

CRISIS MANAGEMENT FOR COVID 19

Phase 55: Recent SCOTUS Rulings & their Effects on Employees

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

1 SCOTUS Ruling Updates

2 Legal & Regulatory Changes



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COVID-19 Statistics Explanation

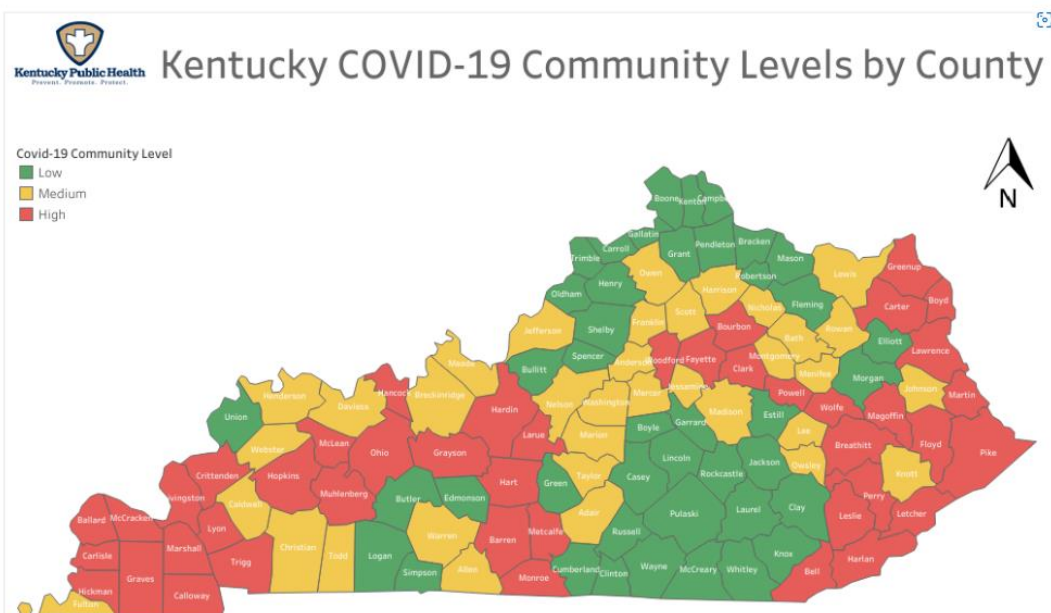
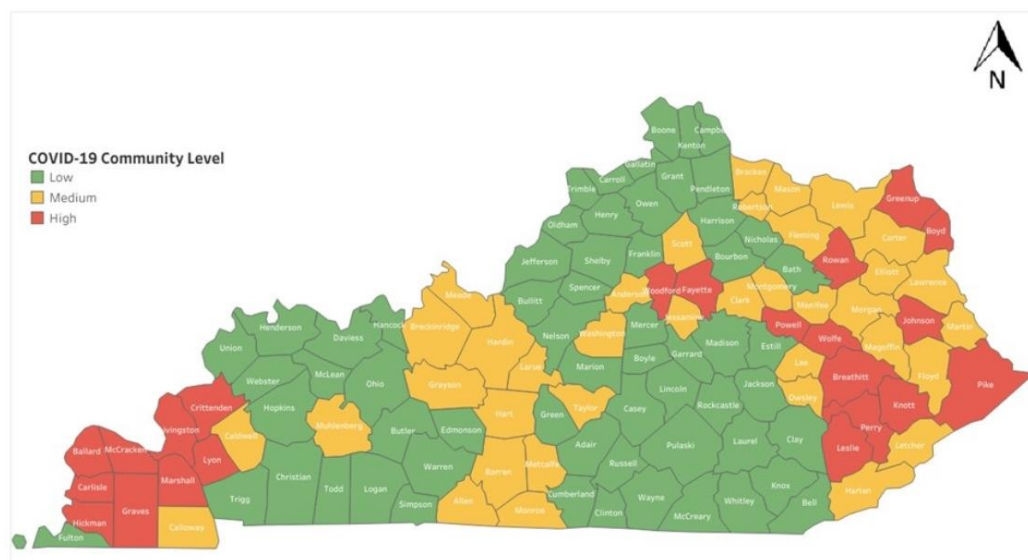


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Kentucky COVID Update/Explanation

Kentucky's State-Wide COVID-19 Status and Comparison June 23, 2022 to July 6, 2022



KDPH COVID-19 Data

Beginning Monday, March 7, 2022, COVID-19 data will be reported weekly and updated each Monday by 5pm.

COVID-19 SURVEILLANCE DATA

Weekly Numbers

[COVID-19 Community Levels Map](#)

[Incidence Rate Map](#)

[Cases by County](#)

[Weekly Surveillance Data](#)

[Vaccine Dashboard](#)

INTERACTIVE MAPS

(Updated every Monday)

[Desktop Dashboard](#)

[Mobile Dashboard](#)

Kentucky's COVID-19 Weekly Summary

Current as of July 4, 2022

Measure	Total
Total Cases	1,408,913
Total Deaths	16,182
New Cases	10,191
New Cases 18 and Under	1,229
Total New Deaths	38

Current Positivity Rate

Positive PCRs	Total PCRs	Positivity Rate
7,543	47,880	15.75%

Positivity rate is calculated using electronically submitted PCRs from the past seven days.



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SCOTUS Ruling Updates and Impact



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SCOTUS Abortion Decision Impact on Employers

On June 24, 2022, the US Supreme Court Reverts Abortion Laws to the States. How Employers Responded

Microsoft to help cover U.S. employees' travel costs for abortion

Reuters

Disney to pay for employees' abortion-related travel costs after SCOTUS ruling

By Ariel Zilber

June 24, 2022 | 2:20pm | Updated



CBS News

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Google workers can move to states where abortion is legal

Google's health insurance will also cover the cost of employees' out-of-state abortion procedures for workers who travel across state lines to seek care.

"To support Googlers and their dependents, our U.S. benefits plan and health insurance covers out-of-state medical procedures that are not available where an employee lives and works," Google's chief people officer Fiona Cicconi said in a memo to employees, obtained by [The](#)

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SCOTUS Abortion Decision
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CBS News

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Companies offering abortion travel benefits face privacy hurdles

Companies could face hurdles covering abortion travel costs

July 5, 2022 at 12:00 am | Updated July 5, 2022 at 8:16 pm



July 5, 2022

The Supreme Court's Dobbs Ruling Creates a Variety of Significant Legal Issues

Large employers face tough hurdles to provide abortion benefits if Roe is overturned

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SCOTUS Abortion Decision Impact on Employers

Issues Employers Should Consider Before Offering Abortion Assistance

Employers must recognize the workplace protections that employees have under pre-existing federal anti-discrimination laws and how they apply to abortion issues.

The Impact of Employment Discrimination Statutes

- Title VII bans employment discrimination based on color, national origin, race, religion, and sex.
- Pregnancy Discrimination Act bans discrimination based on pregnancy, childbirth, and related medical

Under these laws, coupled with the EEOC, employers are prohibited from taking any firing, or taking any adverse action, against an employee for having (or not) or considering (or not considering) an abortion

Coverage under Health Insurance Plans

2015 EEOC Enforcement GL: “However, Title VII makes clear that an employer that offers health insurance is not required to pay for coverage of abortion except where the life of the mother would be endangered if the fetus were carried to term or medical complications have arisen from an abortion”

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SCOTUS Abortion Decision Impact on Employers

Issues Employers Should Consider Before Offering Abortion Assistance

(Con't): EEOC: “If an employer decides to cover the costs of abortion, **it must do so in the same manner and to the same degree as it covers other medical conditions.**” Also, CBA may provide for coverage

State Law Impact on Providing Abortion Coverage

Many states have their own rules on abortion coverage for private insurance plans, which vary significantly. At least one half limit or prohibit abortion coverage in healthcare plans that are offered through a state-regulated ACA Marketplace. Others – including California, Illinois, and New York – require state-regulated plans to cover abortions and related care.

For multi-state employers that are fully insured, monitoring of activity of state departments of insurance will also be **critical** as states are free to regulate the insurance industry within their state, **including insurance issued in another state that covers individuals within such state**

Questions remain regarding the impact of abortion restrictions for employer self-insured plans, and the impact of state-based laws upon a self-insured plan governed by ERISA, etc.

Employers Providing Travel Benefits

Travel benefits for medical care are not uncommon in group health plans and can be provided tax-free up to certain limitations in the Internal Revenue Code. Providing travel benefits outside of the group health plan to all employees raises additional tax, ACA, and ERISA compliance issues.

Job-Protected Leave May Be Available

- According to the EEOC, Title VII does not require providing pregnancy-related leave if the employer does not provide leave for other temporary illness or family obligations
- However, employees can take job-protected leave as a reasonable accommodation under federal law in some circumstances, and state laws may provide additional protections
 - PDA covers reasonable accommodations for pregnant workers, but only if such accommodations are offered to other employees with similar limitations.
 - ADA: A pregnancy-related impairment may be covered by ADA, requiring dialogue with employee
 - Substantially limits a major life activity or major bodily function - which could include abortion
 - FMLA: While Title VII, the PDA, and ADA apply to employers with at least 15 employees, pregnant workers at larger companies (+50) may be entitled to take time off under the FMLA
 - Up to 12 weeks of leave in 12-month period, including an employee's own serious health

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SCOTUS Abortion Decision Impact on Employers

Issues Employers Should Consider Before Offering Abortion Assistance

Privacy Issues For Providing Travel Benefits

If an employer is intending upon providing “travel benefits” for employees to travel to an “abortion friendly” state to have an abortion, how does that occur?

Does the employee have to tell their manager why they are seeking reimbursement for travel to another state? How does this affect privacy? Who makes the determination that travel is “approved”? For what purposes?

Inquiries into employee medical issues are **highly controversial** – as we have discussed many times!

Discussions regarding a person’s medical care or treatment could trigger confidentiality, GINA, HIPAA, potential claims for discrimination and/or retaliation (is a supervisor or HR Director discriminating because they either support or oppose abortion rights?)

Employers considering paying for employees to travel for abortion purposes better think twice – or plan on paying for employees to travel, free of charge, for any number of questionable medical treatments – is it available for massages? Mental Health Days? International? Partners? VERY SLIPPERY SLOPE!

FROM LAST MONTH'S SLIDE DECK!

- Adding medical travel expense reimbursement benefits to existing self-insured medical plans issues with ERISA, tax, and other federal law that employers need to carefully evaluate
 - Such a policy could cause potential issues under rapidly evolving aiding and abetting laws
 - State laws that relate to employee benefit plans are broadly preempted by ERISA, but ERISA preemption is limited, including, for example, state criminal laws
- Many employer health plans cover abortion services, as well as reimbursing for travel
- Federal law generally does not require health plans to cover abortion services.
- EEOC has interpreted PDA to require health plans to cover abortions in certain cases
- Health insurers are subject to state insurance laws, including laws governing whether policies may or must cover abortion services, so insured plans may have less discretion
- Telehealth providers may also be affected by new state restrictions on abortions
- Employers reimbursing for certain medical travel—but not for mental health/substance abuse travel may be in violation of the Mental Health Parity and Addiction Equity Act of 2008

On June 15, 2022, the Supreme Court issued Viking River Cruises v. Moriana

- The Viking ruling held that the Federal Arbitration Act preempts California's Private Attorneys General Act (PAGA), and has impact on other state laws attempting to limit use of Arbitration
- Supreme Court held that where the FAA applies, if the employee agreed to arbitrate claims against the employer on an individual basis, that agreement had to be honored.
- Viking is likely to result in a flurry of legislative activity – especially in California
- Employers with arbitration agreements already in place should consider revising their existing agreements to include class action and representative action waivers and severability clause
- In disputed matters covered by arbitration agreements (whether at the demand letter stage, upon receipt of a notice, or in the midst of a lawsuit), Viking River Cruises should be considered when developing litigation strategy and in valuing ongoing arbitration litigation

Finally, don't forget the **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act**, which precludes the use of Arbitration in any claim asserting sexual harassment or abuse

On June 23, 2022, the Supreme Court ruled that New York's regulations that made it difficult to obtain a license to carry a concealed handgun were unconstitutionally restrictive

- The existing standard required an applicant to show "proper cause" for **seeking a license**
- State actors cannot interfere with a Constitutional Right granted by the Bill of Rights
- New York's law, as written, authorized the state actor to determine C&C "entitlement"

With this ruling, there is no impact upon workplace rules/policies so long as it is published

- The Court's Opinion addressed state action, **not private employer action**.
- Employers have a right (and responsibility) to control the workplace environment
- Employer Policies and Procedures must define what is authorized, implemented, and the consequences, in the event of a ban (or authorization)
- Policies should cover premises, vehicle, person, conceal and carry, open carry, etc.
- Actions against employees for "violation" must be based upon well-defined policies
- If authorized, Employers should consider liability issues, liability waivers, etc.
- What occurs in an active shooter/violence? Who is responsible? How to address?

On June 27, 2022, US Supreme Court Rules On Religious Discrimination. What does this mean for Employers?

SCOTUS ruled that a prayer at the 50-yard line after a game, caused improperly termination

- Whether a school employee, praying alone in view of students, was engaging in unprotected “government speech” or improper speech – **in other words, government sanctioning**
- SCOTUS held that “a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected ... [and] the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress [] religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination”
- Private Employers can incorporate prayer, but **cannot require prayer sessions**
 - Discrimination/Retaliation for failure to participate, or refusal to acknowledge, is illegal
- EEOC previously settled with a company for requiring one-half workdays toward [Scientology](#)
- EEOC filed a [new suit](#), on June 28, 2022, for Religious Discrimination for mandating prayer requiring religious prayer
- , but may impact policies prohibiting religious observances, and treat religious actions differently than secular
- Public employers will need to evaluate Policies & Procedures to determine compliance

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Preventative Measures

What can you do to protect your business?

- Every Company needs to dust off and review their Handbook, Policies and Procedures, and assure full compliance with local, state, and federal law
 - If you have not reviewed your P&P in the past year, you are probably out of date
 - If you have ignored any of your P&P for at least three years, guaranteed out of date
- Many companies attempt to be “risk averse,” and avoid legal expense
 - Paying for P&P up front, in compliance with current laws, is much cheaper than litigation
 - P&P assure a good workplace for Employees
 - P&P avoids confusion, lack of information, and employee frustration
 - P&P sets the standard and expectations for both the Employer and Employee
- It is critical, in these times, to bite the proverbial bullet and spend money on updating NOW!
- Invest in high-quality Human Resources, find SHRM based representatives, provide proper CEC, business/corporate law partners, and work with qualified HR consultants!

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SHRM CODE: 22-MQHZV

HRCI CODE: 599109 **Code may not work for
up to 14 days*



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