



Dear TLW Member:

On May 13, 2020, the Wisconsin Supreme Court issued its decision in the case of *Wisconsin Legislature v. Palm*. In a **4-3 decision**, the Wisconsin Supreme Court ruled **Emergency Order #28, Safer at Home Order (Order #28)** invalid and unenforceable for failure to follow the emergency rule promulgation process under Wisconsin Chapter 227 and for exceeding the Department of Health Services (“DHS”) Secretary’s authority. The Tavern League filed an **amicus brief** in support of the Legislature in this case.

The Court’s decision takes effect immediately, meaning that – at the state level – Order #28 is unenforceable and there are no longer requirements that people remain in their homes, or restrictions on nonessential travel or business operations including restaurants and taverns.

Our lawyers are reviewing the ability of local municipalities or counties to pass their own Safe at Home Orders. For the time being, Licensees should know they may face fines for opening in violation of a local order. For that reason, it is important to consider any local orders and consult with the municipality issuing their license.

The following is from the Wisconsin Counties Association which states it is unclear whether locals have the authority to pass Safe at Home Orders. Excerpt from the Wisconsin Counties Association memo to their members:

- **Validity of Local Health Orders** Many local health officers have issued orders under the authority granted by Wis. Stat. § 252.03 and other local health officers may be contemplating the issuance of orders similar to the Safer at Home Order. While Wis. Stat. § 252.03 provides a local health officer with broad regulatory authority, enforcement of local health orders proceeds under the same statute relating to enforcement of statewide orders like Safer at Home – Wis. Stat. § 252.25. This is the same statute that the Court cited in its decision as problematic in terms of enforcement of the Safer at Home Order. As a result, it is unclear whether a local health order would, in the Court’s view, suffer from the same deficiencies that caused the Court to invalidate the Safer at Home Order.

WEDC Guidelines

Food Safety:

- Ensure you are adhering to the requirements in the **Wisconsin Food Code**. Follow four steps to food safety: Clean, Separate, Cook and Chill.
- Use gloves to avoid direct bare hand contact with ready-to-eat foods or unwrapped single-use items such as straws, stir sticks or toothpicks.
- Do not allow customers to refill their own drinks.
- Use rolled silverware/napkins stored in sealed bags
- Remove shared condiments from tables.
- No buffet/salad bars
- Use disposable menus or sanitize menus after each use.

Social Distancing:

- Two bar stools should be left empty between customers not in the same party
- Limit each table to six guests
- Dining rooms should maintain six feet between tables
- Offer cashless and contact less transactions whenever possible

Social distancing in all areas, from entryways, to restrooms, to the kitchen

Employees should wear face masks around other employees and customers

Sanitizing:

- Proper hand-washing by employees
- Sanitize:
 - High-contact areas (doorknobs, buttons, cooler doors, check-out counters) every two hours
 - Sanitize tables and seating after each guest.
 - Sanitize food contact surfaces after each use
 - Restrooms frequently

WEDC website: <https://wedc.org/reopen-guidelines/>

Thanks