

An illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on a semi-transparent dark blue rectangle.

CRISIS MANAGEMENT FOR COVID-19

Week 13: Update from Lexington's Mayor and Legal & Regulatory Changes

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

1

Legal
Updates –
Part 1

2

Updates from
the Mayor of
Lexington

3

Let's Give
Back!

4

COVID &
Workers'
Compensation

5

Legal
Updates –
Part 2



IMPORTANT REMINDERS

5 Rules to Help Keep You Safe

- Avoid close contact and large crowds (6 feet apart)
- Avoid confined spaces with other people
- Wear a mask and other PPE as needed
- Cover your mouth when coughing or sneezing
- Clean your hands and your environment



1

Legal Updates – New EEOC Guidelines



James M. Morris, Esq.
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1 EEOC Update

New EEOC Guidelines were issued this past week (6/11/2020)

Accommodation

D.13. Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

- No. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

Harassment

E.3. How may employers respond to pandemic-related harassment, in particular against employees who are or are perceived to be Asian?

- EEOC issued specific guidance that basically reiterates the “Golden Rule.” Managers should be alert to demeaning, derogatory, or hostile remarks directed to employees who are or are perceived to be of Chinese or other Asian national origin, including about the coronavirus or its origins.

E.4. An employer learns that an employee who is teleworking due to the pandemic is sending harassing emails to another worker. What actions should the employer take?

- The employer should take the same actions it would take if the employee was in the workplace.

1

New EEOC Guidelines were issued this past week (6/11/2020)

Return to Work

G.6. As a best practice, and in advance of having some or all employees return to the workplace, are there ways for an employer to invite employees to request flexibility in work arrangements?

- Yes. The ADA permits employers to make information available in advance to all employees to request an ADA accommodation upon RTW consistent with the ADEA, the ADA, and the 5/29/20 CDC guidance

G.7. What should an employer do if an employee entering the worksite requests an alternative method of screening due to a medical condition?

- This is a request for reasonable accommodation under the ADA, Rehabilitation Act, or for religious reasons, an employer should proceed as it would for any other request for accommodation

Age-Related Concerns

H.1. The CDC has encouraged employers to offer maximum flexibility to employees 65 and over. Do employees age 65 and over have protections under the federal employment discrimination laws?

- ADEA prohibits discrimination age 40 and older. Employers cannot involuntarily exclude any employee based upon age, even if doing so to “protect” an employee. While the ADEA does not include a “reasonable accommodation” for older workers, Employers can provide flexibility to older workers
- Also be aware of reasonable accommodations for workers age 65 and older under the ADA, not ADEA

Caregivers/Family Responsibilities Issues

I.1. If an employer provides telework, modified schedules, or other benefits to employees with school-age children due to school closures or distance learning during the pandemic, are there sex discrimination considerations?

- Yes. You cannot “assume” and treat male employees differently than female employees. (Golden Rule)

Pregnancy Concerns related to COVID-19

J.1. Due to COVID-19, may an employer exclude a pregnant employee from the workplace involuntarily?

- No. Sex discrimination under Title VII of the Civil Rights Act includes discrimination based on pregnancy, even if attempting to protect the employee.

J.2. Is there a right to accommodation based on pregnancy during the pandemic? (6/11/20)

- Under the ADA, pregnancy-related medical conditions may be disabilities, even though pregnancy is not. If an employee makes a request for reasonable accommodation due to a pregnancy-related medical condition, the employer must consider it under the usual ADA rules.
- Secondly, Title VII as amended by the Pregnancy Discrimination Act, requires that women affected by pregnancy, childbirth, and related medical conditions be treated the same as similarly-situated employees, including job modifications, telework, work schedules, and leave.



2

Updates from the Mayor of Lexington



Linda Gorton
Mayor of Lexington

Questions & Answers





3

Let's Give Back!

CORONAVIRUS CHARITIES

3

Let's Give
Back!



Goal is supporting key social service agencies that provide critical services to the most vulnerable individuals, families and children in Lexington.

Lexington's budget for next year has been crippled by a \$40 million shortfall because of fallout from COVID-19, Gorton said. "Although we provided considerable funding in the budget that helps citizens who are most in need of assistance, we could not fund an additional \$2.1 million in extra grants to social service agencies."

To fund some of those agencies, Gorton is spearheading the "Mayor's Fund for the Greater Good" campaign, and Lexington businesswoman Ann Bakhaus and Blue Grass Community Foundation are assisting.

The fund-raising effort will initially focus on the following agencies because they offer critical services to the most vulnerable individuals, families and children: Greenhouse 17, the Children's Advocacy Center of the Bluegrass, Arbor Youth Services, The Salvation Army, AVOL Kentucky and NAMI Lexington.

CORONAVIRUS RESPONSE FUND

- Coalition of philanthropy, government, and business partners
- Goal is to rapidly deploy resources to community-based organizations at the frontlines of Kentucky's current Coronavirus pandemic
- Led by a partnership between United Way of the Bluegrass (UWBG) and Blue Grass Community Foundation (BGCF)
- Provides flexible resources to organizations in the joint service region working with communities who are disproportionately impacted by coronavirus (COVID-19) and the economic consequences of this outbreak
- To date, awarded more than \$600,503 in charitable grants to fund organizations and programs working to provide residents with access to food, prescriptions/healthcare and other childcare and basic needs
- Designed to complement the work of local public health, nonprofit, and government entities, and to expand local capacity to support

3

Let's Give
Back!



arts resilience initiative

This Partnership of LexArts and Blue Grass Community Foundation provides financial relief for artists and arts organizations impacted by the COVID-19 pandemic.

The current health crisis is putting staggering pressures on the arts community in Lexington and Central Kentucky. With strict guidelines to stem the spread of the virus, public gatherings are banned, venues are closed, and performances, shows, events, classes and gigs are being cancelled, resulting in hundreds of thousands in projected lost revenue for artists and arts organizations.

Focused on lost income, the fund will quickly provide one-time relief to eligible artists and arts organizations on a first-come, first-served basis. The maximum award for an individual artist is \$500, while the maximum award for arts organizations is \$2,000.

3

Let's Give
Back!



Initiative to utilize the skills and talents of hospitality workers recently unemployed due to the COVID-19 closings to provide prepared meals to those who need immediate access to food.

In exchange for preparing and delivering meals, food service workers will receive a \$60 payment for a four-hour shift. Meals will be distributed to hospitality industry families, other families in need, seniors in affordable housing apartment complexes and children and their families through family resource coordinators.

LET'S VOTE!





4

COVID & Workers' Compensation



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Is COVID covered under workers' compensation?

- ***"Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment." K.R.S. 342.0011(1).***
- Flu/Pneumonia/HIV/Hepatitis/COVID
- Does your type of business increase your employees chance to contract COVID?

Impact of Governor Beshear's Executive Order?

- Issued an Executive Order related to workers' compensation benefits
- All employees entitled to TTD immediately if employee has a doctor's note discussing work-related exposure to COVID (exposure/diagnosis)
- COVID diagnosis presumed work-related if employee is: First responder or medical personnel (Burden of proof would shift to the employer to prove otherwise)

4

COVID & Workers' Compensation

Impact of COVID on Workers' Compensation— Predictions vs. Reality

- New York predicted \$36,000,000,000 (\$36B) in workers' compensation losses
- California predicted \$11,000,000,000 (\$11B) in losses
- Prediction for Kentucky---\$450,000,000--\$900,000,000
- KEMI predicted \$4,000,000 (30% of market)

KEMI's Experience with COVID

- 486 claims (450 closed)
- 36 open claims
- Schools---4 fatalities/8 employees hospitalized
- \$2,200,000 in losses (current)

What if my employee is diagnosed with COVID?

- Return to work safely
 - Taking Temperatures before work
 - Ask questions to ensure healthy workforce
 - Documentation
- If your employee receives a COVID diagnosis/exposure to COVID
 - Immediately send employee home
 - Report to workers' compensation carrier/FROI
 - Follow medical advice

How will COVID impact my workers' compensation policy?

- Payroll x Risk/Class Code=Workers' Compensation premium charged
 - Laid off employees---lower premium
 - Paid furlough---lower premium (New rules=charge \$0 for this payroll)
 - Teleworking—MAY reduce premium
- Call your Insurance Agent
 - Discuss your changes in payroll
 - Ask carrier for an audit
 - Reduction in charges/Premium Rebate

Questions & Answers





5

Legal Updates – Crime & Punishment and OSHA Updates



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The DOJ has clamped down on COVID-19 fraudulent claims:

- An employee, wanting to take time off, notified his employer that he was “sick” and had COVID-19
- The Employer, understandably, requested a medical note detailing the employee’s condition
- To comply with the employer’s demand, the vacation-seeking employee sent a physician note advising of COVID-19 illness
- The employer, following CDC guidelines, shut down to have the facility sanitized and sent several contact-traced employees home for 14-days to quarantine, with full pay
- The Employee did not have COVID-19, and the physician’s note was falsified
- The Employer is clearly entitled to legal recourse, but the employee is in much more trouble!
- The DOJ has filed federal criminal charges against the Employee related to the vacationing scheme
 - The doctor's note was sent to the employer via email, transmitted through servers in a different state before getting to the employer's headquarters Federal Crime of Interstate Wire Fraud!
- Had he asked for legal advice Use your kids as an excuse, or have the Dr. Note hand-delivered!

OSHA Updated its Facemask Guidance on 6/10/2020

OSHA issued FAQ explaining the differences between cloth face coverings, surgical masks, and respirators:

- Cloth face coverings do not constitute personal protective equipment.
- Surgical masks are not considered to be PPE if they are being used solely to contain the respiratory droplets of the person wearing them (referred to by OSHA as “source control”).

The use of such face coverings and/or surgical masks would constitute part of “a control plan designed to address hazards from SARS-CoV-2” under the **General Duty Clause**.

- “Employers may choose to use cloth face coverings as a means of source control ... [where] transmission risk cannot be controlled through engineering or administrative controls, including social distancing.”

OSHA also reiterates guidance from CDC that cloth face coverings are not a substitute for social distancing

And finally, OSHA emphasizes that surgical masks and cloth face coverings are not an acceptable substitute where respirators are required due to exposures to contaminants such as asbestos or silica.

- If respirators are not available, worker exposure should be avoided by delaying the task

5

PPP Flexibility Act

US Treasury and SBA Issued New Guidance on PPPFA

- “Covered Period” amended from 2/15/20-6/30/20, to 2/15/20 and ending on 12/31/20
- Maturity Date for PPP Loans amended to 5 years for all PPP loans made on or after 6/5/2020
- Deferral Period for PPP Loans extended to 10 months after the end of the loan forgiveness period
- Loan Forgiveness modified from 75% to 60%. “to receive full loan forgiveness, a borrower must use at least 60 percent of the PPP loan for payroll costs, and not more than 40 percent of the loan forgiveness amount may be attributable to nonpayroll costs.
- Felony Conviction Eligibility Requirements modified from a complete 5-year prohibition to now include only “a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year”

Questions & Answers



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