

Public Health Laws in Kansas----the Simplified Version

By Amanda L. Stanley, General Counsel

At the League we are receiving a lot of questions about what a county's authority is to issue a Stay-At-Home Order and what does that mean for your city and other various stakeholders. In this explainer, I am going to attempt to give you the quick explanation. It is not intended to be a comprehensive look at all public health laws or address any one county's order.

Who can ban public gatherings?

Any county, joint board of health, or local health officer is authorized to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease anywhere inside the county. A city can use its home rule authority, if it is not in conflict with the county or the state, to ban public gathering inside city limits. A city can be more restrictive than a county BUT its order cannot allow things the county prohibits. See KSA 65-119; Kan. Const. Article 12 §5.

Who can issue a Stay-At-Home Order and what notice is required?

The county's power is extremely broad. K.S.A. 65-126 gives the local health officer the authority to quarantine an entire city or even an entire county as may be necessary to prevent the spread of a disease that may show a tendency to become an epidemic. If the county fails to properly act, the secretary of health and environment may quarantine any area in which the disease may show a tendency to become an epidemic. See K.S.A. 126, K.S.A. 65-129b, and K.S.A. 65-202.

If the county health officer is going to issue an order, the order shall be in writing and given to the affected individuals; however, if it is impractical to give each person an individualized notice, the county health officer shall make sure all affected individuals are fully informed using the best possible means available.

A city can use its home rule power as necessary to protect the health and safety of the public by passage of an ordinance of the governing body; however, any action a city takes must not conflict with the county. Generally widespread stay-at-home orders will not be effective if these orders are not county wide. No single city official has authority to unilaterally act if not specifically given that power by statute or by an existing city ordinance.

What is the penalty for ignoring a quarantine or Stay-At-Home Order?

Anyone who leaves a quarantined area without the consent of the local health officer or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor. This can be enforced in district court or in some cities in municipal court. Additionally, the violation carries a fine ranging from \$25 to \$100. See K.S.A. 65-127 and K.S.A. 65-129.

Who can enforce a county order or an order by KDHE or the Governor?

The county health officer or the secretary of health and environment may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued. A city needs to review the order issued by the county to see if it directs city law enforcement officers to enforce the order. See K.S.A. 65-129b. The Governor can order local law enforcement officers to enforce any executive act under K.S.A. 48-925.

Is there any right to appeal a county quarantine or isolation order?

An individual, or group of individuals, isolated or quarantined may request a hearing in district court contesting the isolation or quarantine BUT this will not stay or enjoin an isolation or quarantine order. Upon receipt of a request, the court shall conduct a hearing within 72 hours after receipt of the request. While the district courts are currently closed, the Chief Justice's order has made provisions for the filing and hearing of these appeals. See K.S.A. 65-129c.

What documentation does a city employee need if they are an essential worker?

A city employee who is an essential worker should always carry an identification card. That might be an employee ID card or even a business card. Additionally, the city should consider typing up a letter on official city letterhead stating that the employee is an essential worker as described in the county stay-at-home order. City employees should be prepared to present the identification and paperwork to a law enforcement officer upon request.

Unlawful discharge from employment

It shall be unlawful for any public or private employer to discharge an employee solely because the employee or an immediate family member of the employee is under an order of isolation or quarantine. The key word here is SOLELY. This is a very high burden of proof and does not appear to have ever been tested as a standard during a pandemic. See K.S.A. 65-129d.