



# Post-Pandemic Back-To-Business FAQs For Kentucky And Indiana Employers (UPDATED)

Insights

5.08.20

**LAST UPDATED MAY 14, 2020**

Resuming business operations as the intensity of the COVID-19 pandemic decreases and governments in Kentucky and Indiana ease restrictions will involve more than unlocking your front door and turning the lights on. You must assess your operational needs and abilities in the context of your supply chain's capabilities, customers' expectations, existing and emerging laws and regulations, and a wide variety of employment issues. Even if Kentucky and Indiana governments have not yet lifted restrictions on your business, now is the time to get your re-opening plan in order. Fisher Phillips, the same workplace law firm that helped businesses navigate the COVID-19 crisis, is here to help employers make plans for getting back to business.

The following information was prepared by Kentucky- and Indiana-licensed attorneys in [our Louisville, Kentucky office](#). It is a focused supplement to the much broader [Post-Pandemic Back-To-Business FAQs For Employers](#) prepared by FP's Post-Pandemic Strategy group (a multi-disciplinary group of Fisher Phillips workplace attorneys from across the nation). Both documents will be updated throughout the recovery period. As your business gets back to work, contact any Fisher Phillips attorney for assistance.

## **GENERAL RETURN-TO-WORK PRINCIPLES**

Like most states', Indiana and Kentucky's reopening requirements frequently cite CDC guidelines as the standard employers must satisfy to open and remain open. The CDC's guidelines have changed on a near daily basis since the COVID-19 crisis began, and it is important for employers to remain alert for future changes. If the CDC changes its guidelines in some way you may have to change your practices accordingly to remain in compliance with States requirements.

## ***Indiana* [UPDATED ON MAY 8, 2020]**

Indiana Governor Eric Holcomb issued Executive Order 20-08 ("Stay-at-Home Order") on March 23, 2020, requiring all residents — except those working for an essential business — to stay at home until April 6. The Stay-at-Home Order was subsequently extended twice by Governor Holcomb and was replaced by Executive Order 20-26 on May 1, 2020. In conjunction with the issuance of [Executive Order 20-26](#), Governor Holcomb announced his plan to gradually reopen the state as part of a five-step plan, dubbed "[Back-On-Track](#)." Indiana will follow four guiding principles to determine how

various sectors of the economy should reopen moving forward: (1) the number of hospitalized COVID-19 patients statewide has decreased for 14 days; (2) Indiana retains its surge capacity for critical care beds and ventilators; (3) Indiana can test all residents who are COVID-19 symptomatic; and (4) the ability to conduct contact tracing.

Using the above criteria, Indiana will conduct a county-by-county assessment to determine which stage should apply to a particular county at the end of each time period. If the impact of COVID-19 is minimal or has significantly decreased, the county may be permitted to advance to the next stage. However, if the impact of COVID-19 has not decreased, the county may be required to stay at the current stage or return to a prior stage.

Fisher Phillips [recently published a legal alert](#) discussing the various stages included in “Back-On-Track,” and the relevant time periods for each. (Note: any county currently operating at Stage 1, e.g., Cass, Marion, and Lake, must continue adhering to the restrictions and requirements included in [Executive Order 20-22](#)).

Executive Order 20-26 also requires Indiana businesses continuing their operations, or those allowed to reopen, to develop a plan to implement measures and institute safeguards to ensure a safe environment for employees, customers, clients and members. Such plans must be created by May 11, 2020 and distributed to employees as well as posted publicly. At a minimum, the plans must cover the following: (1) instituting an employee health screening process; (2) employing enhanced cleaning and disinfecting protocols for the workplace, including regularly cleaning high-touch surfaces; (3) enhancing the ability of employees, customers, and clients to wash hands or take other personal hygiene measures, such as using hand sanitizer; and (4) complying with social distancing requirements established by the CDC, including maintaining six feet of separation among employees and members of the general public and/or employing other separation measures such as wearing face coverings or using barriers to create adequate separation.

Indiana also developed the “Small Business PPE Marketplace” to provide reliable access to personal protective equipment (PPE) for small businesses that need help to comply with safe workplace precautions. Businesses and non-profit entities with fewer than 150 employees and registered to do business in Indiana will be eligible. More details regarding the program can be found [here](#).

Lastly, there are several Indiana counties and municipalities that impose more restrictive guidelines or requirements than those included in Governor Holcomb’s Executive Order 20-26. A list of these counties and municipalities can be found below, with links to their respective executive or public health order:

- [Cass County Executive Order 2020-06](#) (went into effect on April 27, 2020 and will be reevaluated every 7 days)
- [Marion County Public Health Order](#) (expires May 15, 2020)

- Monroe County Public Health Order (expires May 15, 2020)
- City of Monticello Executive Order 20-04 (expires May 13, 2020) – Largely resembles White County Executive Order 20-03 listed below.
- Joseph County Public Health Order (expires July 4, 2020)
- White County Executive Order 20-03 (expires May 13, 2020)

### ***Kentucky* [UPDATED ON MAY 14, 2020]**

Per an Executive Order on March 23, 2020, Kentucky Governor Andy Beshear closed all in-person retail businesses that are not life-sustaining. Retail businesses like grocery stores, pharmacies, and gas stations have remained open. In addition, Governor Beshear encouraged Kentuckians to remain “Healthy at Home,” limiting non-essential trips to such retail businesses.

On April 17, 2020, Governor Beshear announced the Commonwealth would reassess its ability to reopen the economy after it achieves the following benchmarks:

1. 14 days of decreased coronavirus cases;
2. Increased testing capacity and contact tracing;
3. Availability of PPE;
4. Ability to protect at-risk populations;
5. Ability to social distance in large gatherings, per the CDC’s guidelines;
6. Preparedness for a possible future spike; and
7. Status of vaccine and treatment.

In addition to the above benchmarks, the governor announced guidance for individuals, employers, and specific types of employers. As Kentucky begins reopening its economy, individuals who feel sick will continue to be encouraged to stay home and should continue following current hygiene and social distancing guidelines. Employers generally should continue encouraging telework to the extent possible to reduce large gatherings of employees.

To that same end, the governor’s guidance indicates employers should close common areas and allow employees to return to work in phases. While not a requirement, the guidance states employers should “strongly consider” special accommodations for employees who are members of vulnerable populations (e.g., those over 60).

The governor addressed some specific businesses. Schools will remain closed to in-person instruction through the end of the school year. In addition, the guidance states that visits to senior living facilities and hospitals should continue to be restricted as the Commonwealth reopens, to protect more vulnerable populations. Gyms and outpatient facilities may reopen if they can adhere to

strict guidelines on sanitation and distancing. Bars will remain closed during the initial phases of reopening to discourage large groups from congregating and violating social distance guidelines.

On April 21, 2020, Governor Beshear announced the “Healthy at Work” initiative to complement the ongoing “Healthy at Home” plan. Healthy at Work aims to help Kentucky businesses reopen safely after the Commonwealth meets the seven benchmarks outlined above, which constitute “Phase 1” of the “Healthy at Work” initiative.

Under “Phase 2,” the Commonwealth will evaluate individual businesses’ ability to reopen gradually and safely. The State’s website encourages industry groups and individual businesses to submit proposals regarding ideas for and challenges to reopening. The proposals should address ability to provide PPE to employees, adequate access to hand sanitizer and disinfectant, and minimal direct contact between employees and the public. The Healthy at Work website indicates industry groups and trade associations may submit input and may submit Business/Trade Association Reopen Proposals and individual businesses also may submit reopening proposals. After receiving input from businesses, the governor, local leaders, and the Department of Public Health will evaluate at what point certain businesses may begin opening, and they plan to issue industry-specific guidance that businesses must follow upon reopening. You can find more information on industry-specific guidance here.

On April 29, 2020, the governor announced tentative dates for reopening certain business sectors, and, on May 11, Governor Beshear issued an Executive Order setting forth the minimum requirements all businesses must follow in order to reopen:

1. Continue telework if employees are able to do their jobs remotely;
2. Develop a phased return-to-work plan;
3. Enforce social distancing;
4. Limit face-to-face interaction;
5. Universal masks and any other necessary personal protective equipment (PPE);
6. Adequate hand sanitizer and encourage hand washing;
7. Restrict common areas, like waiting rooms and break rooms;
8. Proper sanitation;
9. Conduct daily temperature/health checks;
10. Create a testing plan;
11. Make special accommodations;
12. Designate a “Healthy at Work” officer;
13. Educate and train employees; and
14. Implement contact tracing.

... implement contact tracing.

The list of tentative of dates for certain businesses to reopen is as follows:

- **May 9:** Houses of worship;
- **May 11:** Manufacturing, construction, vehicle and vessel dealerships, professional services (at 50% capacity), horse racing (without spectators), and pet grooming and boarding;
- **May 18:** Government offices/agencies;
- **May 20:** Retail, funeral and memorial services;
- **May 22:** Restaurants (33% capacity + outdoor seating);
- **May 25:** Cosmetology businesses, hair salons/barbershops, massage therapy, nail salons, tanning salons, and tattoo parlors;
- **June 1:** Bowling alleys, fitness centers, movie theaters;
- **June 11:** Campgrounds;
- **June 15:** Some childcare, youth sports (low touch and outdoors);
- **July 1:** Bars, groups of 50 people.

Not only is the government watching Kentuckians, it wants Kentuckians to report one another to the state. The Kentucky Labor Cabinet's [KYSAFER](#) web page actively encourages employees and citizens to report businesses they believe are not following the governor's orders. Governor Beshear has stated businesses that fail "strictly comply" with reopening "guidelines" may be cited and or shut down. You should expect employees and others to report perceived infractions to the state and be prepared to demonstrate you are fully compliant.

On March 30, 2020, Kentucky Governor Andy Beshear issued an Executive Order prohibiting Kentuckians from traveling outside of Kentucky, except in certain limited circumstances such as work and to care for dependents. The Order required those who engaged in out-of-state travel to self-quarantine for 14 days upon returning to Kentucky. That Order was ruled unconstitutional on May 5, 2020. The judge ruled the Order unlawfully infringed upon Kentuckians' constitutional right to interstate travel.

In response, on May 6, 2020, Governor Beshear issued a new Executive Order, specifically rescinding the March Order. The new Order "allows travel into or out of the Commonwealth of Kentucky, including travel that originates and ends outside of the Commonwealth." It "asks" that all individuals "entering the Commonwealth of Kentucky with the intent to stay" self-quarantine for 14 days, unless they are traveling:

1. When required by employment;
2. When as part of their normal life, the individual lives in one state and works or delivers services in another state;
3. To obtain groceries, medicine, or other necessary supplies;

3. To obtain groceries, medicine, or other necessary supplies;
4. To seek or obtain care by a licensed healthcare provider;
5. To provide care for the elderly, minors, dependents, persons with disabilities, or other vulnerable persons; or
6. When required by court order.

The new Order is more permissive in general and by inclusion of the broad category that encompasses individuals that live and work in separate states, emphasized above. The Order continues the previous iteration's ban on anyone (other than Kentucky residents) with a positive or presumptively positive case of COVID-19 from entering the Commonwealth except for medical treatment. The Order will remain in effect until Governor Beshear lifts the State of Emergency, which went into effect on March 6, 2020.

## **WORKPLACE SAFETY**

### **Relaxed Shelter-In-Place/Stay Home Order Issues**

As the President and governors consider easing shelter-in-place orders, it is important for Kentucky and Indiana employers to stay up-to-date on the current status of reopening plans in their states.

#### ***Kentucky***

In Kentucky, as noted above, Governor Beshear's Healthy at Work initiative is a two phase approach to reopening Kentucky's economy. Phase 1 is a state-readiness evaluation, while Phase 2 is an individual business-readiness evaluation. In preparation for Phase 2, Kentucky employers bringing employees back to work as restrictions are lifted should, at minimum, be prepared to: (1) provide cloth face covers to all employees and PPE to other employees as necessary; (2) provide adequate access to hand sanitizer and disinfectant; (3) strictly enforce social distancing (at least 6 feet) and minimal direct contact between employees and the public; and (4) adopt protocols for handling known and suspected COVID-19 diagnoses and close contacts.

On April 23, 2020, Governor Beshear announced the first economic sector – healthcare – would begin gradually reopening on April 27, 2020. This occurred on schedule, and non-urgent/emergent healthcare services, diagnostic radiology, and lab services have begun reopening subject to State guidelines. The guidelines include, among other things, daily screening of each employee for temperature and COVID-19 symptoms, all employees continuously wearing surgical/procedural masks at work, all patients and visitors wearing either a surgical/procedural mask or a cloth face cover when in contact with patients and/or staff, and the employer being “able to procure all necessary PPE for routine services via normal supply chains.” The state has not said when other businesses may begin reopening, but it likely will impose many of these requirements on all other businesses as a condition or reopening and remaining open.

#### ***Indiana [UPDATED ON MAY 14, 2020]***

Workplace safety requirements and recommendations in Indiana vary by industry and the particular stage of Indiana's "Back-On-Track" plan. Through Executive Order 20-26, Governor Holcomb either requires or strongly encourages the following businesses to provide face coverings to their employees and, in some circumstances, their customers: retail stores, restaurants, professional services and other office-based businesses, personal services (salons, spas, barber shops, etc.), and healthcare and public health businesses. Indiana also published a list of industry-specific safety guidelines, which can be found [here](#). (Note: to the extent the industry-specific guidelines conflict with Executive Order 20-26, the requirements of Executive Order 20-26 should be followed).

Indiana and Kentucky employers should also expect to, and be prepared to, address employee concerns related to COVID-19 upon reopening. To reassure employees that all hazards are being addressed, you should consider putting in place clear explanations and assurances about safety precautions being taken (such as signage, periodic reminders of good practices, and employee updates). To further minimize employee concerns, you should follow [the Centers for Disease Control and Prevention \(CDC\) guidance](#), as well as the [federal OSHA guidance](#), to assist in making workplace safety decisions regarding reopening.

### **Taking Employees' Temperatures And Other Medical Inquiries**

Indiana and Kentucky employers may continue operating under the [EEOC's guidance](#), which permits measuring employees' body temperatures and requiring accurate and reliable COVID-19 testing, until further notice. If you decide to implement such measures, you should be aware there are possible implications under Indiana's and Kentucky's Occupational Safety and Health Acts (the "OSH Act") that employers should keep in mind. You also should frequently check the EEOC's website for changes to the guidance. Kentucky and Indiana now require daily health screens, and Kentucky requires daily temperature checks. Kentucky permits employees to perform "self-checks," but Indiana's guidance does not speak to whether the employer must perform the health screen.

When implementing a temperature screening process, Indiana's Occupational and Safety Health Administration (IOSHA) and Kentucky's Occupational and Safety Health Administration (KOSH) require an employer to assess potential risk factors and hazards associated with the process and determine appropriate personal protective equipment (if any) to issue to employees conducting temperature screenings. OSHA's recently promulgated [Guidance on Preparing Workplaces for COVID-19](#), which IOSHA and KOSH follow and enforce, can help you classify your workplace exposure risk level, from "Very high" to "Low." The higher the exposure risks, the greater the levels of controls and protections that must be implemented.

At this point is unclear whether OSHA considers taking body temperatures "biological monitoring" within the purview of 29 CFR 1910.1020 entitled, "Access to employee exposure and medical records." Rather than incur the attendant record keeping obligations, it may be best to take employees' temperatures and merely view the results without tracking or recording the data.

### **Masks And Cloth Face Covers**

Indiana and Kentucky employers intending to require employees to wear face masks or cloth face coverings should be aware that OSHA's PPE standard may apply. The PPE standard applies to "all protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers." This means, before you can require an employee to wear a face mask as PPE, you must:

- Perform a hazard assessment;
- Consider other alternative options to protect employees;
- Identify and provide appropriate PPE for employees;
- Train employees in the use and care of PPE;
- Train employees how to clean and maintain PPE, including replacing worn or damaged PPE; and
- Prepare a plan that is periodically reviewed, among other steps, including employee specific requirements.

Whether cloth face covers (as opposed to "masks") are "PPE" and subject to the standard currently is not clear. There is an argument to be made that cloth face covers are not PPE, because they protect others and not the wearer. However, making that argument would involve risk and could be costly. To be safe, employers who require employees to wear cloth face covers should assume state and federal agencies will deem them PPE. Similarly, if you require employees to wear face masks or cloth face covers you should pay for them (as PPE). Kentucky apparently intends to require employers to ensure virtually all employees to wear cloth face covers, so prepare accordingly.

### **Miscellaneous Safety Considerations**

The OSH Act requires employers to ensure their workplaces are "free from recognized hazards that are causing or are likely to cause death or serious physical harm." While OSHA has not implemented new standards specifically for COVID-19, it has said in [recent guidance](#) that this general duty obligation applies to COVID-19-related hazards.

Kentucky and Indiana employers should be aware that KOSH and IOSHA, respectively, are enforcing the executive orders detailed above regarding whether a business is permitted to be open and, whether such businesses are adhering to social distancing and PPE protocols. In fact, KOSH has recently taken a heavy-handed approach when inspecting employers' facilities, especially after receiving COVID-19-related complaints.

For instance, KOSH has forced several businesses to temporarily shut down after reporting positive COVID-19 cases among its employees and/or allegedly failing to follow social distancing or other CDC guidelines. Our Louisville office attorneys have helped employers with some of those incidents. IOSHA has not taken such an aggressive approach during COVID-19-related inspections. IOSHA is following federal OSHA and using the rapid response program for complaints related to COVID-19, including social distancing.



To promote employees' health, safety, and well-being, and satisfy KOSH inspectors, Kentucky employers should implement as many CDC precautions as practicable to minimize the spread of COVID-19. These may include reconfiguring physical workspaces to increase distances among employees, placing barriers between workspaces, closing or modifying common areas, modifying high-touch surfaces (e.g., turning latch doors into push doors and installing no-touch receptacles), and budgeting for and providing PPE (including disposable wipes, hand sanitizer, and masks or cloth face covers where social distancing or other measures are not practical). For additional information see Kentucky OSHA COVID-19 guidance documents at <https://kysafe.ky.gov/Pages/index.aspx>.

## **WORKPLACE PRIVACY**

### ***Indiana***

Indiana employers planning to collect information regarding employees' temperatures, results of antibody testing, and/or COVID-19 diagnosis must be mindful of their obligations under I.C. § 22-9-5-20 to ensure such information is collected without regard to an employee's disability or other protected category. Indiana employers are subject to the following obligations as it relates to medical examinations: (1) all employees must be subject to the examination regardless of disability; (2) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files, and must be treated as confidential medical information; and (3) the results of the examination must be used only for job-related purposes.

Additionally, Indiana employers may not require a medical examination and may not inquire as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is job related and consistent with business necessity.

### ***Kentucky and Indiana***

In both Kentucky and Indiana, businesses and individual supervisors may be held liable for defamation under various circumstances. One is publicly portraying a person in a false light that would be highly offensive to a reasonable person. This may occur, for example, where a manager states publicly, "Our employee, John Doe, has a fever today and has COVID-19," if the manager either knows Doe does not have COVID-19 or makes no effort to determine whether the statement is true.

In this case, because a fever alone is not proof a person has COVID-19, the statement appears reckless. Additionally, "imputation of a loathsome disease" (which COVID-19 arguably is) is presumptively slanderous in Kentucky and Indiana. Moreover, even if Doe had COVID-19, the business and the supervisor could be held liable for publicly disclosing such highly offensive private facts that are not of legitimate concern to the public.

Finally, Kentucky and Indiana businesses, as well as their employees, may be held liable for intentionally intruding, by use of a method objectionable to a reasonable person, into a matter the employee has a right to keep private. An example might be taking John Doe's temperature in front of

employee has a right to keep private. An example might be taking John Doe's temperature in front of a large group of people and then shouting out his temperature for all to hear. These sources of potential liability are in addition to potential liability under the ADA, as well as Kentucky's and Indiana's civil rights laws.

## **HUMAN RESOURCES CONSIDERATIONS**

### **Remote Work/Telework**

#### ***Kentucky***

As noted above, as part of Kentucky's Healthy at Work initiative, employers must permit employees to continue working from home if the employee is able to do their job duties remotely. To the extent telework has not been unduly burdensome for an employer during this crisis, it will be more difficult for that employer to demonstrate telework is not a reasonable accommodation under the ADA if an employee requests it in the future.

Some employers have been pleasantly surprised to discover telework is not as bad as they had (for decades) thought it would be. In fact, some have found it better than having employees taking up expensive commercial real estate. Kentucky employers whose employees have been efficiently and effectively working from home during the COVID-19 pandemic should consider making such arrangements permanent.

#### ***Indiana***

Although not required, Indiana employers also should consider doing this as well.

### **Paid Sick Leave**

#### ***Indiana***

If an employee accrued paid sick leave prior to being furloughed, their balance must be restored upon return. This, of course, assumes the employee did not use any accrued sick leave while on furlough, or the company did not "cash out" an employee for accrued, but unused, sick leave at the time they were furloughed.

#### ***Kentucky***

Employers in Kentucky are not required to provide paid sick leave to their employees. To date, Kentucky has not adopted any paid sick leave provisions during the COVID-19 pandemic.

## **WAGE AND HOUR ISSUES**

### **Reduction in Pay**

#### ***Indiana***

To the extent a reduction in employee compensation is anticipated, you must notify employees of such reduction no later than the pay period preceding the change.

## **UNEMPLOYMENT COMPENSATION**

### ***Indiana***

If an employee is recalled but refuses to return to work due to a COVID-19-related concern with no directive from a medical professional, they will most likely be ineligible for continued unemployment benefits. Indiana's Department of Workforce Development has, however, instructed such individuals to continue applying for benefits. The circumstances of each claim will be evaluated to determine if an exception should be made.

Indiana employers must report all newly hired employees, and employees returning to work after a break of 60 days or more, within 20 days of hire or return (this should be the first actual date of work). Employees who return to work at reduced hours may still be eligible for unemployment benefits.

### ***Kentucky***

If an employee refuses to return to work once recalled, the employee may continue receiving unemployment benefits only if they have a valid, qualifying reason for refusing work. If the employee is given the option to telecommute, the employee must accept such opportunity or be deemed ineligible to continue receiving unemployment benefits.

Kentucky employers must report all newly hired and re-hired employees within 20 days. Employers may report electronically or physically. Employers must provide their Federal and Kentucky Employer Identification Numbers, the name of the business, and the employer's address, along with the employee's name, mailing address, Social Security Number, and the employee's date of hire (or rehire). Employees who return to work at reduced hours may still be eligible for unemployment benefits.

## **WRONGFUL DEATH/PERSONAL INJURY/WORKERS' COMPENSATION**

### ***Indiana***

Indiana workers' compensation benefits are paid by employers, not the state. As a result, the state cannot force employers to automatically cover employees who contract COVID-19. Whether an employee contracts the coronavirus in the course and scope of employment is a determination that must initially be made by the employer. This decision usually is made when the employee notifies the employer of the injury, or in this case, contracting the coronavirus. That decision may be challenged, however, through the administrative process.

It is well accepted that first responders and health care providers, as well as others directly involved in the provision of services to those exhibiting symptoms of COVID-19, are more susceptible to contacting the disease as a direct result of their work duties. Others whose jobs necessarily entail close interaction with many people in a public setting also are more vulnerable to exposure and possible infection than those working remotely or in a limited office setting or in many other settings.

The state urges employers to consider prospectively determining whether to treat vulnerable segments of their workforces as presumptively covered by Indiana's Workers' Compensation Act if they:

- Are quarantined at the employer's direction due to a confirmed or suspected COVID-19 exposure;
- Receive a COVID-19 diagnosis from a physician without a test;
- Receive a presumptive positive COVID-19 test; or
- Receive a laboratory-confirmed COVID-19 diagnosis.

Employers should relay any such decisions to their workforce and workers' compensation insurance carrier/third party administrator as soon as possible to allay fears and expedite the claims process.

### ***Kentucky***

On April 9, 2020, Governor Beshear issued an Executive Order regarding occupational exposure to COVID-19. The Order changes workers' compensation law in Kentucky in a couple of ways. First, if an employee is removed from work by a physician due to occupational exposure, then they will be eligible for temporary total disability (TTD) benefits, even if the employer later denies liability for the claim. The normal seven-day waiting period has also been suspended.

Occupational exposure means there is a "causal connection between the conditions under which the work is performed and COVID-19." Under the Order, certain workers will be presumed to have contracted COVID-19 on the job, including, but not limited to: employees of a healthcare facility, corrections officers, and child care workers providing care during the State of Emergency. Employees removed from work by a physician due to occupational exposure "shall be entitled to temporary total disability payments . . . during the period of removal even if the employer ultimately denies liability for the claim." The Order will remain in effect until it is rescinded or the State of Emergency is lifted.

## **CONFLICTING DIRECTION FROM VARYING GOVERNMENT OFFICIALS**

### ***Kentucky***

Governor Beshear's Order closing non-life-sustaining retail businesses is in effect for the duration of the Commonwealth's State of Emergency. The Healthy at Home Order, too, remains in effect during the State of Emergency. Conflicts may arise in the event the White House urges state governments to lift restrictions before Governor Beshear lifts the State of Emergency. Moreover, there are some conflicts between the generally applicable Minimum Requirements and some of the industry-specific guidance.

## **PRACTICAL CONSIDERATIONS FOR REOPENING**

Figure out now, not next tomorrow or next week, how you will quickly and safely reopen your business — and remain open.

1. Create a written plan;
2. Some basic reopening requirements, likely to continue for at least a few months, are reasonably predictable: most employees will be required to wear cloth face covers; employees must be screened and their temperatures taken daily; physical barriers should be installed to prevent spread of COVID-19; policies and postings for social distancing and proper hygiene will be required; protocols for dealing with COVID-19 positive cases, exposures, and potential exposures;
3. Know how to recognize and handle protected concerted activity;
4. Be ready for OSHA inspections;
5. Consider adopting a permanent telework policy (if you don't have one already) to allow a wider range of employees to work remotely and help improve social distancing in the workplace;
6. Evaluate your sick leave policies to make sure they are up-to-date, sufficiently flexible, and perhaps less punitive, to encourage rather than discourage your sick employees to stay at home; and
7. Work with employees who may have childcare obligations (if daycares, schools, etc. have not yet reopened) to address their current scheduling limitations. Consider shift changes and/or a reduced work schedule until an employee's normal operations can resume.

### **What Should Employers Do?**

As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

### **Conclusion**

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Louisville](#) office, or any member of our [Post-Pandemic Strategy Group Roster](#).

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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