

A stylized illustration of a diverse crowd of people, all wearing face masks. The people are depicted in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on the left side of the image.

CRISIS MANAGEMENT FOR COVID-19

Week 7: Legal Updates & Best Practices

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

1

Unemployment
Insurance
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Update from
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& Updates



1

Unemployment Insurance Update



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1 Unemployment Insurance Update

As a result of the rush to provide benefits, several aspects of Kentucky's UI Laws are confusing and/or contradictory.

- **Wrong information** was being supplied by KUIC:
 - Salaried employees ineligible for workshare;
 - "Someone can make too much and not be eligible for state unemployment assistance. If 80% of their weekly earnings are more than \$552 then that person would not receive UI payment...."
 - "If you are a salaried worker, you have a contract with your employer... so really it becomes a labor and contract dispute between the employee and the employer..."
 - "You do not have to pay out an employee's PTO if he/she will be returning to work"
- Being released today is 787 KAR 1:350E, defining Kentucky's Workshare Program (Copies available)
 - Salaried employees **are** eligible for Kentucky's Workshare Program
 - 10%-60% reduction is based on **employee's wages, not** Kentucky's UI maximum benefits
 - PTO is a subject of KRS Chapter 337 (Wage and Hour), and guidance that it does not have to be paid out upon furlough, termination, or lay off is not accurate

1 Unemployment Insurance Update

Kentucky's Workshare Regulations Overview *787 KRA 1:350E*

- **Emergency Basis** to implement a Short-Time Compensation Program (STC)(6-month time period)
- Provides UI to “employees who have not been terminated But have experienced a reduction in work hours of more than 10 percent, but less than 60%, with no reduction in hourly rate, or the equivalent thereto, to be eligible for unemployment benefits to compensate ... for the temporary loss of income
- STC Benefits means “the regular weekly UI amount Multiplied by the percentage of reduction
- To become eligible, Employers must submit a “STC Plan” to the KUIC Executive Director (15 days)
 - Key elements include continuing benefits, CBA approval (if applicable), usual weekly hours in affected unit, identification of holidays or closed operations, and credits for retirement benefits
 - Certification that Employer will not hire new employees during STC, will not lay off or further reduce hours of participating employees by more than the STC Plan
 - However, STC Plan may be terminated by Employer as it is voluntary
 - Must provide compliance reports, allow access to records, other directives from ED
 - Employers must pay one-half of the amount paid under the plan, but may be reimbursed (CARES)

1 Unemployment Insurance Update

US Department of Labor Issued Guidelines for STC

- U.S. DOL issued ***brand new*** guidance this morning on Short-Time Compensation Programs
- Kentucky is awaiting review to determine implementation of the Regs identified above
- CARES §2108 provides 100% financing of STC through 12/31/2020 (Kentucky can receive \$1,253,728)
- Identifies the program as a lay-off aversion program
- Bring laid-off employees back to work; available for those working for an employer prior to COVID-19
- Affirms requirement of Employer Plan, health/retirement benefits, % of hours reduced, 26 weeks, etc.
- Does not include seasonal, intermittent, or temporary employees
- Kentucky must reach an agreement with Secretary of Labor, pursuant to §2108 of CARES Act
- Additional information is provided at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9622



2

Update from Governor Beshear



Andy Beshear
Governor of Kentucky

2 Update from Governor Beshear

Benchmarks for Reopening Economy

COVID-19

TEAM  KENTUCKY

- 14 days of decreasing cases
- Increased testing capacity on contact tracing
- Personal protective equipment (PPE) availability
- Ability to protect at-risk populations
- Ability to social distance and follow the CDC's guidelines on large gatherings
- Preparedness for possible future spike
- Status of vaccine and treatment

2 Update from Governor Beshear

Healthy at Work

PHASE 1 REOPENING

May 11

- Manufacturing
- Construction
- Vehicle or Vessel Dealerships
- Office-Based Businesses (50%)
- Horse Racing (No Fans)
- Dog Grooming / Boarding

May 20

- Retail
- Houses of Worship

May 25

- 10 Person Social Gatherings
- Barbers, salons, cosmetology businesses, and similar services

2 Update from Governor Beshear

10 RULES

To Re-opening
#HealthyatWork



TEAM
KENTUCKY

[KYCOVID19.KY.GOV](https://www.ky.gov/covid19)

#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](https://www.healthyatwork.ky.gov)

Recap





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Legal and Regulatory Update



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Brand new questions about PPP and Loan Forgiveness

- CARES Act and SBA require a comparison to the “first quarter of 2020”
- Must pay at least 75% of the loan toward payroll; First quarter of 2020 contains **13 weeks**; 3 weeks x 5% is 9.75 weeks.
- Based on this calculation, 9.75 weeks of pay in 8 weeks! Not yet addressed by SBA, or the U.S. Treasury
- By way of example, if an employer obtains a PPP loan of \$40,000 based on wages paid to five employees. During the 1Q Employer paid the 5 workers a total of \$50,000. 75% of \$50,000 is \$37,500. During the 8- weeks, employees receive \$29,000., with remainder going to health insurance and SUTA.
 - Under current CARES Act guidance \$8,500 of the \$40,000 loan will not be forgiven even though all \$40,000 was expended on payroll costs!
- Each lending institution makes the final determination as to compliance and loan forgiveness
- Contact your Lending Institution to determine applicability to your loan!

3 FAQ regarding reopening

Questions about how to plan on temperature scans during re-opening amid the COVID-19 Pandemic

- Are professional office buildings required to take temperatures and conduct health screenings when employees return to the office?

A: Each individual business is required to perform temperature scanning under Governor's directives

- Can employers request that employees self-administer temperature checks before coming in?

A: Not according to the Governor's Directives, as it requires "on-site temperature scanning"

- Who should conduct on-site thermal scans as staff enter the building?

A: It is highly recommended that you utilize a third-party provider or Human Resources – and not utilize any supervisor, co-workers, or any other individual who may access confidential medical information

- What is the baseline temperature reading that should be used to not allow entry into the building?

A: CDC considers a fever a measured temperature of 100.4° F (38° C) or greater

- How long should an employee be required to remain away from a facility due to a temperature reading above what is allowed?

A: Employers may require a Medical Return to Work Document (less-formal notifications)

3

FAQ Regarding Re-opening

Additional questions related to re-opening during the COVID-19 Pandemic – Temperature and Set-up

- Should an employer retain daily temperature scan information and daily documentation that certifies those who enter the building have no symptoms or exposure to COVID-19?
A: You may do so, and track any spikes in temperature, but the tracking must be confidential/med. file
- Will the essential businesses that are open now be required to follow the Governor's new mandates of having daily medical questionnaires completed by employees and taking the temperature of each employee daily?
A: I am unaware of daily medical questionnaires. However, temperatures scans are required
- Where is the guidance on cubicle setups that was mentioned last week?
A: <https://www.osha.gov/Publications/OSHA3990.pdf>; along with CDC **guidance** recommended therein..
- Should COVID-19 precautions be made mandatory for staff?
A: Yes. Employees can be disciplined for refusing/failing to adhere to CDC and Kentucky guidance

- How are independent contractor unemployment requests handled?

A: For right now, handle as you typically handle, and advise that the individual is an independent contractor. According to Kentucky's UI Office, employers' reserve accounts are not being charged. I am awaiting additional guidance with regard to the "Employer" section since they have not yet addressed. My understanding is that independent contractors should identify ***themselves*** as the employer, not where they have been working. However, a rejection could delay handling of the claim.

- Under the PPP, is overtime part of the calculation of what we have to pay to employees?

A: Yes. PPP defines compensation to include tips, wages, overtime, and all other sources upon which the calculation to obtain PPP was based. Also, keep in mind that you cannot have more than a 25% drop in compensation during the 8 weeks compared to the first quarter – which is 13 weeks.

- If we are eligible for Phase 1 opening, but do not have appropriate PPE, do our employees lose eligibility for Unemployment Benefits?

A: No. The Governor requires you to have necessary PPE before you are allowed to open

On May 1, 2020 OSHA announced intent to provide industry-specific guidance: Restaurants

- Encourage workers to stay home if they are sick.
- Avoid direct hand-off, when possible.
- Display a door or sidewalk sign with the services available (e.g., take-out, curbside), instructions for pickup, and hours of operation.
- Reserve parking spaces near the front door for curbside pickup only.
- Train workers in proper hygiene practices and the use of workplace controls.
- Allow workers to wear masks over their nose and mouth to prevent spread of the virus.
- Provide a place to wash hands and alcohol-based hand rubs containing at least 60% alcohol.
- Routinely clean and disinfect surfaces and equipment with EPA-approved cleaning chemicals
- Practice sensible social distancing by maintaining six feet between co-workers and customers. Mark 6-foot distances with floor tape in pickup lines, encourage customers to pay ahead of time, temporarily move workstations to create more distance, and install plexiglass partitions, if feasible.
- Encourage workers to report any safety and health concerns.

Additional guidance provided for various industries, being updated throughout each day:

- OSHA issued guidance for the following industries, available at the link below:
 - Meat and Poultry Processing
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>
 - Construction Workforce <https://www.osha.gov/Publications/OSHA4000.pdf>
 - Manufacturing Workforce <https://www.osha.gov/Publications/OSHA4002.pdf>
 - Package Delivery Service <https://www.osha.gov/Publications/OSHA3998.pdf>
 - Retail Workforce <https://www.osha.gov/Publications/OSHA3996.pdf>
- Basically, the guidance mirrors that of the CDC and OSHA Guidance discussed in Week 5: Social distancing, plexiglass if possible, stagger work areas, and other efforts to encourage safe and healthy work environments

Additional guidance provided on Respirators in Health Care provided on April 24, 2020

- If respiratory protection must be used, and acceptable alternatives are not available for use in accordance with OSHA's previous COVID-19 enforcement memoranda, NIOSH has identified the following methods offer the most promise for decontaminating FFRs:
 - Vaporous hydrogen peroxide;
 - Ultraviolet germicidal irradiation; and/or
 - Moist heat (e.g., using water heated in an oven).
- If such methods are not available, the following methods could also be suitable options:
 - Microwave-generated steam; and/or
 - Liquid hydrogen peroxide.
- Employers should not use the following methods unless objective data that sufficiently demonstrate the safety and effectiveness of such methods become available:
 - Autoclaving; dry heat; isopropyl alcohol; soap; dry microwave irradiation; chlorine bleach; disinfectant wipes; and/or ethylene oxide (EtO).

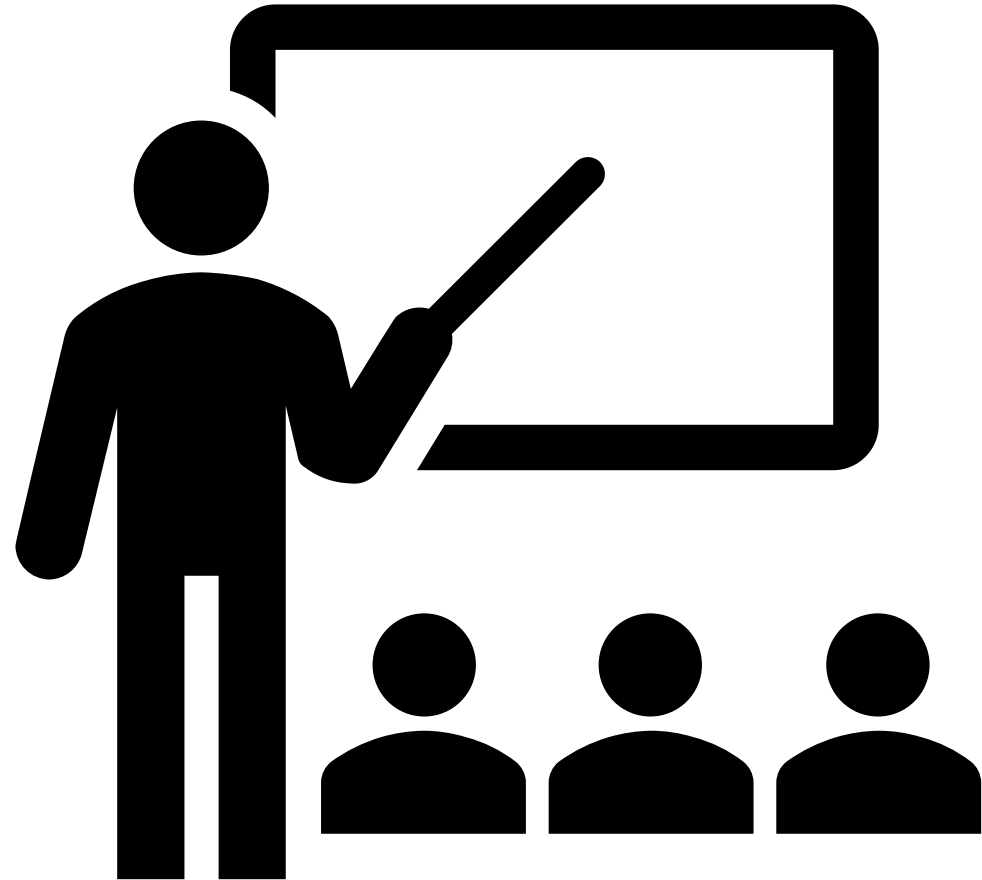
Questions & Answers





4

Recap & Updates





HAND SANITIZER

Buffalo Trace Distillery

<https://buffalotracegiftshop.com/>

MASKS

Tempur Sealy

Masks, Gloves, Sanitizer, etc.

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MASKS

Kentucky Chamber

(<https://www.kychamber.com/maskorderform>)

**Control-click on the link to open*

PPE Resources &
Updates



POSTER RESOURCES

- [Families First Act for those with 500 or fewer employees: mandatory](#)
- [Families First Act for federal employees: mandatory](#)
- [OSHA Poster on 10 Steps to Reduce Risk of Exposure: non-mandatory](#)
- [CDC Notice on Covid-19: non-mandatory](#)

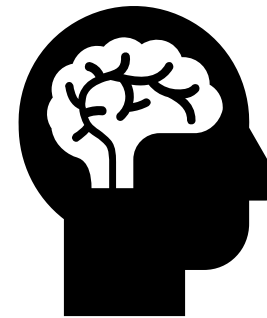
The Kentucky Chamber has great tools to keep up-to-date with these postings. You can also order the postings from the Kentucky Chamber [HERE](#).

**Control-click on the link to open*



MENTAL HEALTH RESOURCES

- [Yale is offering a popular "Science of Well Being" course FREE online](#)
- [Palouse Mindfulness is offering a FREE Mindfulness-Based Stress Reduction Course Online](#)



Questions & Answers





HANNA RESOURCE GROUP



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