



CRISIS MANAGEMENT FOR COVID-19

Week 42, Phase 32: Kentucky Legal Update, PPP, and Federal Executive Orders

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

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New Executive Orders
Affecting Businesses



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New Kentucky Legislation and Guidance



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1 Kentucky Legislature Set to Restrict Governor's Executive Order

*Welcome to the Wild-World of Kentucky Politics!
There's a new Sheriff in town....*



VETO!



1 Kentucky Legislature Set to Restrict Governor's Executive Order

Kentucky Legislation, Veto, and Override

General Background for General Assembly

- Convened on 1/5/21; adjourned on 1/13/21 (8 days); will reconvene for Part II on 2/2/21
- In odd-numbered years, not more than 30 legislative days, not beyond 3/30
- "Legislative day" is any day, excluding Sundays, holidays, and any day when neither meets

How Bills become Laws (commenced in either the House or Senate)

- Must receive Two Readings, Rules Committee, Third Reading and a Final Vote
- Must be approved by at least 2/5 of the members of the chamber and a majority present
- If a bill passes in one house, it is sent to the other chamber
- Both houses must agree on the final form of each bill.
- Changes agreed to by this conference committee are subject to approval by both houses.

Enrollment

After passage by both houses, the bill is signed by the presiding officer of each house

Governor's Action

Within 10 days, excluding Sundays, Governor may sign, permit without signature, or veto

Bill become law over the Governor's veto by a simple majority of members of both houses

1 Kentucky Legislature Set to Restrict Governor's Executive Order

New Legislation from Kentucky Legislature affecting Kentucky Businesses (House & Senate hold veto proof majority)

BILL	STATUS	DATE	DESCRIPTION
SB1	Vetoed by Governor	1/19/21	Limits the effective dates of executive orders issued by the Governor to 30 days unless an extension is approved by the general assembly (passed 75 to 21 & 26 to 5)
SB2	Vetoed by Governor	1/19/21	Amends KRS 13A.030 to include, in the list of administrative regulations that may be found legally deficient, any emergency administrative regulations without adequate justification (passed 74 to 21 & 31 to 6)

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Kentucky Legislature Attempts to Restrict Governor's Orders

New Legislation from Kentucky Legislature affecting Kentucky Businesses (House & Senate hold veto proof majority)

BILL	STATUS	DATE	DESCRIPTION
HB1	Vetoed by Governor	1/19/21	Provides relief to businesses and individuals during COVID related state of emergencies; provides guidelines for reopening schools and businesses; suspends interest on unpaid unemployment insurance contributions. (All Retroactive to March 6, 2020) (passed 74 to 21 & 28 to 7)
HB5	Vetoed by Governor	1/19/21	Amends KRS 12.028 to remove the provisions related to temporary reorganizations; repeals KRS 12.027, removing authority for temporary reorganizations by executive order (passed 73 to 22 & 29 to 7)

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Kentucky's Vaccine Distribution Details

Kentucky Vaccine Update

TOTAL COVID-19 VACCINE DOSES ADMINISTERED in KY

232,127

State Program

Doses Received in KY

332,200

Doses Administered Statewide

192,766

Long Term Care Facilities (LTCF) Program

Doses Received by the LTCF Program

112,125

Doses Administered by the LTCF Program

39,361

VACCINE UPDATE

PHASES



Phase	Description
1 A	Long term care facilities, assisted living facilities, health care personnel
1 B	First responders, anyone age 70 or older, K-12 school personnel
1 C	Anyone age 60 or older, anyone age 16 or older with CDC highest risk C19 risk conditions, all essential workers
2	Anyone age 40 or older.
3	Anyone age 16 or older.
4	Children under the age of 16 if the vaccine is approved for this age group (est. 18% of KY population)

VACCINE UPDATE

PHASE 1 - A, B, C: REFERENCE



Frontline Essential Workers

- Healthcare Personnel
- First Responders (Firefighters, Police)
- Corrections
- Education (teachers, support staff, daycare)
- Food & Agriculture
- Manufacturing
- U.S. Postal service workers
- Public transit workers
- Grocery store workers

Other Essential Workers

- Transportation and logistics
- Food Service Shelter & Housing (construction)
- Finance
- IT & Communication
- Energy
- Media
- Legal
- Public Safety (Engineers)
- Water & Wastewater

Per CDC, adults of any age with the following conditions are at increase risk of severe illness from the virus that causes COVID-19:

- Cancer
- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Down Syndrome
- Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- Immunocompromised state (weakened immune system) from solid organ transplant
- Obesity (body mass index [BMI] of 30 kg/m² or higher but < 40 kg/m²)
- Severe Obesity (BMI ≥ 40 kg/m²)
- Pregnancy
- Sickle cell disease
- Smoking
- Type 2 diabetes mellitus



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PPP Update



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- 2nd loan for less than 300 employees, 25% revenue reduction and spent or will spend First Draw PPP Loan on eligible payroll expenses
- Forgiveness for second PPP if at least 60% is spent on payroll costs
- Expansion of covered expenses: software, cloud, HR, accounting, PPE, & supplier costs
- Eligibility for include 501(c)(6) nonprofits; WOMB priority; limited to \$2MM
- Repeals previous CARES Act requiring deducting of EIDL Loans from Loan forgiveness
- Overrides IRS ruling that barred deduction of expenses paid for with PPP loans
- Prohibits publicly-traded and affiliated with Chinese government from accessing funds
- If same lender is utilized, no additional corporate entity documentation is required

- 1/13/21: Requirements for PPP borrowers to reapply for a 1st PPP loan or request an increase
- 1/16/21-1/18/21 Weekend Releases: three different guidance announcements
 - Calculation processes and required documentation for 1st draw; notice explaining borrowers must do if an application error resulted in an excess loan exceeding; and notice addressing borrower resubmission of Form 3508S when 3508 or 3508EZ were submitted
- 1/19/21: Updated PPP Loan Forgiveness Forms
 - Form 3508S - 1-page application for borrowers that received a PPP loan less than \$150,000
 - Loan amount, disbursement and covered period dates, employees, forgiveness sought
 - No documentation required to be submitted, but must maintain for potential audit
 - Form 3508 and Form 3508EZ -- Must submit payroll and nonpayroll documentation when applying for loan forgiveness, which each provide lists of the required documents.
 - Form 3508D -- certain individuals must disclose controlling interest if applying for PPP
- All forms are for both first and second PPP Draws

Demonstrating Revenue Reduction

- “Gross receipts” for determining eligibility for Second Draw include all revenue in whatever form received or accrued from whatever source, including affiliates (all as defined by IRS)
- Gross receipts do not include (1) sales and other collected taxes (not including employee-based tax withholdings); (2) transactions between affiliates; (3) amounts collected for another; or (4) PPP or EIDL Advances or Loan Proceeds
- Eligibility for 2nd Draw is based upon a 25% gross receipts reduction based upon gross receipts in any calendar quarter of 2020 compared to the same quarter of 2019, annual, or specific
- Must provide Quarterly financial (audited or signed) OR bank statements OR Annual IRS filings
- Greater than \$150,000: must provide documentation with its Application (2483-SD)
- Less than \$150,000, must provide documentation before or at the time of loan forgiveness
- Entities using a fiscal year to file taxes may document a reduction in gross receipts with income tax returns only if their fiscal year contains all of the second, third, and fourth quarters of the calendar year (i.e., February, March, or April)

Determining Maximum Second Draw PPP Loan Amounts

- Specific tax-form driven guidance provided for self-employed without employees; self-employed with employees self-employed farmers; partnerships; S Corporations and C Corporations; eligible nonprofit organizations; nonprofit religious institutions; LLC; partial year entities (i.e., not in operation for all of 2019 or all of 2020)
- Applicants may provide IRS Form W-2s and IRS Form W-3 or payroll processor reports, including quarterly and annual tax reports, in lieu of IRS Form 941.
- Very small businesses that file IRS Form 944 or agricultural that file IRS Form 943 should rely on and provide IRS Form 944 or IRS Form 943 in lieu of IRS Form 941.
- An applicant may provide records from a retirement administrator to document employer retirement contributions. An applicant may also provide records from a health insurance company or third-party administrator for a self-insured health plan
- Must utilize calendar 2019 (cannot use precise 12-month time period as in First Draw)
- Businesses that are part of the same corporate group cannot receive Second Draw PPP Loans in a total amount of more than \$4 million (common control or ownership)



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Federal Executive Orders and Federal Agency Rules Affecting Businesses



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New EEOC Regulations

On January 15, 2021, the EEOC issued new guidance on Religious Discrimination – first update since 2008

- Clarifies Protections for Employers and Employees Under the Law
- Updated guidance describes in what ways Title VII protects individuals from religious discrimination in the workplace and sets forth legal protections for religious employers
- New guidance includes revisions to protections for employees from religious discrimination in the context of reasonable accommodations and harassment
- Expands the discussion of defenses that may be available to religious employers
- Defines “religion” extremely broadly, regardless of whether there is actual “religion”
 - “These protections apply whether the religious beliefs or practices in question are common or non-traditional, **and regardless of whether they are recognized by any organized religion**. The test ... is whether the beliefs are, in the individual’s ‘own scheme of things, religious.’ Belief in God or gods is not necessary; nontheistic beliefs can also be religious for purposes of the Title VII exemption **non-discrimination provisions of the statute also protect employees who do not possess religious beliefs or engage in religion”**

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COVID-19 Vaccines

*EEOC Issued Vaccine Update (December 16, 2020)
(addressing applicability of EEO Laws, including ADA,
Rehabilitation Act, GINA, and Title VII (pregnancy))*

- Administration of Vaccine by an employer is not a “medical examination” for purposes of ADA
- Pre-screening questions are subject to the ADA standards for disability-related inquiries
- Asking or requiring proof of receipt of COVID-19 vaccination is not a disability-related inquiry
- Asking an employee pre-vaccination screening questions implicates Title II of GINA
- Sincerely Held Religious Practices and Beliefs are protected in enforcement of COVID-19 Vaccinations
- Disability is protected in enforcement of COVID-19 Vaccinations
- If an employer cannot accommodate due to disability or religion, and there is no reasonable accommodation, then it would be lawful for the employer to exclude the employee from the workplace
- Still no guidance for age related concerns

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New Marshall in Town

Within hours of being sworn in as President, Biden issued 17 Executive Orders (and counting) -- some immediately affecting businesses

Pandemic

1. Appointed new COVID-19 response coordinator to "aggressively" gear up response to the pandemic
2. Restores global health security and biodefense at the National Security Council
3. Federal Mandate for social distancing and masks on all federal property and by all federal employees
4. "100 days masking challenge"
5. World Health Organization by and through Dr. Anthony Fauci

Climate change

1. Re-enter Paris Climate Accord – reasserting goal to eliminate fossil fuels (Coal, Natural Gas, Oil, etc.)
2. Revoking the permit for the Keystone XL pipeline & reversing rollbacks to vehicle emissions standards
3. Enforcing a temporary moratorium on oil and natural gas leases in the Arctic National Wildlife Refuge

Economy

1. Extending federal moratorium on evictions and cease foreclosures on federally guaranteed loans
2. Pause federal student loan interest and principal payments (may cancel up to \$50,000 per person)

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Immigration

1. Deferred Action for Childhood Arrivals (DACA) reinstated and seeks citizenship for all
2. All illegal immigrants/noncitizens are included in census and included in Congress/money allocation
3. Overturning previous order requiring aggressive efforts to find and deport unauthorized immigrants
4. Blocking the deportation of Liberians who have been living in the United States
5. Ending the travel ban and reinstate visa processing from at-risk areas (Middle East, North Korea, Africa), and compensate for harm caused to those who were prevented from coming because of ban
6. Halting border wall with Mexico and the "Immediate termination" of emergency declaration at border

Racial and L.G.B.T.Q. equality

1. Ending the 1776 Commission (reestablishing 1619 project)
2. Commencing a "robust, interagency" to make "rooting out systemic racism" central to all agencies
3. Reinforcing Title VII with regard to sexual orientation or gender identity (LGBTQ)

More Executive Orders being issued today and in the coming days and weeks

Questions & Answers



HRCI (Strategic/Business): 546766
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