

A stylized illustration of a diverse crowd of people, all wearing face masks. The figures are rendered in various colors and styles, representing different ethnicities and ages. The background is a mix of warm and cool tones. A semi-transparent dark blue rectangle is overlaid on the center of the image, containing the main title text.

CRISIS MANAGEMENT FOR COVID-19

Phase 16 (Week 19): Back to School Issues for Employers during COVID-19 and other Critical Updates

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

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Insights on
Schools Re-
Opening

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Back-to-
School
Considerations
for Employers



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Insights on Schools Re- Opening



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Questions & Answers





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Back to School Considerations for Employers and Legal Updates



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2 Kentucky's Executive Order (Update)

*Last week we addressed the confusion surrounding
Beshear's Executive Mandates*

- On July 9, 2020, Scott County and Boone County Circuit Courts issued TRO precluding enforcement of Governor Beshear's Executive Orders.
- On July 17, 2020, Boone County's Circuit Judge indicated intention to set aside all of those Orders.
- On Friday, July 17, 2020, the Kentucky Supreme Court SET ASIDE the actions of any lower court, temporarily, on the grounds that such definitive rulings were necessary for the health, safety, and welfare of Kentucky citizens, pending final adjudication of the appeal filed by Kentucky's Attorney General Cameron.
- Accordingly, pending final determination by the Kentucky Supreme Court, Governor Beshear's Emergency Executive Orders are, indeed, the law...
 - With the exception of Unemployment, which continues to be a debacle.... Still no actions on the part of Kentucky's Unemployment Insurance Commission.
- Until further notice, all Emergency Executive Orders have the full force of law in the Commonwealth

*Due to Kentucky's definition of calculation for unemployment benefits, all benefits in Kentucky expire **this week***

- As we have previously discussed, the Federal Unemployment Compensation (providing \$600 per week) expires on July 31, 2020.
- Kentucky utilizes a calculation that ends on Saturday, at midnight
- Kentucky failed to modify its calculations, retaining the Saturday deadline for compensation
- As a result, Kentucky does not qualify for the last week of unemployment compensation available through the Federal government (had it modified to Sunday, all Kentucky citizens would have qualified for the additional week)
- Accordingly, for all Kentucky-based employees, any entitlement to Federal Unemployment Benefits expires on **Saturday, July 25, 2020, not July 31, 2020**
- All employers utilizing furlough, or layoffs, should address with their employees, so that employees are not negatively impacted by the unexpected date change

Kentucky Back-to-School Mandate

- *On June 24, 2020, Governor Beshear issued the new "Healthy at School" Initiative*
 - Five key areas: Social Distancing, Masks, Health Screenings, Sanitation & Contact Tracing
 - In response:
 - All 650,000 public school students will be required to wear masks
 - All students must have temperatures checked each day
 - All students must keep their distance from peers
- As of this morning, Jefferson, Fayette, and several other private and public schools are still evaluating their possible responses to this directive
 - Jefferson anticipated an announcement by the "middle of July"
 - Fayette announced an intention to identify its steps, but has not identified a deadline for any announcement

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FFCRA Guidance for Employers Facing Back-to-School Issues

PAID LEAVE REQUIREMENTS

As addressed previously, the DOL announced FFCRA requirements for paid leave for all employees

- 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 (under 18 years of age) 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
- EFMLEA requires that an employee be employed for at least 30 calendar days. If an employee is laid off and subsequently rehired by the same employer, **the employee may be immediately eligible for EFMLEA leave if he/she was employed for 30 or more of the 60 calendar days prior to the layoff.** 29 CFR § 826.60

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FFCRA Guidance Considerations for Back-to-School

HOW DO YOU CALCULATE BENEFITS FOR EMPLOYEES NEEDING TO CARE FOR THEIR CHILD DURING A FORCED SCHOOL SHUTDOWN?

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

1. 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.

***For leave related to childcare caused
by the closure of school or childcare
centers (reason 5):***

- Employees taking leave shall be paid at the higher of 2/3 their regular rate or 2/3 of the applicable minimum wage, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave)

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New FFCRA Guidance & Updates

EMPLOYERS MAY BE ABLE TO RECEIVE REIMBURSEMENT FROM PAYING FFCRA COMPENSATION

On March 24, 2020, the Department of Labor and Internal Revenue Service issued guidelines for employer reimbursement for FFCRA Sick Leave and EFMLEA Leave:

- The DOL and IRS previously concluded that Employers will receive a “dollar-for-dollar reimbursement”
- Businesses are able to retain and access funds that they would otherwise pay to the IRS in payroll taxes during time periods where employees are utilizing FFCRA Sick or EFMLEA Leave
- If the payroll taxes retained are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form seeking reimbursement
- To the extent that you have paid for Sick Leave or EFMLEA Leave, make sure to submit for reimbursement and follow appropriate guidelines issued from DOL and IRS

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Unanswered Questions for Employers in dealing with Back to School Issues

Governor's Office advised that it wanted "flexibility" for Schools during the "Healthy at School" initiative, but the reverse may be occurring.

Due to the "flexibility," schools are actually left with several additional unanswered questions:

- Under FFCRA, employees are entitled to sick and EFMLEA Leave ***only if*** the school is ***closed*** due to COVID-19.
 - Schools are reviewing different scenarios for "re-opening": Part-time/Half-day/Remote
 - Some schools are suggesting the ability for parents to "choose" which option is best
 - By selecting an "option," employees may be ***foregoing*** any ability for EFMLEA Leave
 - We were anticipating additional guidance and instruction. Absent such instruction, employers will need a well-defined policy defining how employees can obtain leave
- Under the "option" theory, we believe:
 - Voluntary election of "remote learning" precludes FFCRA Sick or EFMLEA Leave
 - ***Mandatory*** "remote learning," part-time or half-day implements intermittent leave

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Unanswered Questions for Employers in dealing with Back to School Issues

FFCRA Sick and/or EFMLEA Leave Issues Require Clear Mandates and Compliance with Federal Laws

As employers move forward during the Back-to-School time, it is ***critical*** to clearly and carefully define expectations for Employees, and to avoid potential litigation pitfalls.

- Expiration of FFCRA Sick and/or EFMLEA Leave must be handled strictly in accordance with FFCRA Regulations
 - In essence, expiration of FFCRA Sick or EFMLEA Leave must be conducted in accordance with previously-established FMLA Leave Policies (appropriate notification, adherence to proper calculations, etc.)
 - Unfortunately, due to the simultaneous commencement of school, employers need to be ready to face mass simultaneous expiration of leave among employees with school-aged children
 - We highly recommend implementation or modification of well-defined policies that allow for flex time, work-from-home strategies, and other measures designed to avoid the absence of employees caused by FFCRA Sick or EFMLEA Leave Policies

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Unanswered Questions for Employers in dealing with Back to School Issues

FFCRA Sick and/or EFMLEA Leave Issues Require Clear Mandates and Compliance with Federal Laws

Employers must maintain proper calculation of all FMLA, EFMLEA, and Sick Leave utilized

- Remember, FFCRA leave is ***not*** in addition to FMLA Leave, only another method to receive FMLA Leave
- Develop/update appropriate policies, procedures, and handbooks for the “new normal”
- If you do not have Work from Home Strategies established, employers need to create clearly-defined policies setting forth all necessary parameters
 - Computer, Network, HIPAA, PCI Compliance and Security
 - Workers Compensation Compliance
 - Flexible work schedules and arrangements
 - Work Hours, Location, and OSHA-required Safety Considerations
- If you cannot allow remote working, new policies and work hours may need to be considered

Questions & Answers



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