



# **STATE OF OKLAHOMA STATUTE OF LIMITATIONS (during COVID-19 pandemic)**

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## **EXTENDED CIVIL STATUTES OF LIMITATIONS DURING THIS TIME OF COVID-19**

From March 16, 2020 through May 15, 2020, there was a tolling period in Oklahoma affecting the civil statutes of limitations. However, it is not entirely clear whether this tolling period affected only instances in which the statute of limitations *would have* expired during those 60 days, or if there is no such limitation – meaning the statute of limitations in all situations simply paused. The following information explains Oklahoma’s tolling period.

On March 15, 2020, Governor Stitt issued Executive Order 2020-07 declaring an emergency in all 77 Oklahoma Counties because of the pandemic. This executive order did not mention the statute of limitations, nor any other aspect of civil procedure or the judiciary more generally. Nonetheless, the next day, referencing the Governor’s order, the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals jointly issued their First Emergency Joint Order Regarding the Covid-19 State of Disaster, which suspended deadlines and limitations. Subsequently, the two courts issued two additional Emergency Joint Orders Regarding the Covid-19 State of Disaster. The third order, issued April 29, 2020, is the last word as of the date of this memorandum regarding the statute of limitations in connection with the pandemic. *See Third Emergency Joint Order Reg. COVID-19*, 462 P.3d 703, 2020 OK 23.

The orders, especially when read serially, leave themselves open to multiple interpretations. The third order, though, explicitly directs in its fourth paragraph that the period between March 16, 2020 to May 15, 2020 “will be treated as a tolling period.” In most authority, a “tolling period” is treated differently than a “grace period” or “savings period.” If a statute of limitations is “tolled,” this authority treats the “clock” of the limitations period as being “paused” or “suspended.” In other words, if a cause of action accrued on January 1, 2020, and has a five-year statute of limitations, a suit could be timely filed on that cause of action in early March of 2025, because the five year “clock” was paused for 60 days, many years before, during an emergency in 2020.

On the other hand, there are several other indications across the text of the three orders that the high courts did *not* intend to pause or suspend all civil statutes of limitation for all causes of action, but rather intended (as might be seen as more logical in the circumstances) to affect only certain deadlines and limitation periods where the pandemic shutdowns and their

more immediate follow-on effects might be hindering courts', parties' and their attorneys' ability to accomplish the day-to-day requirements of litigation.

We simply do not know at this point how available arguments about the interpretation of these unusual and unprecedented orders will play out in the months and years to come.

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Furthermore, the high courts' emergency orders may raise constitutional issues, especially if they are interpreted to have intended a true sixty-day toll or pause of all statutes of limitation, even those expiring long after the pandemic is over. The orders themselves explicitly state multiple times that their terms are "subject... to constitutional limitations." The orders *reference* the Governor's Executive Order, but they do not purport to be issued *pursuant* to that Executive Order (nor would there be any textual basis for such a conclusion). The courts' orders do not state what grant of authority the courts believe the orders are issued pursuant to. In some states, the legislature has enacted statutes that vest in the state's highest court (or Chief Justice thereof) the explicit power to suspend the statute of limitations because of an emergency, and many have done so this year.<sup>1</sup> None of the long-standing major sets of Oklahoma statutes pertaining to emergencies appear to mention anything about delegating to the judiciary or the executive the authority to alter the statutes of limitation. Nor does any COVID-specific statute enacted this year do so.

Certainly, the courts would not have issued the emergency orders without a good faith belief that they had the proper legal authority to do so. They may well have such authority, even if their effects are far reaching. The adversarial process has not yet tested this question.

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In short, there may be several litigable issues pertaining to the extension of the civil statutes of limitation in Oklahoma during this time of Covid-19.

#### **TEMPORARY RULES EXTENDING TIME LIMITS TO SERVE COMPLAINTS AND/OR SPECIAL RULES RELATING TO METHODS OF SERVICE**

There have not been changes made relating to methods of formal service of process.

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<sup>1</sup> In New York, Governor Cuomo, and not the judiciary, took the formal step of suspending the statute of limitations because of the Covid-19 emergency, but he did so pursuant to a specific statute granting him such power. (N.Y. Exec. Law § 29-a (McKinney)).

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