

An illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on the left side of the image.

KENTUCKY COVID-19 SHUTDOWN

Legal Update on Impact on Kentucky Businesses and Families

*Presented by:
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and
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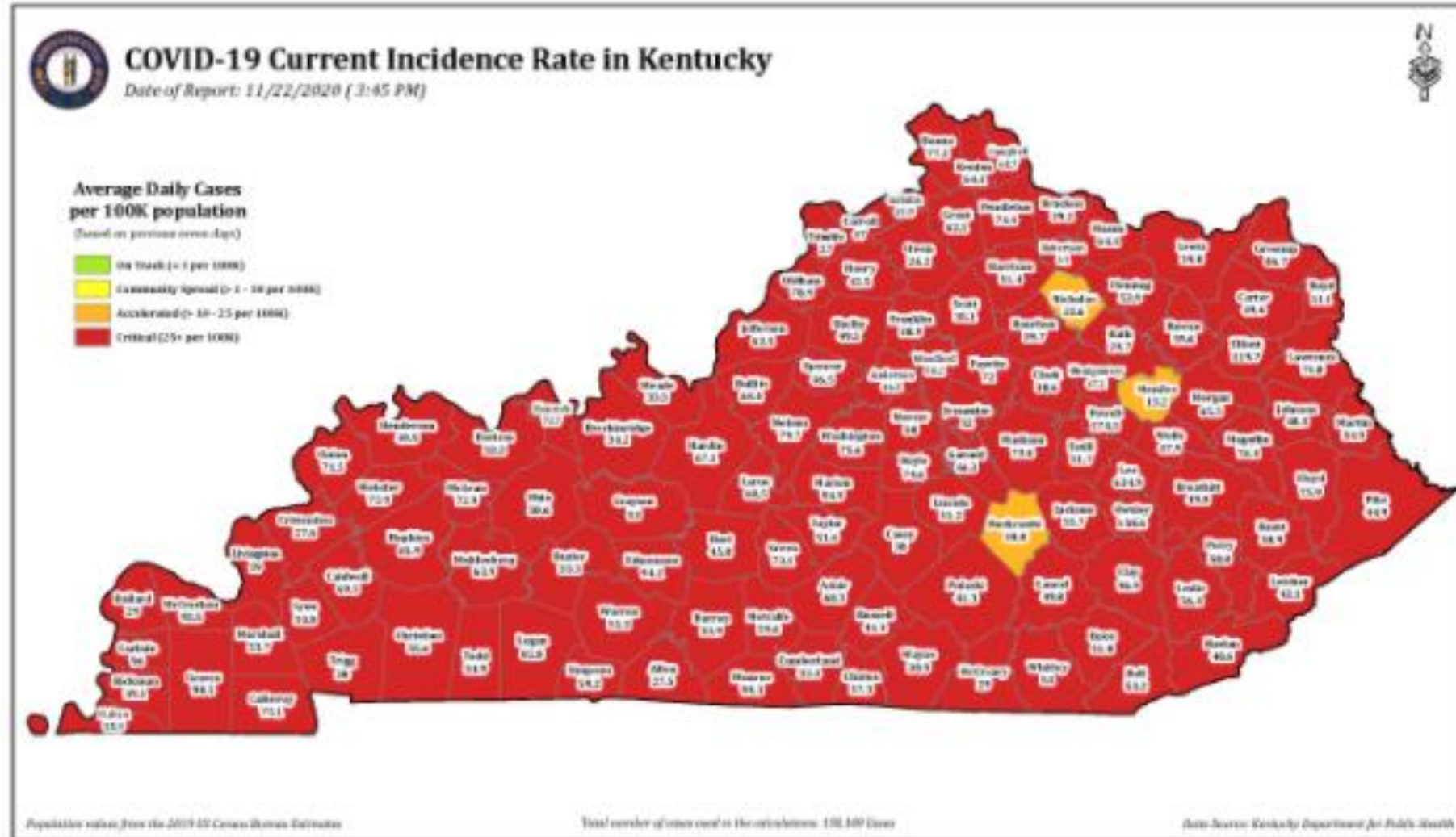
- Governor Beshear Issues Two Executive Orders Impacting Businesses Throughout Kentucky



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Kentucky Update From Federal Government

White House COVID-19 Task Force Kentucky Update (week ending 11/15/2020)

“There is now aggressive, unrelenting, expanding broad community spread”

Kentucky continues in the red zone for cases, 344 cases (**274 last week**) per 100,000 population, with the 24th highest rate (**21st last week**) in the country. Kentucky is now in the red zone for test positivity (**orange last week**)

- **Kentucky has seen an increase in new cases and an increase in test positivity**
- Jefferson, Fayette, and Kenton (replacing Warren)(31.8% of new cases (**same last week**))
- 89% of all counties in Kentucky (**78% last week**), have moderate or high levels of community transmission (yellow, orange, or red zones), with 55% red zone (**32% last week**).
- Between 11/7 and 11/13, on average, 307 confirmed patients admitted per day
- 95% of hospitals confirmed new cases each day
- 26% of nursing homes had at least one new resident COVID-19 case, 47% had at least one new staff COVID-19 case, and 9% had at least one new resident COVID-19 death.

RED ZONE REDUCTION RECOMMENDATIONS

- Employers allow employees to **work from home** when possible
- Non-critical **Government offices to operate virtually**
- **Reduce in-person shopping**; order online or curbside pickup
- **Order take-out**; avoid dining in restaurants or bars
- Prioritize **businesses that follow and enforce mask mandate and other guidelines**
- **Reschedule, postpone or cancel public and private events**
- **Do not host or attend gatherings of any size**
- **Avoid non-essential activities** outside of your home
- **Reduce overall activity and contacts, and follow existing guidance**, including 10 steps to defeat COVID-19

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Kentucky Executive Orders Impacting Businesses & Families

Kentucky's Governor Issues Two Executive Orders Following Supreme Court Approval 2020-968 (businesses) and 2020-969 (schools)

On Wednesday, November 18, 2020, (less than 1 week after Supreme Court Opinion Affirming the Governor's Authority):

- **Governor Beshear has issued two Executive Orders (2020-968 and 2020-969) affecting families, businesses, schools and livelihoods throughout the Commonwealth**
- **Business Mandate became effective last Friday, November 20, 2020 at 5:00 p.m. EST**
- **School Mandate became effective today, Monday, November 23, 2020**
- **The Executive Orders identifies additional information available on the kycovid19.ky.gov website**
- **Each of the Executive Orders references the authority granted for continuing States of Emergency**
 - **Relies upon the language of the Supreme Court**
 - **References the “potentially catastrophic surge” in COVID-19 cases**
 - **References the need for “new health measures”**

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Kentucky Executive Orders Impacting Businesses & Families

Kentucky's Executive Order 2020-968 Mandate Affecting Businesses

- Restaurant and Bars:
 - Cease all indoor activities
 - Restricted exclusively to delivery, to-go, & “Outdoor” (undefined) limited to 8; 2 households; 6 ft
- Social Gatherings:
 - All indoor gathering limited to 2 households, limited to 8 (household defined as living together)
- Gyms, Fitness, pools, Recreation Facilities (school-related activities covered by separate orders):
 - 33% of maximum capacity; 6 foot distance; no group activities; masks mandatory
- Event Venues:
- Event Venues (Theaters, Indoor venues, event spaces, etc.):
 - Limited to 25 per room – including weddings and funerals
 - Does not apply to places of worship (governed separately by “Healthy at Work Website)
- Professional Services
 - Must mandate work from home if able to do so
 - If the office remains open, must ensure no more than 33% of employees are present

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Kentucky Executive Orders Impacting Businesses & Families

Kentucky's Executive Order 2020-968 Mandate Affecting Businesses

- Restaurant and Bars:
 - Governor has announced use of \$40MM in CARES Act Funding in response to his Mandate
 - Support available to restaurants and Bars
 - \$10,000 per business for various expenses (up to \$20,000 for those with multiple locations)
 - Not available to businesses with at least 50% of sales via drive-thru
 - Publicly traded businesses not eligible
 - Must comply with all public health orders
 - Applications will be accepted starting November 30, 2020; first come first served
 - “Details will be forthcoming” on the Restaurant CARES Act Application Process
 - On November 5, 2020, ABC commenced a 12-month waiver of renewal fees for current licensees

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Kentucky Executive Orders Impacting Businesses & Families

Kentucky's Executive Order 2020-969 Mandate Affecting Schools and Families

Mandate applies to “all public and private elementary, middle, and high schools”

- Does not yet apply to Universities, Colleges, Trade Schools, or other educational institutions
- All schools must cease in-person instruction beginning November 23, 2020
- Middle and High School shall remain remote or virtual until at least January 4, 2021
- Elementary may re-open starting December 7, 2020 through January 4, only if:
 - County is not a Red Zone County (<https://govstatus.egov.com/kycovid19>) and
 - School follows all KDE Guidance (<https://govstatus.egov.com/ky-healthy-at-school>)(not updated)
- Schools may continue to provide “small group in-person targeted services”
- Does not apply to in-home schooling of household members

Additional Guidance should be forthcoming, and additional information is on www.kycovid19.ky.gov

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FFCRA Guidance Considerations for Businesses Dealing with School Closures

FFCRA Requirements for COVID-19 Leave Reminder

Employees qualify for paid sick leave if they are unable to work (or telework) for these reasons:

1. a quarantine or isolation order;
2. is advised to self-quarantine;
3. is experiencing symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in number 1 or 2 above;
5. ***is caring for a child whose school or place of care is closed***; or
6. is experiencing any other substantially-similar condition, **and**
7. An employee qualifies for **expanded family leave** if they are caring for a child whose school or place of care is closed.

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FFCRA Guidance for Employers Based on School Closure Mandate

FFCRA Paid Leave Requirements for School Closures

For Employees with children dealing with school closures, businesses must provide:

- Two weeks (up to 80 hrs) of ***paid sick leave*** at 2/3 of the employee's regular rate of pay for care of a quarantined individual ***or care for a child (under 18 years of age) whose school or childcare provider is closed due to COVID-19***; and
- For all employees employed more that 30 days, up to an additional ***10 weeks of paid expanded family and medical leave*** at 2/3 of the employee's regular rate of pay where an employee is ***unable to work due to the need to care for a child whose school or childcare provider is closed or unavailable related to COVID-19***
- EFMLEA requires that an employee be employed for at least 30 calendar days. If an employee is laid off and subsequently rehired by the same employer, ***the employee may be immediately eligible for EFMLEA leave if he/she was employed for 30 or more of the 60 calendar days prior to the layoff.*** 29 CFR § 826.60

Employers are eligible for reimbursement

- The DOL and IRS previously concluded that Employers will receive a “dollar-for-dollar reimbursement” for monies properly paid to Employees for FFCRA Leave
- Businesses are able to retain and access funds that they would otherwise pay to the IRS in payroll taxes during time periods where employees are utilizing FFCRA Sick or EFMLEA Leave
- If the payroll taxes retained are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form seeking reimbursement
- To the extent that you have paid for Sick Leave or EFMLEA Leave, make sure to submit for reimbursement and follow appropriate guidelines issued from DOL and IRS

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Unanswered Questions for Employers in dealing with New School Closure Issues

FFCRA Sick and/or EFMLEA Leave Issues Require Clear Mandates and Compliance with Federal Laws

Employers must maintain proper calculation of all FMLA, EFMLEA, and Sick Leave utilized, both in the Spring and the Fall, as Employees are only entitled to twelve weeks total, and reimbursement must be tied to proper FFCRA payments not exceeding the limits of FMLA/EFMLEA

- FFCRA leave is ***not*** in addition to FMLA Leave, only another method to receive FMLA Leave
- Develop/update appropriate policies, procedures, and handbooks for handling child-care/COVID issues
- Employers need to create clearly-defined Work-From-Home policies setting forth all parameters
 - Computer, Network, HIPAA, PCI Compliance and Security
 - Workers Compensation Compliance
 - Flexible work schedules and arrangements; childcare assistance; childcare flexibility
 - Work Hours, Location, and OSHA-required Safety Considerations
- If you cannot allow remote working, new policies and work hours may need to be considered to allow for shift differentials for parents with children, etc.

Questions & Answers





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