

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 mix of warm and cool tones. The text is overlaid on a dark blue vertical band on the left side of the image.

CRISIS MANAGEMENT FOR COVID-19

Phase 15 (Week 18): Current Issues with COVID-19, Legal Updates, & a Precursor to Back-to-School Considerations for Employers

*Presented by:
Hanna Resource Group and
Morris & Morris, PSC*

INTRODUCTIONS



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WHAT WE'LL COVER

1

Current
Issues with
COVID-19

2

Legal Updates

3

Precursor to
Back-to-School
Considerations
for Employers



Current COVID-19 Stats

In Kentucky as of 7/12

- 19,389 Cases
- 277 new cases

49% increase week over week from 1st week of July

- 625 total deaths

IMHE Model Projections

- By 11/1, have 1139 deaths total



3 Key Ways to Prevent Spread

- 1) Wear masks
- 2) Social distance
- 3) Practice proper hand washing



COVID-19
CORONAVIRUS DISEASE

BE INFORMED:

Know Your Risk During COVID-19

On a scale of 1 to 10, how risky is...

Ranked by physicians from the TMA COVID-19 Task Force and the TMA Committee on Infectious Diseases



COVID-19

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1

Current Issues with COVID-19



Dr. Mark J. Dougherty, MD

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Questions & Answers





2

Legal Updates



James M. Morris, Esq.

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2 CDC Symptom Update

Since June 22, 2020, CDC has updated symptomology

The CDC's symptom list expanded from 8 to 11 potential indicators:

- *Fever or chills*
- *Cough*
- *Shortness of Breath or difficulty breathing*
- *Muscle or body aches (Fatigue)*
- *Headache*
- *New loss of taste or smell*
- *Sore throat*
- **Congestion or runny nose**
- **Nausea or vomiting**
- **Diarrhea**

2 PPP Update (Extension Act)

PPPEA Extends PPP Application Deadline to August 8

Quietly, prior to the June 30, 2020 Deadline, Congress Extended the PPP Application Deadline

- More than 4.8 Million Businesses have already applied for the PPP Loan*
- At the original deadline, over \$130 Billion remained*
- Congress passed the PPP Extension Act to allow additional Small Businesses to benefit*
- If you have not done so already, APPLY! August 8, 2020 will probably be the last extension!*

A critical update:

- On June 11, 2020, SBA authorized Schedule C Filers to consider themselves paid up to 20.833% of their 2019 Schedule C net income (20.833% is equal to 2½ divided by 12, i.e., what could be borrowed, in the event you have no employees)(highest amount for an ind. would be \$20,833)*

The two other safe harbors that can be used reduced workforces:

Governmental Guidelines Caused Reduction or Good Help Is Hard to Find Reduction.

2 PPP Update (New guidance)

US Treasury now provides EZ Form, new PPP Application Forms, and new Calculation forms

- **6/26/2020 Treasury provided new explanation for Calculations of Maximum PPP Loan amount**
 - Self-employed with or without employees; Partnerships; S Corp; C Corp; LLC; Non-Profit; Religious organizations; new Self-Employed (not operational in 2019)
- **PPP EZ Loan Forgiveness Form (streamlined process for loan forgiveness)**
 - Self employed; independent contractor; sole proprietor with no employees
 - No reduction in wages by more than 25% AND no reduction in # of employees; or
 - No reduction in wages by more than 25% AND unable to operate at the same level
- **PPP Loan Forgiveness Form (last updated 6/16/2020)**
 - Detailed form and instructions (for those that do not qualify for EZ Form)
 - Addressed some of the gaps and confusion of earlier forms

2 Potential COVID-19 Legal Issues for Employers

Benefits -- continuing/ending coverage due to reduction or furlough; contract or legal compliance

Contracts -- Breach of contracts due to reductions, pay cuts, furloughs, etc.; Non-compete; *force majeure*

COVID-19 Legislation -- Compliance/Non-Compliance with FFCRA, State and Local Leave, and retaliation claims

Discrimination/Retaliation Claims -- National origin/race, disability and FMLA claims related to layoffs, rehire, etc.

Employee Expenses -- Work from home reimbursement disputes/charges (cell phone, WiFi, office supplies, etc.)

Immigration Compliance -- I-9/E-Verify; paying H-1B but not US employees; DOJ audits; restarting H-1B reviews

NLRB -- Retaliation for refusing unsafe working conditions (potential exposure to COVID-19)

OSHA/Workplace Safety -- Safe workplace; claimed workplace infections; whistleblower/retaliation claims

Union Relations -- CBA compliance; union organization efforts caused by layoffs, furloughs, terminations; \$\$\$

Wage and Hour Issues -- Improper calculation for layoffs/furloughs/reduction/pay cuts; Donning & Doffing

WARN Act Compliance -- Failure to comply with WARN Act in conjunction with layoffs, furloughs and closures

Workers' Compensation -- compensation claims by infected employees; retaliation for reporting/refusals

2 Kentucky's Executive Order Confusion

*Governor Beshear Issues Mask Mandate
But it, and several others, may be invalid*

On July 9, 2020, Governor Beshear issued a new "Mask Mandate" by Executive Order

However, on July 9, 2020, Scott County Circuit Judge Privett issued a TRO enjoining Beshear from:

enforcing any Executive Order, Secretary's Order, or other order or guidance issued pursuant to KRS Chapter 39A related to the emergency declared by the Governor on March 6, 2020, against Evans Orchard & Cider Mill, LLC or any of the 548 agritourism businesses in Kentucky currently registered with the Department of Agricultural;

According to the Scott County Order, **NONE OF GOVERNOR BESHEAR'S ORDERS THAT IMPACT ANY 548 AGRITOURISM BUSINESSES ARE VALID, including the recently-mandated July 9, 2020 Mask Policy.** So, where does that leave Kentucky companies?! Technically, all of his Orders, due to the over-expansive nature of each, could be argued to be VOID.

However, Governor Beshear declared, during his July 10, 2020 daily press briefing, that his Executive Orders continue to be valid despite the TRO. This will probably cause a Kentucky Constitutional issue...

Reminder of FFCRA requirements:

- Two weeks (up to 80 hrs) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms; or
- Two weeks (up to 80 hrs) of paid sick leave at 2/3 of the employee's regular rate of pay for care of a quarantined individual or care for a child whose school or childcare provider is closed due to COVID-19; **and**
- For all employees employed more than 30 days, up to an additional 10 weeks of paid expanded family and medical leave at 2/3 of the employee's regular rate of pay where an employee is unable to work due to the need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19

An employee qualifies for paid sick leave if they are unable to work (or telework) for these reasons related to COVID-19:

1. is subject to a quarantine or isolation order;
2. is advised to self-quarantine;
3. is experiencing symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in number 1 or 2 above;
5. is caring for a child whose school or place of care is closed; or
6. is experiencing any other substantially-similar condition, **and**

An employee qualifies for **expanded family leave** if they are caring for a child whose school or place of care is closed

3

Questions for Employers in relation to Back to School

Back to School Provides Huge Issues for Employers!

Questions arise, however, with School Re-Opening Issues

- What if the employee was given a choice (remote versus in-school)?
- Intermittent Leave allowed?
- What happens at the end of the FFCRA leave time period?

Employers need take several steps:

- Develop new handbooks, policies and procedures, and structure for Work from Home
- Properly document all time off
- Assure compliance with handbooks, policies, procedures, and agreements
- Build relationships with your employees that allow for work-from-home and home schooling

Next week we will have more information and will address the details

Questions & Answers



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