

Legal and HR Considerations for Kentucky Employers to Get Back to Business



Todd Logsdon, Fisher Phillips, LLP

May 5, 2020



Workplace Safety: Relaxed Shelter-in- Place/Stay Home Order Issues

- › As the President and governors begin easing shelter-in-place orders, it is important for Kentucky and Indiana employers to stay up-to-date on the status of their states' reopening requirements.

Gov. Beshear, 4/29/20:

Healthy at Work

PHASE 1 RE-OPENING

TEAM
KENTUCKY

May 11

- Manufacturing
- Construction
- Vehicle or Vessel Dealerships
- Professional Services (50%)
- Horse Racing (No Fans)
- Dog Grooming / Boarding

HEALTHYATWORK.KY.GOV



KY



REOPENING Phase 2

MAY 20
**Churches,
retail**

May 25
**Barbers,
groups of 10**

June 15
**Childcare,
youth sports**

May 22
**Restaurants
(33 percent
capacity)**

June 1
**Movie theaters,
fitness centers**

July
**Bars,
groups of 50**

June 11
Campgrounds



Workplace Safety: Relaxed Shelter-in- Place/Stay Home Order Issues for Kentucky

- *Healthy at Work*
- *Executive Order 2020-323*
- *Minimum Requirements for All Businesses*
- *Industry Specific Requirements*
- *KYSAFER – report non compliance*

10 RULES

To Re-opening
#HealthyatWork



TEAM
KENTUCKY

KYCOVID19.KY.GOV
#TEAMKENTUCKY
#TOGETHERKY
#HEALTHYATHOME

- ✓ Continue telework where possible
- ✓ Phased return to work
- ✓ Onsite temperature/health checks
- ✓ Universal masks and any other necessary PPE
- ✓ Close common areas (waiting rooms, cafeterias, break rooms, etc.)
- ✓ Enforce social distancing
- ✓ Limit face-to-face meetings
- ✓ Sanitizer/hand wash stations
- ✓ Special accommodations
- ✓ Testing plan

HEALTHYATWORK.KY.GOV



Workplace Safety: Relaxed Shelter-in- Place/Stay Home Order Issues for Kentucky

> Minimum Requirements:

- Designate a safety officer at each workplace;
- Require employees to telework (must);
- Employees must wear mask within 6 feet of others (employer provides)
- Conduct daily temp/employee health checks;
- Testing Plan
- Special Accommodations – greatest extent practicable
- Contact Tracing
- Employee training



Workplace Safety: Relaxed Shelter-in- Place/Stay Home Order Issues

- **Expect to address employee concerns. To reassure employees that all COVID-19 hazards are being addressed, you should consider:**
 - Providing clear explanations and assurances about safety precautions you are taking (such as signage, periodic reminders of good practices, and employee updates).
 - Following the Centers for Disease Control and Prevention (CDC) guidance, as well as federal OSHA guidance, when making workplace safety decisions regarding reopening.



Workplace Safety: Miscellaneous Safety Considerations

- › While OSHA has not implemented new standards specifically for COVID-19, in recent guidance it said the General Duty Clause applies to COVID-19 related hazards.
- › Enforcement by KOSH
 - › Remote Inspections
 - › Shutdown Orders



Workplace Privacy: Kentucky

- Defamation - Businesses and individual supervisors may be held liable.
 - Imputation of a “loathsome disease” is presumptively slanderous
- These sources of potential liability are in addition to liability under the ADA and state civil rights laws.



Human Resources Considerations: Kentucky

- › Generally not required to provide paid sick leave and KY has not adopted special paid sick leave requirements related to COVID-19.
- › But – FFCRA if under 500 employees
- › Although not required under state law, if provided:
 - › In most circumstances, unused sick leave that accrued before furlough must be restored.
 - › Restoration is not required if employee used sick leave during furlough or was “cashed out” for it prior to furlough.



Human Resources Considerations: Kentucky

- > Generally not required to provide paid sick leave and KY has not adopted special paid sick leave requirements related to COVID-19.
- > Although not required under state law, if provided:
 - > In most circumstances, unused sick leave that accrued before furlough must be restored.
 - > Restoration is not required if employee used sick leave during furlough or was “cashed out” for it prior to furlough.
- > But – FFCRA if under 500 employees

Human Resources Considerations: Kentucky

 **Quick BENEFITS TIPS FROM DOL**

How much paid leave can employees take?

In general, applies to you if you are an employee of either a private employer with fewer than 500 employees or a covered public sector employer



| | | | |
|--|------------|--|--|
|  <p>You are following a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider</p> | OR | <p>You have COVID-19 symptoms and are seeking a diagnosis</p> | TIME OFF Up to two weeks or 80 hours of paid sick leave at higher of regular rate or minimum wage* |
|  <p>You must care for someone under a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider</p> | OR | <p>You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19</p> | TIME OFF Up to two weeks or 80 hours of paid sick leave at higher of 2/3 regular rate or minimum wage* |
|  <p>You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19</p> | AND | <p>You've been employed at least 30 calendar days</p> | TIME OFF Up to 10 additional weeks of family leave paid at 2/3 regular rate* |

*Paid leave is capped at specific maximum amounts per worker

Learn more at dol.gov/FFCRA





Unemployment Benefits & work comp: KY

- > An employee who refuses to return to work when recalled may be eligible for continued unemployment benefits only if there is a **valid, qualifying reason** for refusing to return.
- > WC - Removal by Physician due to occupational exposure = TTD even if claim denied, no waiting period

Practical Considerations

Figure out now, not next week, how you will safely reopen—and remain open.

- › Obtain all the face covers you can.
- › Be ready to take temperatures.
- › Know how to handle CV19 positive cases, exposures, and potential exposures.
- › Proper hygiene and social distancing posters, barriers, floor markings, etc.
- › Be ready to calm employees' fears.
- › Know how to recognize and handle PCA.
- › Be ready for OSHA inspections.
- › Permanently adopt teleworking.
- › Temporary lenient leave policies.

Visit **FISHER PHILLIPS** **RESOURCE CENTER** for **Employers**

Post-Pandemic Back-To-Business FAQs For Employers

Comprehensive set of FAQs that are continually updated throughout the recovery period. Not only do we go deeper on all these topics, but we also have detailed information about:

- SBA Loans
- Paid Sick Leave and E-FMLA
- Benefits
- Unemployment
- I-9s and Immigration Issues
- International Workplaces
- Trade Secrets Concerns
- ...and more

Please rely on **fisherphillips.com** for up-to-date information.



Questions?

Todd Logsdon, Esq.
(502) 561-3971
tlogsdon@fisherphillips.com