



Trusted Advisors for Growth

**Coronavirus in the
Workplace and the
Families First
Coronavirus Response
Act Webinar**



Disclaimer

The materials presented in this webinar are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to your particular issue or problem. Participation in this webinar does not create a client relationship between the participant and our presenters. The opinions expressed in this webinar are the opinions of the individual presenters and may not reflect the opinions of the presenter's company or KMS.

Webinar Housekeeping

- **Everyone attending the webinar is muted. To ask a question, type your question in the Q/A text box using your GoToMeeting panel.**
- **We will ask questions, time permitting, at the end of the presentation.**
- **If there are questions that we are not able to get to, we will provide the questions and answers for everyone in a follow-up email distributed tomorrow and listed on our website.**
- **This webinar is being recorded. The link to the recording will be included in the follow-up email tomorrow as well as listed on our website.**
- **Please check our website www.wearekms.com frequently for resources and updates.**

Presenters

Tiffany Stovall

CEO

Kansas Manufacturing Solutions



David Parkhurst

Founding Partner

Cornerstone Companies



Kyle Russell

Managing Principal & Attorney at Law

Jackson Lewis P.C.

JacksonLewis



Presenters

Conor McGrath

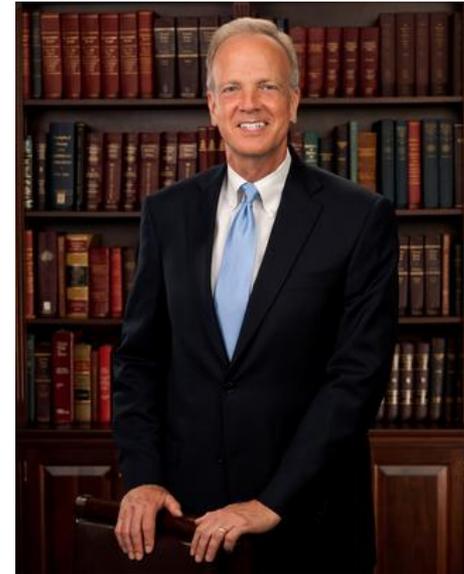
Senior Policy Advisor

Senator Moran

Alex Richard

State Director

Senator Moran



Senator Jerry Moran

Agenda

- **Introduction** Tiffany Stovall
- **Congressional Stimulus Efforts** Conor McGrath and Alex Richard
- **COVID-19** David Parkhurst
 - COVID-19 Update and Current Guidance From the CDC
 - Employee Safety and OSHA
 - Employee Actions and Responding to COVID-19 in the Workplace
- **Workers' Compensation**
- **Are losses covered by insurance?**
- **The Families First Coronavirus Response Act (FFCRA)** Kyle Russell
- **Additional Topics** Kyle Russell and David Parkhurst
 - EEOC Guidance
 - Layoffs/WARN Act
 - Stay at Home Orders

Kansas Manufacturing Solutions

Kansas Manufacturing Solutions (KMS)

KMS' mission is to grow Kansas manufacturing by delivering solutions to small and medium sized manufacturers with value driven results.

Affiliated with the National Institute of Standards and Technology (*NIST*) and is part of the Hollings Manufacturing Extension Partnership (*MEP*) Program.

MEP National Network contains 51 Centers across the U.S. to locally serve their manufacturing community – KMS is the Kansas MEP Center resource.



Congressional Stimulus Package

Conor McGrath

Senior Policy Advisor

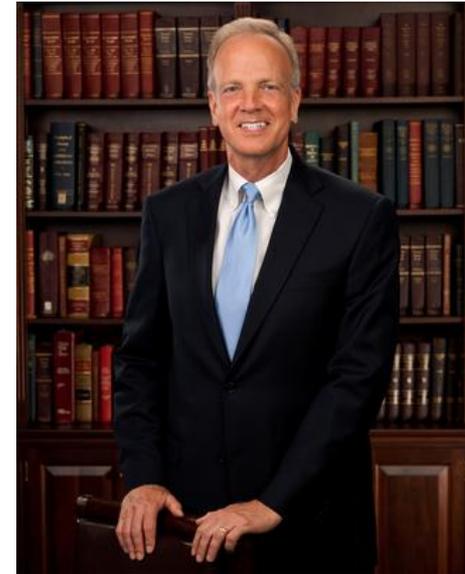
Senator Moran

Alex Richard

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Senator Moran

www.moran.senate.gov/public/



Senator Jerry Moran

Send your questions or statements to info@wearekms.com or type them in your Q/A box. We will get the questions and statements to Conor, Alex and Senator Moran and include the Q/A in the follow-up communication and on our website.



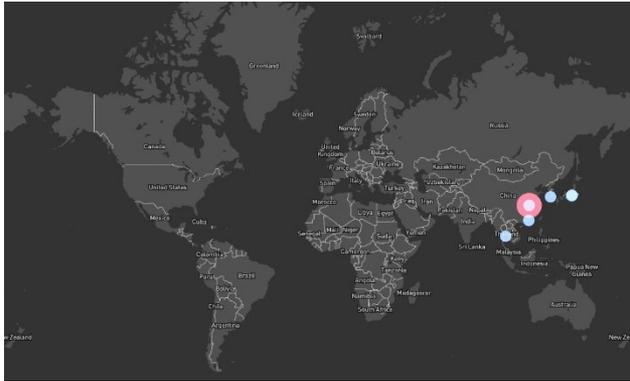
Trusted Advisors for Growth

Covid-19 Update

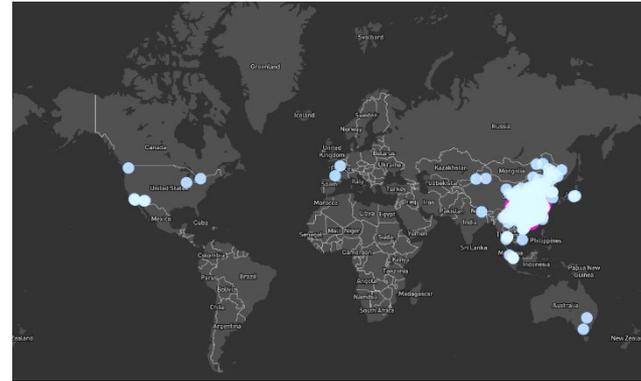
David Parkhurst



COVID-19 Situational Update



1.13.20



1.20.20



1.27.20

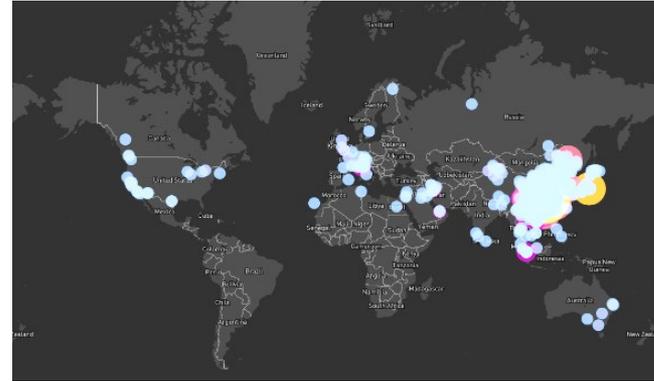


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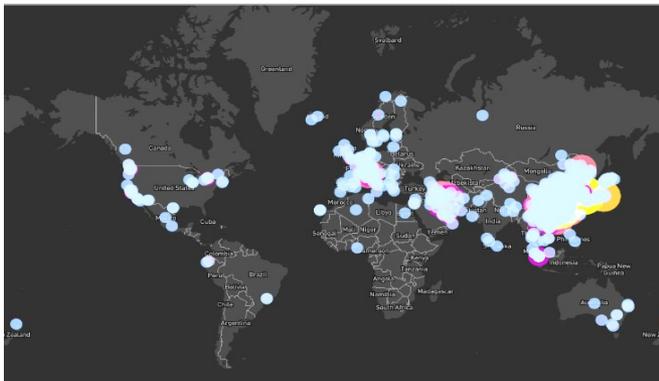
COVID-19 Situational Update



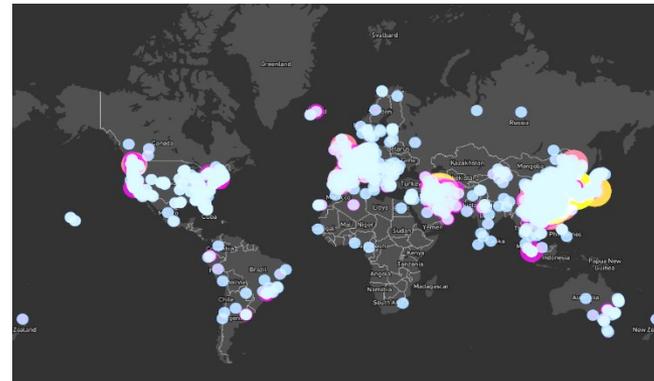
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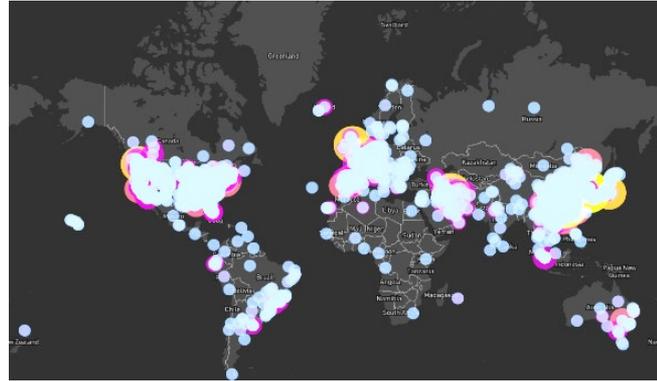


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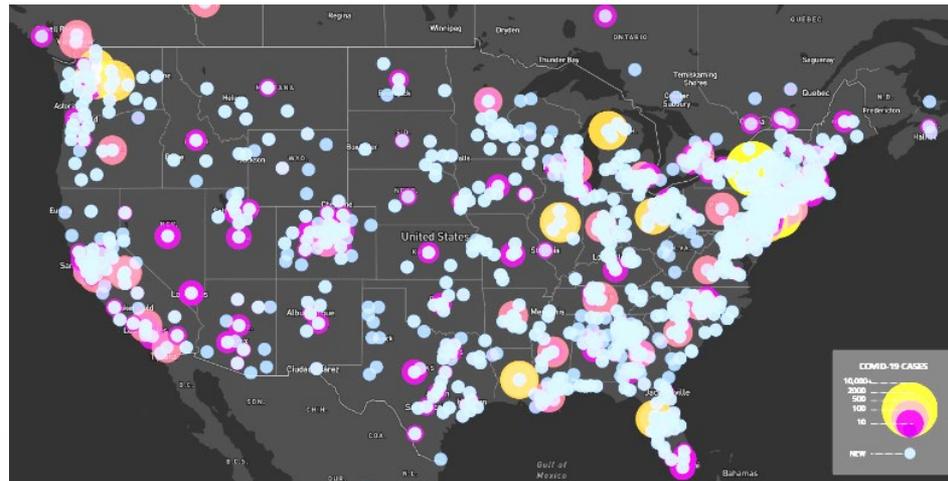


3.2.20

COVID-19 Situational Update



3.9.20



3.16.20

COVID-19 Situational Update

- CDC and state and local public health laboratories are testing for the virus that causes COVID-19.
- All 50 states have reported cases of COVID-19 to CDC.
- U.S. COVID-19 cases include:
 - Imported cases in travelers
 - Cases among close contacts of a known case
 - Community-acquired cases where the source of the infection is unknown.
- Three U.S. states are experiencing sustained community spread.

Current Guidance From CDC

Actively encourage sick employees to stay home

- Employees who have symptoms of acute respiratory illness are recommended to stay home and not come to work until they are free of fever (100.4° F [38.0° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Employees should notify their supervisor and stay home if they are sick.
- Ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.

Current Guidance From CDC

Actively encourage sick employees to stay home

- Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- Employers should maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.

Separate sick employees

- CDC recommends that employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

Current Guidance From CDC

Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees

- Place posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to your workplace and in other workplace areas where they are likely to be seen.
- Provide tissues and no-touch disposal receptacles for use by employees.
- Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty.
- Provide soap and water and alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained. Place hand rubs in multiple locations or in conference rooms to encourage hand hygiene.

Current Guidance From CDC

Emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees

- Visit the coughing and sneezing etiquette and clean hands webpage for more information.
- Symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

Perform routine environmental cleaning

- Routinely clean all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label.
- No additional disinfection beyond routine cleaning is recommended at this time.
- Provide disposable wipes so that commonly used surfaces (for example, doorknobs, keyboards, remote controls, desks) can be wiped down by employees before each use.

Employee Safety and OSHA

- There is no specific OSHA standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposure to COVID-19. Among the most relevant are:
- OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection.
- When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134).
- OSHA has issued temporary guidance related to enforcement of respirator annual fit-testing requirements for healthcare.
- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

OSHA

- OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit COVID-19. However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard.
- Kansas, Missouri, and Nebraska are under federal OSHA jurisdiction which covers most private sector workers within the state.

Recording workplace exposures to COVID-19

- OSHA recordkeeping requirements at 29 CFR Part 1904 mandate covered employers record certain work-related injuries and illnesses on their OSHA 300 log.
- COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all the following are met:
 - The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
 - The case is work-related, as defined by 29 CFR 1904.5; and
 - The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).
- Visit OSHA's Injury and Illness Recordkeeping and Reporting Requirements page for more information.

- Employers must also protect their workers from exposure to hazardous chemicals used for cleaning and disinfection. Employers should be aware that common sanitizers and sterilizers could contain hazardous chemicals. Where workers are exposed to hazardous chemicals, employers must comply with OSHA's Hazard Communication standard (in general industry, 29 CFR 1910.1200), Personal Protective Equipment standards (in general industry 29 CFR 1910 Subpart I) and other applicable OSHA chemical standards. OSHA provides information about hazardous chemicals used in hospitals in the Housekeeping section of its Hospital.

COVID-19 in the Workplace

Employee Actions and Responding to COVID-19 in the Workplace

- Sick Employees need to go home and stay
 - They need to consult their healthcare providers and follow the state and local health department mandates to determine when they can come back
- Can we require a note for employees to return after sick leave?
 - Yes, but the CDC asks that you do not.
- Can you ask about symptoms if an employee is out sick and you do not know why?
 - Yes but keep it specific to COVID-19
- Can we make an employee with a sick family member stay home?
 - Yes if the family member is showing symptoms of COVID-19.

COVID-19 in the Workplace

Employee Actions and Responding to COVID-19 in the Workplace

- Employees don't want to come in. Can we make them?
 - Yes, as long as there is no legitimate threat and they do not require accommodation.
- Employees that may have come into contact with someone that may be infected?
 - The CDC does not currently recommend special scrutiny for people exposed to asymptomatic people with potential exposures to COVID-19.
 - If you do decide to send someone home under these circumstances, we suggest you pay them for their time and not take it from their sick leave or PTO.

Worker's Compensation

- Currently Carriers are handling coronavirus claims in the same manner as the standard flu.
- Under most states Workers' Compensation Statutes, employees are entitled to benefits for "occupational diseases", while "ordinary diseases of life" that the general public is equally exposed to are typically excluded. This means that COVID-19 Workers' Compensation claims are most likely non-compensable.
- If the claimant works in a vulnerable field such as healthcare and can prove the illness was contracted at work or while traveling for work, coverage could be afforded.
- As COVID-19 becomes more widespread, this burden of proof will become increasingly difficult
- However all potential claims that involve this should be turned into your workers' compensation carrier or TPA for claims handling



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FFCRA

Kyle Russell



Families First Coronavirus Response Act (FFCRA)

Families First Coronavirus Response Act (FFCRA)

- Signed into law on March 18, 2020
- Effective “no later than” April 2, 2020
- Two key provisions for employers:
 - Emergency expansion of FMLA leave
 - Paid Sick Leave Benefit (PSL)

Families First Coronavirus Response Act (FFCRA)

Provisions Applicable to both FMLA and PSL

- Apply to employers with fewer than 500 employees
- Allow employers to exclude employees who are health care providers; or emergency responders
- Allow DOL to issue regs excluding employers with less than 50 employees, if compliance would jeopardize the viability of the business as a going concern
- Require that employees be unable to work (including telework) for a qualifying reason in order to be eligible for the leave
- Provide new refundable tax credits to employers in an amount equivalent to the benefits paid to employees
- Expire December 31, 2020 unless extended further
- Prohibit discrimination/retaliation against employees who exercise their rights

Families First Coronavirus Response Act (FFCRA)

FMLA Expansion

- Employees are eligible after being employed for 30 calendar days (as opposed to one year for “normal” FMLA)
- Only qualifying reason: Inability to work (including telework) because employee needs to care for son/daughter under 18 years old due to school or child care facility being unavailable because of COVID issues
- First two weeks can be unpaid (but see PSL provision)
 - Employee may elect to use accrued PTO (unlike “normal” FMLA)
- Next 10 weeks payable at 2/3 of employee’s normal pay, capped at \$200/day or \$10,000 in all.
- NOT a separate 12-week leave entitlement in addition to “normal” FMLA

Families First Coronavirus Response Act (FFCRA)

FMLA Expansion

- FMLA restoration requirement doesn't apply if:
 - Employer has fewer than 25 employees
 - Employee's position doesn't exist when leave ends due to economic issues caused by COVID-19 crisis
 - Employer makes reasonable effort to restore to equivalent position
 - Employer contacts employee if an equivalent position opens up in the 12 months after the leave ends
- Employees with fewer than 50 employees (i.e. not covered by "normal" FMLA) are not subject to lawsuits by employees
 - DOL can still take enforcement action

Families First Coronavirus Response Act (FFCRA)

Paid “Sick Leave” Benefit

- Employees are eligible regardless of length of tenure (Day 1)
- Leave must be made available immediately as opposed to accruing over time
- Employee does not have to actually be sick – qualifying reasons:
 1. Employee is subject to a government quarantine/isolation order
 2. Health care provider has advised employee to self-quarantine/isolate
 3. Employee has symptoms consistent with COVID-19 and is waiting for diagnosis
 4. Employee is caring for an individual described in #1 or #2 above
 5. Employee is caring for son/daughter whose school or childcare facility is not available
 6. Employee is experiencing “substantially similar condition” specified by HHS regs.

Families First Coronavirus Response Act (FFCRA)

Paid “Sick Leave” Benefit

- 2 weeks fully paid leave for reasons 1-3
- 2 weeks of leave at 2/3 pay for reasons 4-6
- Leave for reasons 1-3 is capped at \$511/day or \$5,110 in all
- Leave for reasons 4-6 is capped at \$200/day or \$2,000 in all

- Employer can't require employee to use other accrued paid leave before using this leave
- Employer can't require employee to find replacement worker as a condition of using the leave
- Accrued leave doesn't carry over after December 31, 2020
- Not required to be paid out upon termination
- No obligations under this Act for employers with more than 500 employees

EEOC Guidance – COVID-19 Response

EEOC Guidance – COVID-19 Response

- Can employers take employees' temperature?
- In the current situation, EEOC says yes. BUT, does it really tell you much?
 - Many people have COVID-19 without fever.
 - Many people have fever but no COVID-19.
- Best practices, if you really want to do this:
 - Use social distancing
 - Use digital infrared thermometers
 - Consider paying non-exempt employees for time spent waiting
 - Consider paying employees who are sent home due to fever
 - Temperature records should be confidential

EEOC Guidance – COVID-19 Response

EEOC Guidance – COVID-19 Response

- Can employers ask employees about symptoms?
- In the current situation, EEOC says yes in some circumstances.
- In a pandemic, employers may ask employees who report that they are sick if they are experiencing symptoms associated with the pandemic virus.
- In this case, that includes fever, chills, cough, shortness of breath, sore throat. (Keep response confidential.)
- Don't ask about symptoms of other conditions.
- Employer may take applicant's temperature in a post-offer, pre-employment medical exam
- Employer may screen applicants for COVID-19 symptoms after making a conditional job offer
- Employer may delay the start date of an applicant who has COVID-19 or associated symptoms
- Employer may withdraw a job offer if it needs an employee to start immediately and the candidate is not able to enter the workplace safely under current CDC guidance

Layoffs/WARN Act

- Many employers are laying off or furloughing employees due to government closure orders or slow-downs in business.
- In either situation, notify affected employees about how to file for unemployment.
- Consider Kansas shared work program as alternative to layoffs/furloughs.
- Reduction in hours can trigger unemployment eligibility.
- Kansas has waived the waiting week and extended unemployment benefits to 26 weeks.

Layoffs/WARN Act

- Continued benefits eligibility generally depends on provisions of your benefits plans.
- Kansas law does not require accrued PTO to be paid out upon furlough or layoff.
- However, you must follow your own policies/contracts/CBA
- WARN Act may apply if you have more than 100 employees, and your layoff/furlough is expected to last at least 6 months.
- If duration is uncertain, consider issuing WARN notice prior to 4-month mark of furlough/closure.

Local “Stay at Home” Orders

- No statewide order yet, although this could change quickly
- As of 3/23/20, 8 counties have issued orders – Johnson, Wyandotte, Leavenworth, Douglas, Miami, Lyon, Atchison, Doniphan. Sedgwick County is about to issue their order.
- Most orders require residents to stay at home unless they are engaged in essential activities or businesses.
- Essential activities include obtaining food, medicine, health care and gas.
- Essential businesses normally include food production/delivery, transportation, health care, safety, child care, media, auto, banks, hardware stores, laundry
- Restaurants generally limited to take-out and delivery service
- Other business generally limited to “minimum basic operations” necessary to facilitate at-home work, process payroll, etc.

Local “Stay at Home” Orders

- Johnson County order includes specific exemption for “manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for residences and for certain industries:
 - Pharmaceutical, technology, biotechnology, health care, chemicals and sanitation, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel products, petroleum, lubricants and fuel, mining, construction, national defense, communication and other essential businesses.”

Q&A and Final Notes

- **To ask a question, type your question in the Q/A text box using your GoToMeeting panel.**
- **You can also send your questions to info@wearekms.com.**
- **Webinar follow-up/playback information will be distributed to you tomorrow via email and posted on our website.**
- **Small Business(SBA) Disaster Loans are available to Kansas small business. Hoping to host a webinar with SBA District Director Wayne Bell this week. Will be posted on our website.**
- **If you can manufacture or can retool to manufacture critical needed supplies, visit our website: www.wearekms.com/covid-19-resources-for-manufacturers Look for the “Production of Critical Supplies Survey”.**