

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 mix of warm and cool tones, with a dark blue vertical band on the left side where the text is located.

CRISIS MANAGEMENT FOR COVID-19

Week 37, Phase 30: 2020 In Review & Updated Guidance, Legal Changes, and Legislation!

*Presented by:
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INTRODUCTIONS



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WHAT WE'LL COVER

1

Updated Guidance,
Legal Changes, and
Legislation

2

2020 In Review



1

EEOC Guidance,
Vaccines, Small
Business Relief,
National and
Kentucky Updates



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1

Kentucky Update From Federal Government

White House COVID-19 Task Force Kentucky Update (week ending 12/13/2020)

- Kentucky continues in the red zone for cases
- 513 cases (**344 last month**) per 100,000 population
- 22nd highest rate (**24th highest last month**) in the country
- Positivity rate at or above 10.1%
- **Kentucky has seen stability in new cases, and decrease in test positivity (previously increased)**
- Jefferson, Fayette, and Kenton (29.3% of new cases (**31.8% last month**))
- 97% of all counties in Kentucky (**89% last month**), have moderate or high levels of community transmission (yellow, orange, or red zones), with 78 red zone (**55% last month**).
- Between 12/7 and 11/13, on average, 115 confirmed patients admitted per day
- Hospitals are reporting critical staffing shortages

1

Kentucky New Executive Orders Impacting Businesses & Families

On December 3, 2020, and December 11, 2020, Governor Beshear Issued Executive Orders 2020-996 and 2020-1034

- **2020-996**: “Mask Mandate” applies to ***all*** indoors activities (except while actively eating or drinking at a table), in-line, public transportation, and any outdoor activities where social distancing not possible
 - Includes mandates for all Gyms and Fitness Facilities
 - Expires in 30 days, i.e., January 2, 2021
- **2020-1034**: All prior orders, unless rescinded, continue in effect
 - Rescinds elimination indoor dining and returns to previous percentage restrictions
 - Includes “recommendations” that all indoor social gatherings be limited to 2 households/8 people
 - Mass Gatherings Order issued on March 19, 2020, and amended as recently as 7/20 is rescinded
 - Social Distancing and Hygiene mandates for all social gatherings

1

COVID-19 Vaccines

*EEOC Issues Vaccine Update (December 16, 2020)
(addressing applicability of EEO Laws, including ADA,
Rehabilitation Act, GINA, and Title VII (pregnancy))*

Precursor to new updates state "EEO laws do not interfere with or prevent employers from following CDC or other federal, state, and local public health authorities' guidelines and suggestions"

K.1. Is administration of Vaccine by an employer a "medical examination" for purposes of ADA? (12/16/20)

No. "If a vaccine is administered to an employee by an employer for protection against contracting COVID-19, the employer is not seeking information about an individual's impairments or current health status." However, pre-screening questions may trigger ADA. If an employer administers or contracts for the vaccine, it must show that such inquiries are "job-related and consistent with business necessity." (See K.2.)

K.2. If an employer requires an employee to receive vaccination, and asks required pre-screening questions, are these questions subject to the ADA standards for disability-related inquiries? (12/16/20)

Yes. Pre-vaccination medical screening questions are likely to elicit ADA-protected information. Thus, an employer must prove that the screening is "job-related and consistent with business necessity," i.e., the employer must have "a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others." See K.5. re: a direct threat. **Two Exceptions: (1) voluntary vaccine denial (no retaliation); or 3rd Party no employer contract (i.e., pharmacy or healthcare administration)**

1 COVID-19 Vaccines

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K.3. Is asking/requiring proof of receipt of COVID-19 vaccination a disability-related inquiry? (12/16/20)

No. "There are many reasons that may explain why an employee has not been vaccinated, which may or may not be disability-related." Requiring proof of receipt "is not likely to elicit ADA information and, therefore, is not a disability-related inquiry." **However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability**

K.4. Where can employers learn about Emergency Use Authorizations of COVID-19 vaccines? (12/16/20)

At this point, FDA controls the EUA designations for vaccine distribution, available on FDA website

K.9. Does asking an employee the pre-vaccination screening questions before administering a COVID-19 vaccine implicate Title II of GINA? (12/16/20)

If the pre-vaccination questions do not include any questions about genetic information, then it does not implicate GINA. However, if the pre-vaccination questions do include questions about genetic information, then employers **may want to request proof of vaccination instead of administering the vaccine themselves**. GINA does not prohibit an employee's own health care provider from asking GINA questions, but it does prohibit an employer or a doctor working for the employer from asking about genetics

1 COVID-19 Vaccines

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K.5. Disability COVID-19 Vaccination Concerns (12/16/20)

The ADA allows an employer to have a qualification standard that includes “a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.” However, if a safety-based qualification standard, such as a vaccination requirement, screens out or tends to screen out disabilities, the employer must show a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”

- Four Factors: duration of the risk; nature and severity of the potential harm; likelihood that potential harm will occur; and the imminence of the potential harm. Must demonstrate that an unvaccinated individual will expose others to the virus at the worksite.
- Cannot take any action “unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so the unvaccinated employee does not pose a threat” If there is a direct threat, the employer can exclude the employee from physically entering the workplace, but may have to provide reasonable accommodations, i.e., remote work, FFCRA; EFMLEA
- Managers must recognize and identify reasonable accommodations and Meet & Confer (very troubling); EEOC recommends that management be aware of and “keep up to date with” CDC/OSHA!

1 COVID-19 Vaccines

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K.6. Sincerely Held Religious Practice/Belief and COVID-19 Vaccinations (12/16/20)

Employer must provide a reasonable accommodation “unless it would pose an undue hardship under Title VII of the Civil Rights Act” – i.e., “more than a de minimis cost.” **Basically no guidance!**

K.7. What happens if an employer cannot accommodate due to disability or religion (12/16/20)

If an employee cannot get vaccinated for COVID-19 because of a disability or religious belief, and there is no reasonable accommodation, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker.

K.8. Is Title II of GINA implicated when an employer administers a COVID-19 vaccine to employees or requires employees to provide proof that they have received a COVID-19 vaccination? (12/16/20)

No. So long as the vaccine is administered by an independent third-party, the administration of a COVID-19 vaccination or requiring proof of a COVID-19 vaccination does not implicate GINA because it does not involve the use of GINA information, or the acquisition/disclosure of “genetic information”

So, what about ADEA? What about age-related concerns, limitations, omissions?

No FAQ was included. States are pre-selecting vaccines. Employers can follow CDC & State Mandates

1 CDC Addresses Vaccines

CDC has addressed Isolation, Vaccine Distribution and Various Vaccine-related Concerns

12/3/20: Typical isolation discontinuation when at least 10 days have passed since symptom onset, symptoms have improved, and at least 24 hours since resolution of fever without fever-reducing drugs

12/16/20 FAQ:

- All but 1 vaccine on the market require 2 shots
- Still have to wear a mask and social distance while getting vaccine, and after receipt of the vaccine
- There is no cost for the vaccine for Americans; however, facilities can charge an administration fee
- Distribution initially to first responders and LTC Residents
- Still may need a vaccine even if you were exposed previously
- Even with other measures, a vaccine is still required to stop the pandemic
- Evidence does not exist to determine how long safety measures will be needed
- Flu vaccine does not impact COVID-19; COVID-19 vaccines are not fool-proof (strongly recommended)
- No knowledge, as of yet, as to Herd Immunity

1 CDC Addresses Vaccines

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12/19/20: COVID-19 Vaccines and Severe Allergic Reactions:

- Recommending individuals with any severe allergic reaction to any Vaccine ingredient should avoid
- If severe allergic reaction to other vaccines or injectable therapies, you should ask your doctor
- People with a history of severe allergic reactions not related to vaccines or injectable medications—such as allergies to food, pet, venom, environmental, or latex—may still get vaccinated
- People with a history of allergies to oral medications or a family history of severe allergic reactions, or who might have a milder allergy to vaccines (no anaphylaxis)—may also still get vaccinated.
- If you have a severe allergic reaction after getting the first shot, you should not get the second shot

All people who get a COVID-19 vaccine should be monitored on-site. People with a history of severe allergic reactions should be monitored for 30 minutes after getting the vaccine. All other people should be monitored for 15 minutes after getting the vaccine.

Vaccination providers should have appropriate medications and equipment—such as epinephrine, antihistamines, stethoscopes, blood pressure cuffs, and timing devices to check pulse rates

1 Congressional Relief!

\$900 Billion Relief Package Finally Approved

After ***months***, late last night Congress (House and Senate) finally reached a new consensus relief bill:

- \$600 checks to adults and children (compared to \$1,200 earlier this year)
 - Available for individuals making less than \$75,000 and couples making less than \$150,000 (\$166 B)
- Extended unemployment benefits
 - \$300 per week UI Benefits instead of previous \$600 per week Pandemic Unemployment
- Additional PPP for small businesses
 - \$300 Billion allocated to small businesses in additional funding
 - Additional funding will apparently require documentation of hardships during 2020
 - **Apparently includes tax relief by forgiving payroll costs and other expenses**
- Monies for Schools (\$82 B), Health Providers, and Renters

Details still forthcoming

Questions & Answers





2

2020 in Review



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Week 1 – Recap
Answers to Tough Questions

Key Takeaways:

- Develop a Crisis Management Plan
 - Create and distribute Plan of Action with decision tree
- Communication plan for employees
 - Transparency
 - Determine internal messengers
 - Create a balanced/caring tone
- Take measures to protect your employees both in-person and telecommuting from OSHA complaints

Week 2 – Recap
Seeking Clarity in Murky Times

Guest:

Congressman Andy Barr

Key Takeaways:

- The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from the effective date through December 31, 2020.

Week 4 – Recap
KY Unemployment Update

Guests:

Josh Benson, Deputy Secretary Workforce Development Cabinet
Muncie McNamara, Director KY Unemployment Insurance

HR –

Jon Caldwell, Valvoline
Michelle Stevens, Seikisui

Jon Bongiovi, Sazerac
John Petrov, St. Joseph Hospital

Key Takeaways:

- Expansion of benefits to include independent contractors
- Questions on eligibility and definition workshare and receiving partial benefits when hours reduced
- Reduction of force and furloughs
- Introduced new protective measures including social distancing and sanitization measures to protect those in-person working, discussed best practices for telework and remote workforces

30 COVID WEBINARS

Week 7 – Recap KY Healthy at Work

Guests:

Governor Andy Beshear

Key Takeaways:

- Introduction of phased business re-openings
- Introduction of Healthy at Work Guidelines
- Develop and distribute new in-person work policy to employees



- ✓ Continue telework where possible
- ✓ Enforce social distancing
- ✓ Phased return to work
- ✓ Limit face-to-face meetings
- ✓ Onsite temperature/health checks
- ✓ Sanitizer/hand wash stations
- ✓ Universal masks and any other necessary PPE
- ✓ Special accommodations
- ✓ Close common areas (waiting rooms, cafeterias, break rooms, etc.)
- ✓ Testing plan

HEALTHYATWORK.KY.GOV

Week 10 – Recap
What Real KY Employers are Doing!

Guests:

- Drew Millar, VP HR, North America, Tempur Sealy Intl
- John Greene, Leader of HR, Keeneland
- Erin Sharp, Group VP, Manufacturing, The Kroger Co.

Key Takeaways:

- Policies and Procedures
- Accommodations
- Educate/inform using multiple modes of communication
- Remember vendors, suppliers, and visitors!

*Week 11 – Recap
COVID 19 & the Economic Impact Ahead;
Preparing for the New Normal: Evaluating Business
Strategy & HR's Role*

Guest & Key Takeaways:

- Beth Davisson, Founding Executive Director of KY Chamber Workforce Center
- Most impacted: low wage, part time, young, women, and minority workers
- Post jobs or sign up to be a 2nd chance employer:

<https://www.kychamber.com/news/coronavirus/covid-19-whos-hiring>

Guest & Key Takeaways:

- Brad Patrick, HRG Partner & Adviser/Consultant, Practical Performance Solutions
- Focus on the positive opportunities
- Goal to eliminate or minimize uncertainty/build trust
- Help organization confirm values/commitments or establish new values/commitments
- Begin with future state in mind and plan from today forward!
- Focus on mission critical work (Stop – Start – Continue – Delay)

Week 13 – Recap
COVID & Workers' Compensation

Guest & Key Takeaways:

- Timothy Feld, General Counsel, KEMI
- “Injury does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment.” KRS 342.0011(1)
- COVID diagnosis presumed work-related if employee is: First responder or medical personnel (Burden of proof would shift to the employer to prove otherwise)

Guest & Key Takeaways:

- Michelle Hollingshead, Founder, Impact
- What can managers and leaders do?
 - Check-ins
 - Be-seen (video conference)
 - Focus on unified sense of purpose
 - Adjust and adapt as new info is available
 - Encourage discussion of alternative perspectives
 - Highlight job significance
 - Establish feedback loops
 - Express appreciation

Week 19 – Recap
HR Scenarios: Dealing with COVID

Key Takeaways:

- Remember to think about employee feelings/thoughts/expectations when creating and executing your COVID-related plans
- Remember to get contract/vendor/supplier/visitor information for contact tracing
- Travel policies:
 - Who report to
 - What 'hot spot'
 - Length of time
 - Leave requirements
 - Exposure risks
 - Discipline

- **Guests**
 - John Coffee, Director of Talent Acquisition, Hanna Resource Group
- **Key takeaways**
 - Unemployment is at a high, but the number of job openings are beginning to increase
 - Job candidates are also looking to see how organizations are handling COVID-19 in the workplace when making job related decisions
 - Passive candidates are less likely to move
 - Consider how to communicate your organization's culture remotely

- Guest Speakers

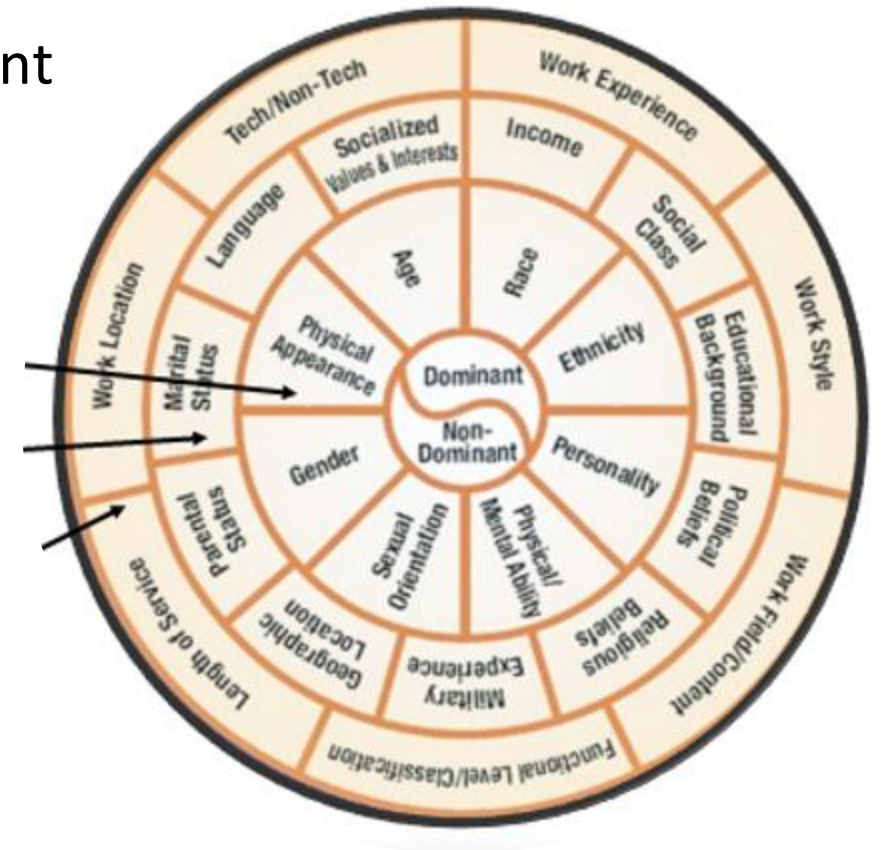
- Brad Patrick, HRG Partner & Adviser/Consultant for Practical Performance Solutions
- Allison Pettrey, HR Outsourcing Manager, Hanna Resource Group

- Key Takeaways

- Times are not normal so companies should not be trying to do things as normal.
- Re-focus on core work
- “You can do anything, but not everything”

Phase 26 - Practical, Hands-On Examples of IDEA Initiatives

- Guest Speaker
 - Eric Ellis, President & CEO, Integrity Development
- Key Takeaways
 - Focusing on sustainable inclusion
 - Diversity wheel
 - Formula for Long-Term Bias Reduction
 - Increase Awareness
 - Increase Empathy and Concern
 - Develop Strategies to Reduce Bias



Phase 27 - DEI and Racial Justice Efforts and Insights from Employers & Employees About the Future of the Workplace

- Sheri Evans Depp, HR Director, Global Talent Management, Lexmark
 - Key Takeaways
 - Diversity councils and network groups
 - Ongoing communication, and continuous learning
- Peter Burke, President & Co-Founder, Best Companies Group
 - Key Takeaways
 - **62%** of employees would like to continue working from home permanently
 - Work from home rates pre-COVID19 was **14%**. Currently, the average is **57%**
 - Larger companies are more likely to implement safety measures than smaller firms
 - **57%** of employers say they are likely to allow/require at least some of their newly remote employees to work remotely on a permanent basis
 - **26%** expect to utilize less commercial workspace after COVID19 pandemic has ended
 - **49%** of companies say they've already begun their return to work (as of October)

Phase 28 – Performance Management for COVID Times

- **Guest Speakers**
 - Troy Landoch, Vice President of Operations, Hanna Resource Group
- **Key Takeaways**
 - Review your performance management program – Does it make sense for COVID times?
 - Re-evaluate your questions
 - Frequency?
 - Are goals applicable?
 - Be mindful of bias that COVID-19 may encourage
 - Proximity
 - Recency

Phase 29 – Compensation for COVID Times and COVID-19 and Long-term Care

- Guest Speakers

- Andrea Beavin, Director of Compensation, Hanna Resource Group

FALL 2020 SURVEY

90.7 % Offered work from home options
24.2 % Additional paid sick days/leave
11.0 % Additional health care benefits
3.5 % Dependent care benefits
13.7 % Reimbursement for additional expenses (home office, cell phone, supplies, etc)
45.8 % Flexible schedules
3.1 % Other

FALL 2020 SURVEY

4.2 % Increasing
43.5 % Continuing as Planned
17.9 % Slowing Growth
20.2 % Freezing Pay
6.5% Decreasing Pay
5.0 % Undecided
2.7 % Other

Questions & Answers



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