



Kentucky Releases Industry-Specific Reopening Guidelines (UPDATED)

Insights

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UPDATED MAY 15, 2020

Governor Andy Beshear recently announced a tentative schedule for re-opening specific Kentucky businesses amid the coronavirus pandemic. Certain businesses that encourage large gatherings, like bars, will remain closed, but the governor recently announced a timeline for re-opening restaurants would be forthcoming. What do employers need to know about this plan?

Businesses Slated To Open This Month

Those businesses that may re-open this month are:

- **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:** Social gatherings of no more than 10 people, barbers, salons, cosmetology businesses, and similar services.

Before reopening, all businesses must conform to the [Minimum Requirements for All Entities](#), in addition to industry-specific guidance. By May 11, 2020, all businesses that have remained open must meet the following minimum requirements as well:

- Continue telework where possible;
- Phased return to work;
- Enforce social distancing;
- Limit face-to-face interaction;
- Universal masks and any other necessary personal protective equipment (PPE);
- Adequate hand sanitizer and encourage hand washing;

- Restrict common areas, like waiting rooms and break rooms;
- Proper sanitation;
- Conduct daily temperature/health checks;
- Create a testing plan;
- Make special accommodations for vulnerable persons;
- Designate a “Healthy at Work” officer;
- Educate and train employees; and
- Prepare to assist with contact tracing.

On May 11, 2020, Governor Beshear issued the above guidelines in the form of an Executive Order, meaning such guidelines now have the force of law.

Masks And Health Screens

You will need to familiarize yourself with these requirements before moving on to any industry-specific guidance. For example, you must ensure your employees wear a mask “to the greatest extent practicable.” It does not have to be a surgical mask; a cloth mask will suffice. However, you must provide a mask to the employee at no cost and provide instruction to all employees regarding proper use. If you serve customers or clients, you should encourage your customers to wear masks and may refuse to serve anyone who does not comply.

Masks need not be worn when employees are working alone in a closed space, and notably, per the May 11 Order, cloth masks are not required of employees, volunteers, or contractors when they are working alone and six feet of separation can be maintained. Employers must also provide gloves to employees who frequently touch items touched by others (credit cards, etc.).

In addition to providing masks and gloves when necessary, you must also require employees to undergo a daily health check or screening and temperature check. You may opt to have employees self-administer a health check and temperature screen prior to reporting for work. Keep in mind that independently-administered health screens cannot be verified.

Whether performed by the employee or the employer, the health assessment must answer the following questions:

- Have you had any of the following symptoms since your last day at work or the last day you were here?
 - Fever (100.4° F or higher)? [This appears to be a typographical mistake, as the CDC standard is 100.4.]
 - A new cough?
 - Shortness of breath or difficulty breathing?

- Sore throat?
- New muscle aches or headache?
- Gastrointestinal symptoms (i.e. diarrhea, vomiting, etc.)?
- Chills or repeated shaking with chills?
- A new loss of taste or smell?
- Is there anyone in your household who is ill or has been diagnosed with COVID-19?
- Have you been in contact with anyone who is ill, has shown symptoms, or has been diagnosed with COVID-19?

Any employee who answers “yes” to any of the above questions should be sent home immediately or should not be permitted to enter the worksite. You must direct employees who have a fever and/or any symptoms of COVID-19 to their health care provider to be tested within 36 hours, and they must be instructed to quarantine at home as soon as any illness is detected. This clarifies earlier guidance, which vaguely stated “sick employees,” irrespective of COVID-19-related symptoms, must be directed to their health care provider. Employers will also be expected to assist public health officials with contact tracing in the event an employee tests positive or becomes exposed to COVID-19.

You should instruct sick employees to quarantine at home until further notice and to contact their healthcare provider. If you choose to administer health checks at the workplace, you should remember to enforce adequate social distancing and to not alert others to an individual’s temperature or other medical information gathered during such checks. You should train employees (during working hours) regarding all Healthy at Work protocols, and your designated “Healthy at Work” Officer will be responsible for enforcing compliance with these minimum requirements, as well as any more detailed, industry-specific requirements.

Finally, you should keep documentation of work schedules, meetings, and in-person clients or visitors in order to be able to assist public health officials if necessary in the event of a suspected or confirmed positive case. To that end, you should be able to answer the following questions:

- What was the employee’s work schedule prior to testing positive?
- Where was the employee working in the days prior to testing positive?
- When was the last day the employee came into work?
- Who could have come into close contact (within six feet of the individual for more than 30 minutes) with the employee in the two days prior to the employee testing positive?
 - Examples of others to consider are: customers, clients, visitors, or other employees with whom the individual works closely.

Industry-Specific Guidance

On Monday, May 4, 2020, Governor Beshear published industry-specific guidance for the first set of industries permitted to re-open on May 11. The guidance for each industry reiterates that businesses must meet the minimum requirements set forth above in addition to the more specific requirements that have been tailored to individual industries based on recommendations from businesses and industry groups.

[Ed. Note: Please note, since we first published this Alert, some industry-specific guidance has changed slightly, so be sure to check the [Healthy-at-Work website](#) for the most up-to-date copies.]

Much of the guidance overlaps or elaborates on the minimum requirements for reopening. For example, in the [Requirements for Manufacturing, Distribution, and Supply Chain Businesses](#), it states that businesses must “restrict access to common areas in order to maximize social distancing and reduce congregating.” This will likely be true for each business that has common areas and is not unique to manufacturing.

The guidance, however, does address some concerns that are more tailored to each sector. For example, for manufacturing, distribution, and supply chain businesses, it states that “production practices should be modified, to the greatest extent practicable, to enforce adequate social distancing.” In addition, in the [Guidelines for Vehicle and Boat Dealerships](#), dealers are instructed to “ensure that all sales paperwork can be completed electronically to the greatest extent practicable by using DocuSign or other e-signature technology for signatures.”

On May 14, 2020, Governor Beshear released interim [Requirements for Restaurants](#), although they are expected to change after receiving industry feedback. Some key components of the guidelines include limiting the number of customers to 33% of the maximum seating capacity, requiring that all tables maintain six feet of space between them, and using disposable utensils, napkins, and other items when possible.

Among some additional requirements for certain businesses is the directive that employers must ensure employees wear “appropriate face coverings” and other PPE. Even in [office-based businesses](#), masks or face coverings are required when employees are moving about outside their own offices: “Businesses must ensure that employees wear face masks for any interactions between co-workers or while in common areas of the office (e.g., hallways, conference rooms, bathrooms, entries, and exits). Employees are not required to wear face masks while alone in personal offices or if doing so would pose a serious threat to their health or safety.”

There also are some conflicts between the generally applicable [Minimum Requirements](#) and some of the more specific guidance documents. For example, while the guidance for [office-based businesses](#) says employees should continue working remotely if “possible,” the Minimum Requirements (which apply to all employers) say employees who are [able](#) to perform their job duties remotely [must](#) continue working remotely.

[Ed. Note: On May 7, 2020, Governor Beshear announced tentative dates for re-opening additional sectors of Kentucky's businesses:

- **May 22: restaurants (at 33% capacity);**
- **June 1: movie theaters; fitness centers;**
- **June 11: public and private campgrounds;**
- **June 15: child care (reduced capacity); possibly low-touch and outdoor youth sports.**

New guidelines have also been released for government offices/agencies, funeral homes, places of worship, and retail businesses. Government offices/agencies may reopen on May 18, while the latter businesses may reopen on May 20. As with the previous guidelines, the minimum requirements outlined above apply in addition to industry-specific guidelines. As with the proposal for opening restaurants, the new retail guidelines indicate that retail businesses will be limited to 33% of their maximum permitted occupancy. Retail businesses must also, to the extent practicable, modify internal traffic flow to minimize customer contacts and should discourage employees from sharing phones, radios, or workstations. The guidance encourages businesses to continue use of internet sales or contactless pickup/delivery of items. Indeed, many customers may feel more comfortable continuing to shop in this manner until they are more comfortable resuming in-person shopping.]

The requirements outlined above, and those addressed in greater detail in each of the new industry-specific guidance publications, will represent a “new normal” as Kentucky businesses begin to reopen and employers begin to navigate the uncertainty of operating a business amid a pandemic.

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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