making procedures were not required, Secretary Palm exceeded her authority by:
 - Ordering all persons to stay home
 - Closing all non-essential businesses
 - Prohibiting private gatherings
 - Prohibiting all non-essential travel

Wisconsin Supreme Court Decision

- So Now What
 - Back to the Governor and Legislature
 - Back to Local Municipalities
 - Winnebago, Outagamie, Brown pass local orders
 - Fond du lac does not

Business Considerations

- Liability

- Negligence - “Negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk or harm. It does not include conduct which recklessly disregards the interest of others.” (Restatement of Torts, 2nd, Section 282).
 1. A duty of care.
 2. A breach of that duty.
 3. A causal connection between the conduct and the injury.
 4. An actual loss or damage as a result of the injury.

Business Considerations

- OSHA - Guidance on Preparing Workplaces for COVID-19:

<https://www.osha.gov/Publications/OSHA3990.pdf>

- Steps all Employers Can Take

- Develop a Preparedness and Response Plan
- Implement Infection Prevention Measures
- Develop Policies and Procedures for Addressing Infected People.

OSHA Guidance (Continued)

- Communicate Workplace Flexibilities and Protections.
- Implement Workplace Controls.
 - Engineering Controls
 - Administrative Controls
 - Safe Work Practices
 - Personnel Protective Equipment (PPE)

Return to Work Plan

- Daily Assessment Prior to Entering Premises
- Rules for Staying Home, Prohibiting Entry
- Employee Reporting Requirements
- Responding to a Confirmed Case
- Training on all Safe Practices and Procedures

Questions?

