

UPDATE: KENTUCKY OSHA'S PROPOSED INJURY AND ILLNESS REPORTING RULE IS IN EFFECT

Insights
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With such little fanfare that it may have escaped many employers' attention, the Kentucky Labor Cabinet's Department of Workplace Standards recently implemented final amendments to its injury and illness recordkeeping and reporting requirements. Originally proposed in February but delayed due to the COVID-19 pandemic, these new rules quietly took effect without an accompanying announcement from the state. But make no mistake – the changes that are now on the books will affect your injury and illness reporting in Kentucky. What do you need to know about this critical development?

THE KENTUCKY LABOR CABINET'S NEW REQUIREMENTS

We summarized the proposed rules soon after they were released by the agency. Although certain provisions of the proposed amendments were found to be deficient by the Kentucky Administrative Regulation Review Subcommittee in June 9, the key portions of the amendments were adopted and became effective on September 29. Again, as noted above, these rules took effect without the usual public announcement or other publicity that would reasonably put employers on notice of their new obligations.

Now that the proposed amendments are in effect, here's a recap of how parts of the Kentucky Occupational Safety and Health Administration's (KOSH) amendments differ from the federal Occupational Safety and Health Administration's (OSHA) reporting requirements:

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- KOSH now defines “hospitalization” to include “a formal admission to a hospital or clinic for care, treatment, observation or diagnostic testing.” It previously only included reporting the hospitalization of an employee for treatment. The federal rule is not this expansive and does not require an employer to report hospitalization for just observation or diagnostic testing, but limits reporting to hospitalization for treatment.
- KOSH’s rule requires notification of the hospitalization of three or more employees within eight hours. The federal rule requires reporting a hospitalization regardless of the number of employees within 24 hours. KOSH’s rule requires reporting a hospitalization of less than three employees within 72 hours.
- KOSH’s requirement for reporting has changed from “work-related” to require reporting of a death, hospitalization, etc., “which occurs in the work environment, or is caused or contributed to by an event in the work environment.” This does not really change prior obligations, but better defines what KOSH means by “work-related.”
- Finally, KOSH’s rule now specifically includes heart attacks.

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WHAT ABOUT EMPLOYERS’ OBLIGATIONS TO REPORT COVID-19 CASES?

On September 30, federal OSHA issued some much-needed guidance clarifying employers’ obligations to report COVID-19 cases resulting in hospitalization or death. Under federal OSHA’s new guidance, employers must promptly report hospitalizations and fatalities caused by workplace exposure if they determine the in-patient hospitalization occurred within 24 hours of the workplace exposure or the fatality occurred within 30 days of the exposure. According to OSHA, this means an employer must report such hospitalization within 24 hours of knowing both that: (1) the employee has been in-patient hospitalized; and, (2) that the reason for the hospitalization was a work-related case of COVID-19. An employer must report the fatality within eight hours of knowing both that: (1) the employee has died; and, (2) that the cause of death was a work-related case of COVID-19. KOSH has not clarified if it will follow this federal OSHA guidance.

As background, KOSH and other states that have their own OSHA plan are required to adopt and implement federal OSHA's reporting requirements or create their own that is substantially similar. KOSH has never fully adopted the federal OSHA reporting requirement because it had a more stringent reporting requirement prior to federal OSHA updating its reporting regulations in January 2015.

For instance, KOSH does not have a 30-day endpoint like federal OSHA. So, any fatality that is work-related must be reported even if it occurs more than 30 days since the work-related incident. Also, as noted above, KOSH uses a 72-hour clock, rather than a 24-hour clock, for reporting hospitalizations. Therefore, if an employee is hospitalized within 72 hours of the last work-related exposure, then the employer has 72 hours to report it to KOSH. Similarly, if three or more employees are hospitalized, then it must be reported within eight hours.

CONCLUSION

While we are waiting on a response from KOSH concerning how its new reporting rule applies to an employers' obligations to report COVID-19 hospitalizations and fatalities, employers in State Plan states should keep in mind that certain states, like Kentucky, may or may not adopt federal standards or policy guidance. Therefore, the best practice is to check the state regulation, contact your state's Occupational Safety and Health Program to determine if the state program comports with federal standards and policies, or reach out to your Fisher Phillips attorney.

In the meantime, employers in Kentucky should become familiar with KOSH's new injury and illness reporting requirements. Employers must also continue to report any work-related fatality, in-patient hospitalization, amputation or eye loss by calling the KOSH's Division of Compliance at (502) 564-3535 or OSHA after hours at (800) 321-6742.

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact the authors, your Fisher Phillips attorney, or any attorney in our [Louisville office](#).

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