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

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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.

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Gov. Beshear, 4/29/20:

**Healthy at Work**
**Phase 1 Re-Opening**

**May 11**
- Manufacturing
- Construction
- Vehicle or Vessel Dealerships
- Professional Services (50%)
- Horse Racing (No Fans)
- Dog Grooming / Boarding

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KY REOPENING
Phase 2

May 20
Churches, retail

May 22
Restaurants (33 percent capacity)

May 25
Barbers, groups of 10

June 1
Movie theaters, fitness centers

June 11
Campgrounds

June 15
Childcare, youth sports

July
Bars, groups of 50

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

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10 RULES
To Re-opening
#HealthyatWork

- 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

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> 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

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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 Controls and Prevention (CDC) guidance, as well as federal OSHA guidance, when making workplace safety decisions regarding reopening.

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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

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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.

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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.

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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.

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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?

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