



Kansas State Council of SHRM, Inc.
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KS SHRM COVID-19 WEBINAR DISCUSSION

May 1, 2020

Topic: Kansas Re-opening Plan

Guests:

- Will Lawrence – Governor Laura Kelly’s Chief of Staff
- Kyle Russell – Jackson Lewis P.C.

Questions answered on the call:

1. What are the expectations for funerals and graveside services?

This is being evaluated, guidance will be provided at a later date.

2. What are the expectations for higher education?

Higher education, trade schools and technical colleges will continue as they have been, generally not operating in person at this time.

3. How are outdoor attractions treated such as zoos?

This will likely be considered in the “indoor leisure” category and open in Phase 2.

4. What about splash pads? Are they treated the same as public swimming pools?

Yes.

5. Are dance studios considered organized sports facilities?

More information is needed to determine this.

6. How about a summer psychosocial group done by a licensed mental health facility?

It most likely falls under Phase 2 but will need to check.

7. If a restaurant has a bar area, can that area be open if food is served?

The bar area can be opened for seating as long as the 6-foot social distance requirements are met between tables or people at the bar. You’re not allowed to have people standing or congregating.



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8. Can you discuss business travel in Phase One?

If the travel is non-essential then it is best not to do it. We understand some travel may be required. Be judicious in the decision because there are still quarantine requirements in the U.S. Basically, don't go if you don't have to for the next 2 phases.

9. Are retail businesses restricted to 10 customers in a store at a time or can there be more if they can maintain 6 feet?

The requirement is 10 individuals unless you can accommodate the 6-feet of social distancing.

10. How are the number of people gathered in certain areas being monitored? Any enforcement measures or are they just a suggestion?

These are requirements contained in the governor's executive order: no more than 10, social distancing, etc. Local government is in charge of enforcement.

11. Do you have guidelines, checklists, etc., that employers can use for screening entering the workplace?

Yes, the KDHE website has a toolkit with this information:

<https://www.coronavirus.kdheks.gov/248/Business-Employers>.

12. Will each county be able to set their own date to open beyond the date the governor has established?

Counties may be stricter than the governor's order but not less strict.

13. Will the state assist businesses with getting necessary PPE?

We've been trying to buy PPE for as many people as we can but it's been a challenge. My advice is to purchase it on your own. We make it available to some critical infrastructure where we needed to assist but it's on a limited basis. The lack of PPE is partly why we made the decision on who should and should not reopen in Phase 1 and Phase 2 because not everyone has the appropriate PPE. Many were placed in Phase 2 to give them more time to get those resources. A cloth mask is appropriate for the public to wear.

14. What about youth sports? Are practices allowed in Phase 1 in groups of 10 or less? Or do all youth sports activities have to wait until Phase 2?

We are asking for any type of organized sports or practices to wait until Phase 2. If all goes well, this will take place mid-month (no earlier than May 18th).

15. How long is each phase expected to last?



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Each phase is set for 14 days as one incubation period, so at least 14 days for each phase. We will be looking at certain metrics – new cases, new hospitalizations, new deaths – and looking at trends to make final determinations. If things go according to plan, we'll move to Phase 2 on May 18th, Phase 3 on June 1st, and Phase Out on June 15th.

16. Can you speak to public library operations and how this differs from a community center?

Public libraries are allowed if following social distancing guidelines. Community centers have more traffic that's interactive, whereas library patrons are usually more spread out.

17. Can you clarify if museums are Phase 2 or Phase 3?

Museums may re-open in Phase 2.

18. In terms of the 6' distancing, if a family comes in do they have to sit 6' apart? Or does it just apply to unrelated persons?

If you reside in the same household, you don't have to social distance from each other.

19. How does that apply to students in residence halls? Can they have roommates?

Higher education is working on determining a plan. We will have guidance in the future regarding what summer and fall will look like for higher education.

20. Will the Kansas Law Enforcement Training Center (KLETC) be able to reopen on Phase 1?

It would seem they would be considered essential but if they closed, then we'll have to check on their status.

21. What liability does the employer have if the employer tells the employee they have to come back to work and the employer doesn't have the required equipment to test yet?

Testing for the virus has not been mandated as a requirement. The EEOC has said it is allowed. The bigger issue is the chance that you are subject to legal liability for failing to keep the workplace safe. Negligence lawsuits have been brought by employees stating employers did not take reasonable steps to protect employees. If my client was sued for negligence in that type of situation, I would argue that's a workers compensation issue.

22. Should there be extra clock-in time allowed for testing when reporting to work?

If non-exempt employees are waiting to be screened or tested, then we recommend they be compensated for that time.



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23. How long of notice should you give employees that have been furloughed or those working from home to let them know to return to work?

There is no specific requirement but as practical advice, I would recommend a week or so unless you promised something else.

24. How do you handle those employees who do not want to come to work because they feel like they are in a high-risk group but the doctor refuses to write them a note?

Fear of getting the virus is not generally a valid legal reason for people to be allowed to refuse to return to work. That being said, there could be medical situations (i.e. persons who are immunocompromised) and can be allowed to work from home as a reasonable accommodation. Have a conversation with them, consider sensitivities, and work collaboratively to grant leave for a qualifying reason.

25. What happens if someone at work feels ill? How long do we have to assume every time someone doesn't feel well that it is COVID-19? What actions do we have to take immediately? Can we require proof of negative results before returning to work?

You should never assume COVID-19 when someone feels ill. However, if you want to send someone home because they're exhibiting symptoms, you are encouraged to do that. The EEOC says it's okay to test employees and screening is fine, but the DOL is encouraging employers to relax the normal requirements for doctor's notes. The FFCRA guidelines note that many health care providers are overwhelmed with the requirement for doctor's notes.

26. How are businesses that straddle the state line addressing the differences in return to work guidance for employees who may live in KCMO but work in Kansas?

Each state has its own orders as county or local governments may impose stricter guidelines. Generally, keep up with requirements and orders being issued by any state or county in which you do business.

27. We're in an office environment, should we do temperature checks when employees enter?

The EEOC says it's okay but be sure to do it in private so other employees are not aware. If you keep records, keep those records confidential and treat them as medical records.

28. Three days was given in an example of how long a person should be fever-free before returning to work. Is that a good parameter for staying home with a fever?

The CDC guidelines would be best for that answer: <https://www.cdc.gov/flu/business/stay-home-when-sick.htm>.



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29. Situation – an employee who we know has serious underlying health conditions, wants to return to work in the office. Is there anything additional that we need to do except to have a conversation with them to confirm that's what they want to do (presuming we are doing all we can as an employer making the workplace safe)? We don't want to discriminate, due to a health condition under ADA.

You don't want to pass over older employees who may be more susceptible. If that person is next in line to be called back to work, then call them back. If they are hesitant because of a medical condition or risk factor, then have an interactive discussion with them about it, but don't be too paternalistic to employees and run counter to ADA guidelines.

30. Work Comp claim question: if Employee A becomes positive for COVID-19 and Employee B worked with Employee A on the same shift, can Employee B claim work comp?

Kansas work comp covers occupational illnesses and diseases so they may have a valid work comp claim if they can show the exposure at work.

31. Do you know of any new FFCRA guidance or clarification on #6?

The DOL FAQ page provides a lot of guidance: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

32. Do you advise paying employees accrued leave time before placing them on furlough or should it be the employee's choice?

Under Kansas law, it is your choice to offer that unless there is a company policy that addresses that question or a collective bargaining agreement. Options are fine. If the employee is taking paid leave time, that will probably disqualify them from receiving UI benefits, though.

33. Should employees be requested to stay home if they have sick family members in their home?

I would start with the KDHE quarantine guidance – if you live with someone who has tested positive or is awaiting test results, you are asked to quarantine for 14 days or until they test negative. They should stay home under the quarantine guidance and consider if they would qualify for FFCRA paid leave.

34. If the laid-off employee is rehired within 60 days, should we mandate a pre-employment drug screen again?

There is no Kansas law that would prohibit that, so it's up to you if you want to do another background check or drug screen for onboarding.

35. If an employee is traveling for non-work, can we ask where they're going?



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Yes, you can ask about non work-related travel to determine if they're subject to the KDHE quarantine order. KDHE has guidance on travel-related quarantine and hot spots:

[https://www.coronavirus.kdheks.gov/DocumentCenter/View/135/Travel-Related-Quarantine-Table-PDF---4-30-20?bidId=.](https://www.coronavirus.kdheks.gov/DocumentCenter/View/135/Travel-Related-Quarantine-Table-PDF---4-30-20?bidId=)

36. Would it be advisable to have an infectious disease policy in place before opening?

It would be advisable to have a wholesale look at policies for bringing people back who have been gone (cleaning protocols, no handshaking, etc.). It is not required but is recommended to have a policy for conducting business safely.

37. If you require an employee to quarantine, do you have to pay them?

It depends on why you are requiring a quarantine. If they have been advised by a healthcare provider or are subject to a KDHE quarantine order, then they're eligible for FFCRA paid sick leave. If you are sending them home outside of that guidance, the practical advice is not to do that unless you are willing to pay for that.