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2 BIG LEGAL CHANGES COMING FOR KENTUCKY EMPLOYERS: NEW SAFETY RULES AND COURT REVIEW STANDARDS

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Two new Kentucky laws will soon reshape workplace safety rules and how courts review agency decisions — with big implications for employer compliance and litigation strategy. Lawmakers passed House Bill 398, which will bring consistency and clarity to Kentucky’s workplace safety laws, and Senate Bill 84, which will reform how courts review administrative agency decisions. Both bills survived a veto by Governor Andy Beshear and are now set to take effect on June 26. Here’s what Kentucky employers should to know about these new laws and their impact on workplaces across the state.

House Bill 398: Aligning Kentucky OSHA with Federal Standards

House Bill 398, introduced by Representative Thomas Walker on February 6, brings changes to Kentucky’s Occupational Safety and Health (OSHA) program. While many are familiar with federal OSHA, few people realize Kentucky is one of 22 states with a state-run OSHA program regulating both public and private sector employers with oversight from federal OSHA.

Since Kentucky is a state program, the state legislature has authority over how Kentucky OSHA administers its program. House Bill 398 seeks to improve consistency with Kentucky’s OSHA regulations and align Kentucky’s regulations more closely with federal OSHA regulations.

Senate Bill 84: Changing How Courts Review Administrative Agency Decisions

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Senate Bill 84 focuses on how Kentucky courts review decisions of administrative agencies. Specifically, the new law aligns Kentucky with the recent blockbuster U.S. Supreme Court ruling in *Loper Bright Enterprises v. Raimondo*, which overturned the longstanding *Chevron* doctrine. The *Chevron* case previously required courts to defer to agency interpretations of ambiguous laws, but the Supreme Court moved away from that mechanism and returned to a method of review that hands more power to courts. [Read more about this game-changing decision and how it could impact your workplace.](#)

Senate Bill 84 ensures Kentucky courts will now review agency decisions “de novo” (with a fresh, independent review), rather than automatically deferring to agency interpretations. This change is significant for employers, as many regulatory decisions are made by non-attorneys who may lack any formal legal training. By requiring courts to independently assess legal questions, Senate Bill 84 ultimately shifts decision-making power away from agencies and back into the hands of judges.

How These New Laws Will Benefit Kentucky Employers

Despite opposition, these bills introduce several employer-friendly reforms that promote legal consistency and fair regulatory enforcement in Kentucky.

New Safety Standards

- **HB 398 aligns Kentucky OSHA with federal OSHA**, preventing the state from enforcing regulations that federal OSHA has not adopted. The state also cannot have more stringent requirements than federal OSHA. This ensures businesses operating in both Kentucky and other states can follow consistent workplace safety policies, allowing them to save money on workplace training and avoid confusion that could lead employers to being cited even when they thought they were in compliance.
- **Standardizes filing deadlines** for OSHA-related discrimination complaints, matching federal timeframes for greater uniformity.
- **Improves the complaint process** by implementing measures to verify the legitimacy of workplace complaints. This protects employers from frivolous

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complaints and reduces unnecessary government expenditures.

- **Pauses abatement periods** until OSHA violations are fully adjudicated, preventing employers from being forced into costly compliance measures before a violation is even proven.
- **Limits repeat violation citations** to a three-year window, preventing businesses from being penalized for past infractions long after conditions and personnel have changed.
- **Introduces “de minimis” violations**, which are minor infractions carrying no penalty if they do not impact employee safety. Unlike federal OSHA, Kentucky OSHA previously did not recognize this category and often imposed unnecessary \$5,000 fines for minor administrative errors.
- **Allows employers to recover legal costs** when they successfully appeal an OSHA decision in state court, making it easier for small businesses to challenge unfair citations. However, the Governor’s office has indicated it may not comply with this provision -- likely leading to future and potentially costly legal battles.

New Court Review Standards

- **SB 84 prevents courts from automatically deferring** to administrative agency interpretations, instead requiring them to independently review regulatory decisions.
- **Ensures a fairer legal process**, especially given that many initial administrative decisions are made by non-lawyers.
- **Aligns Kentucky law with the recent SCOTUS ruling**, reducing excessive agency power and restoring judicial oversight.

What These Bills Do Not Change

- House Bill 398 does not give control of Kentucky’s OSHA program to the federal government. Kentucky OSHA remains a state-run program under federal oversight.
- Employees can still file OSHA complaints, and the process for doing so remains largely unchanged.

- Employers must still comply with OSHA regulations. While some Kentucky-specific regulations may be adjusted, federal OSHA standards often provide better protections, ensuring no loss of workplace safety.
- Senate Bill 84 does not prevent agencies from enforcing laws, but it changes how courts review agency decisions, ensuring a more impartial and legally sound process.

Conclusion

We will continue monitoring developments and their potential impact on Kentucky employers. Stay tuned for updates and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about these new laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Louisville office](#) or in our [Workplace Safety Team](#).