Kentucky Supreme Court Upholds Governor's Powers To Issue COVID-19-Related Orders

Insights
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The Kentucky Supreme Court issued a decision today determining Governor Andy Beshear was acting within his powers when he issued orders related to COVID-19 without deference to local authorities or other emergency management agencies. This means that Governor Beshear's industry-specific COVID-19 reopening requirements, also known as "Healthy at Work," continue to be in effect – and it could mean that more orders could soon be on their way. What do Kentucky employers need to know about today's decision and what this means for the near future?

Quick Overview Of Litigation
Today's decision resolved a lawsuit filed in June 2020 by three Northern Kentucky businesses challenging the executive orders, which the governor said were justified under KRS 39A, which authorizes him to declare a state of emergency. Soon after the lawsuit was filed, Attorney General Daniel Cameron intervened in the litigation. The lower court initially issued a restraining order prohibiting the relevant orders from being enforced, leaving some Kentucky employers confused as to their obligations. But the Kentucky Supreme Court blocked the restraining order in July 2020 until the court could review the parties' briefs and hear oral arguments.

Besides concluding that the governor was well within his rights to issue the orders, the court's 92-page opinion also held that some legal challenges to the orders were moot. That is because many of the provisions at issue have been changed or superseded since the lawsuit was filed.

What Does This Mean For Employers?
At this time, Governor Beshear has not announced any additional executive orders setting forth new requirements for businesses, so employers may assume everything is "business as usual" – whatever that means these days. Since the Commonwealth, and indeed, the entire country, is seeing unchecked community spread of the virus, however, it would not be outside the realm of possibility for the governor to soon issue new or revised orders setting forth additional requirements for businesses. Those requirements are likely to target bars and restaurants or similar venues that attract groups and encourage congregating, though they could cover a wider range of industries.

In Louisville specifically, the Health Department recently announced it would be cracking down on COVID-19 compliance throughout the Metro area. Mayor Greg Fischer announced that, along with bars and restaurants, other businesses like hair salons, spas, and country clubs, to name a few,

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could be visited by the Health Department to ensure compliance with the governor's Healthy at Work Orders. According to the Courier Journal, the Health Department has issued approximately 330 orders to employers and businesses for failing to adhere to the applicable requirements.

What Are Your Next Steps?

With increased inspections, employers should expect that number to rise and should take all necessary steps to ensure employees and customers are adhering to Kentucky's COVID-19 guidelines. It will also be important in the coming weeks, as the virus continues to spread rapidly, to be aware that current guidelines could change at any time.

Stay on top of the latest COVID-19 news by subscribing to Fisher Phillips' Legal Alerts. For further information, contact your Fisher Phillips attorney or any attorney in our Louisville office.

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