

Excellence

A report on emerging legal trends from the attorneys of DBL Law

WINTER 2021

1 EMPLOYMENT & LABOR

Can Employers Mandate That Employees Receive The COVID-19 Vaccine?

2 NONPROFIT

Raising Money With Charitable Gaming and Alcohol Prizes

2 EMPLOYMENT & LABOR

Kentucky Unemployment Relief For Nonprofit Agencies

3 WILLS & TRUSTS

Kentucky Adopts New Power of Attorney Laws

4 EMPLOYMENT & LABOR

City Of Covington Passes Law Prohibiting Hairstyle Discrimination

4 EMPLOYMENT & LABOR

Ohio Enacts COVID-19 Related Legal Immunity

5 FIRM NEWS

6 BUSINESS

Summary of New COVID-19 Relief Bill



Can Employers Mandate That Employees Receive The COVID-19 Vaccine?

by Kelly Holden | kschoening@dbllaw.com

This will be the preeminent question as we start 2021. For years, many healthcare institutions have grappled with a similar problem at the start of every flu season. Most hospitals and healthcare companies require employees to receive the flu vaccine to protect their workers and patients. There are generally two exceptions to this mandatory rule: religion and health-based accommodations under the Americans with Disabilities Act ("ADA").

To meet the religious exception, there must be a sincerely held religious belief that justifies not receiving the vaccine. However, if the employee refuses the vaccine, he or she should be required to wear a mask (PPE) during their entire shift.

The ADA exemption requires that it be more dangerous for the employee to receive the vaccine than not to. Employers in this situation should require a physician's note to justify the exemption. These employees must also wear PPE during their shifts, as well.

On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) issued guidance on this issue as it pertains to the COVID-19 vaccine. In short, the guidance provides that federal equal employment opportunity laws, including the ADA and Title VII, do not prevent employers from requiring that employees receive the COVID-19 vaccine. The same two exceptions discussed above apply to this rule.

Employers have a duty to keep the workplace safe, and this year that has been more of a challenge than ever. Employers have been sanitizing, taking employees' temperatures, providing sick leave, issuing guidelines on social distancing, allowing remote work, etc. It has been a year of adapting quickly and responding to a virus that has sickened and killed many.

As it currently stands and without more guidance, the short answer is yes, employers can mandate the vaccine. This blanket policy will have two exceptions: religion and accommodations pursuant to ADA. The driving force behind this policy is to keep the workplace safe. This policy will be met with resistance by those fearful of the vaccine, but without a legitimate exception, it can be required for employees to stay employed.

DBL Law

Cincinnati: (513) 241-4110

Louisville: (502) 572-2500

Northern Kentucky: (859) 341-1881



@DBLLAW
DBLLAW.com

THIS IS AN ADVERTISEMENT

Other attorneys may provide services advertised in this newsletter



Raising Money With Charitable Gaming and Alcohol Prizes

by Danyel Rickman | drickman@dbllaw.com

Many nonprofit organizations host in-person COVID-19 friendly or virtual events to boost fundraising efforts. Many will look to charitable gaming or auctioning liquor or wine to achieve their fundraising goals. However, doing so should be done prudently to ensure that an organization is compliant with state and local regulations. Below is a nonexclusive list of do's and don'ts for Ohio and Kentucky nonprofit organizations:

Ohio

Do provide a raffle prize of alcohol; Ohio does not require a liquor license to do so.



Don't sell raffle tickets through a third party; the entity hosting the raffle is the only entity permitted to distribute tickets.

Do maintain records related to funds raised for a period of three (3) years at the charity's principal place of business.

Don't compensate any individual assisting with the operation of a raffle or bingo.

Kentucky

Do apply for a liquor license if auctioning or accepting donated liquor and indicate where donated liquor will be stored during and after the event.

Don't apply for a liquor license and hold a virtual event or virtual/in-person hybrid event which runs for more than twenty-four hours without including the appropriate run time for the event. Thus, an application should encompass the entire period of the fundraising event.

Do apply for a Charity Fundraising Event or Special Limited Charity Fundraising Event License and complete a Charitable Organization License Application before hosting a raffle or bingo.

Don't hold in-person raffles or bingos unless specifically allowed by Gov. Beshear's latest COVID executive orders. After COVID restrictions expire, the following games of chance are acceptable: bingo, pulltabs, and raffles.



Kentucky Unemployment Relief For Nonprofit Agencies

by Kelly Holden | kschoening@dbllaw.com

Governor Beshear delivered an early Christmas present for Kentucky's nonprofit companies and agencies. A press release was issued on December 18, 2020, confirming that "reimbursing" nonprofit employers will not have to repay benefits for Q2-4.

Pursuant to Kentucky law, nonprofits have a choice to participate in the unemployment insurance fund or to reimburse any benefits paid out dollar for dollar. When the pandemic began in early March, many employers had to furlough or terminate staff during mandated shutdowns. An Executive Order from the Governor's office initially indicated that employers would not be

responsible for paying unemployment benefits since the layoffs were caused by government shutdowns. However, nonprofit agencies recently began receiving an invoice for 50% of the cost of benefits paid out to employees.

The Governor's office clarified in a recent press release that the federal government was covering half of the benefits paid and Kentucky would use CARES Act money to cover the remaining portion. Therefore, reimbursing nonprofits are not responsible for benefits paid in the second, third, and fourth quarters. Any employer who already repaid benefits can apply for a refund.



Kentucky Adopts New Power of Attorney Laws

by Bill Brammell | bbrammell@dbllaw.com

As of July 2020, Kentucky once again implemented changes to its power of attorney laws. These changes follow the Uniform Power of Attorney Act.

A Power of Attorney ("POA") is a legal document that names an agent to act in the place of the principal as authorized. The principal is the individual granting power to an agent to act in situations where the principal has become unable to act. Of the recent changes, the following are the most noteworthy:

- Alter rights of survivorship
- Alter beneficiary designation
- Delegate authority granted under the power of attorney
- Waive principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers
- Exercise authority over electronic communications sent or received by the principal.

Witness Requirement for Execution

Under KRS 457.050, the principal must now sign in the presence of a notary public to create a valid POA. Under the prior law, a power of attorney could be executed with the principal's signature in the presence of two disinterested witnesses.

A Statutory Form

Kentucky's new POA laws include a statutory form to assist an individual, the principal, to specifically authorize certain powers of her agent from a provided list. The use of this form allows for a more streamlined and uniform execution of POAs, but leaves room for confusion as to what exactly is being authorized by checking the box. The specific powers listed within the form are defined by statute. It is critically important that any principal fully understand the breadth of powers delegated to an agent.

Express Grant of Authority v. General Grant of Authority

The new law distinguishes between express grants of authority and general grants of authority within the statutory form. Granting general authority to act is limited by the subsections within the statute, which provide for specific actions that may be taken under a general grant of authority. For example, KRS 457.270 lays out nine ways in which the agent may act under a general grant of authority as to the principal's real property.

A general grant of authority can be accomplished by simply including such terminology in the POA. While actions that require express grants of authority require the principal to include the specific actions that are being granted to the agent. For example, the following actions require an express grant of authority by the principal:

- Create, amend, revoke, or terminate a trust
- Make a gift

Under the new changes, KRS 457.400 also differentiates between a general grant of authority and an express grant of authority as to an agent's ability to make gifts of the principal's property. Most importantly, the agent does not have the power to designate a gift without authorization from the POA.

A general grant of authority will allow the agent to gift a certain amount, not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code. Additionally, if the agent is only acting under a general grant of authority and not a spouse, ancestor, or descendant of the principal, then the agent may not make gifts to themselves or others to whom the agent may owe a legal obligation. This limitation may affect the ability of the agent to follow the wishes of the principal.

General grants of authority to make gifts may lead to unintentional limits on the ability of the agent to act as the principal intended. For example, if the principal intends that a non-relative agent be able to designate gifts as he sees fit, a general grant of authority will simply not allow the agent to do so. Thus, based on the desires of the principal, the POA needs to expressly grant a specific power to gift certain assets to allow for the ability to make or amend gifts to certain recipients.

Lastly, agents are required to only make gifts that are consistent with the principal's known objectives. If the agent is unsure of the principal's objectives, then the agent must only make gifts in the principal's best interest.

Every situation is different, so if you or a family member have any questions about creating an effective power of attorney that best serves your individual needs or if you have any other estate planning matters, please contact a DBL Law Estate Planning attorney.



City Of Covington Passes Law Prohibiting Hairstyle Discrimination

by Kelly Holden | kschoening@dbllaw.com

The City of Covington has joined seven states to pass the CROWN Act, which stands for “Creating a Respectful and Open World for Natural Hair”. The Covington Board of Commissioners voted 5-0 to pass the Act.

The ordinance forbids race-based hair discrimination for employment or educational opportunities because of hair texture, hairstyles, and protective hair coverings.

The Crown Act was a response to a 2014 court decision where the Equal Employment Opportunity Commission (EEOC) sued an employer on behalf of an African-American female applicant whose job offer was rescinded after she refused to cut off her dreadlocks. The employer asserted that the applicant’s dreadlocks violated their personal grooming policy, which required hairstyles to “reflect a business professional image” and prohibited “excessive hairstyles.”

The federal district court dismissed the EEOC’s complaint, holding that a hairstyle constitutes a “mutable characteristic,” which is not afforded Title VII protection.

Since 2014, seven states have passed the CROWN Act, including California, New York, New Jersey, Virginia, Colorado, Washington, and Maryland, as did the City of Cincinnati, OH and Montgomery County, MD.

Employers in these areas should review grooming or dress code policies to be sure there is not language that would violate the CROWN Act. Any language that discusses excessive hairstyles or would violate the Act, should be carefully considered and amended.

More information on the Crown Act can be found at <https://www.thecrownact.com/>.



Ohio Enacts COVID-19 Related Legal Immunity

by Partick Reagan | preagan@dbllaw.com

On Monday, September 14, 2020, Ohio Governor Mike DeWine signed House Bill 606, which provides civil immunity to businesses, healthcare facilities, schools, individuals, and other entities. In passing the bill, the Ohio General Assembly made certain specific findings, including that “lawsuits related to the COVID-19 health emergency numbering in the thousands are being filed across the country. Ohio business owners, small and large, as they begin to re-open their businesses are unsure about what tort liability they may face.”

H.B. 606 has three key moving parts. First, businesses, healthcare facilities, and individuals are immune from lawsuits wholly or partially based on the cause of action that “injury, death, or loss to person or property is caused by the exposure to, or the transmission or contraction of, MERS-CoV, SARS-CoV, or SARS-CoV-2, or any mutation thereof.” The only exception to this is reckless conduct and intentional, willful, or wanton misconduct that causes COVID-19 exposure. In that case, immunity does not apply, and a plaintiff may sue.

Second, the bill provides that government orders, recommendations, and guidelines shall not be construed to create a duty of care or create the basis of a cause of action against anyone. Evidence of such orders is inadmissible as evidence.

Third, even if a business or other entity is not immune from COVID-19 related liability (i.e. there is a showing of willful or wanton misconduct), plaintiffs may not band together and bring a class-action lawsuit.

Ultimately, this bill provides key protections for businesses and other entities operating in the age of COVID-19. The effects of the virus are still to be determined. Circumstances and recommendations related to the virus often change. H.B. 606 gives businesses and other entities flexibility in navigating the pandemic. It may also provide encouragement to continue operation without fear of liability for COVID-19 exposure that may be outside their control.

Firm & Attorney News more at dbllaw.com/news

DBL Law Welcomes New Associates:



Madison Gamble is an associate attorney in DBL Law's Civil Litigation and Banking practice groups. Madison received her Juris Doctor, *cum laude*, from the University of Louisville Brandeis School of Law in May 2020.



Emma Gripshover is an associate attorney in DBL Law's Employment Law and Civil Litigation practice groups. Emma received her Juris Doctor from the University of Cincinnati College of Law in 2020.



Rebecca McDonough is an associate attorney in DBL Law's Commercial Banking, Real Estate, and Construction practice groups. Rebecca received her J.D. from Northern Kentucky University Chase College of Law in 2020, where she graduated *summa cum laude*.



Olivia Oney is an associate attorney practicing primarily in the area of Civil Litigation in the Louisville office. Olivia received her Juris Doctor from the University of Kentucky College of Law in May 2020.



Brad Steffen is an associate attorney practicing primarily in the areas of Civil Litigation, Employment and Labor Law, and White Collar Criminal Defense. Prior to joining DBL Law, Brad served in the military as an officer in the United States Air Force JAG Corps for almost five years. During this time in the Air Force, Brad served as both a prosecutor and defense attorney.

Firm News Continued

DBL Law has been named to the 2021 "Best Law Firms" list by the U.S. News & World Report and Best Lawyers™. The firm received a total of nine top tier rankings by the publications.



DBL Law partner **Mitchel Denham** was recently appointed by Kentucky Governor Andy Beshear to the Board of the Louisville Regional Airport Authority for a four-year term through July 2024.



DBL Law partner **Kelly Holden** has been elected to the Board of Trustees for CancerFree KIDS.



Cincinnati Zoo & Botanical Gardens has named DBL Law attorney **Katie Tranter** to its Ambassador Council.



Litigation practice group chair **David Kramer** has been named to the Top 10 2021 Kentucky Super Lawyers® List. Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers.

Fifteen attorneys from DBL Law are among those named by Super Lawyers® in its 2021 list of Ohio and Kentucky Rising Stars and Super Lawyers. Each year, no more than five percent of the lawyers in each state are selected by the research team at Super Lawyers to receive this honor.

Making the list from DBL Law are:

Rising Stars

Nick Birkenhauer
Aaron Caskey
David Durr
Mike Enzweiler
Justin Knappick
Ryan McLane
Andrew Pellino
Katie Tranter

Super Lawyers

Mark Guilfoyle
Bob Hoffer
Ellie Houston
David Kramer
Rick Meyer
Betsy Weber
Kent Wicker

Firm News

On January 11, 2021, DBL Law was recognized for efforts in child abuse and neglect prevention by statewide nonprofit Prevent Child Abuse Kentucky (PCAK). Annually, PCAK recognizes partners from within their 238+ partner network. Partners are recognized for going "above and beyond" in their work to help prevent child abuse and neglect. DBL Law received one of six 2020 Partner in Prevention awards, according to PCAK Executive Director Jill Seyfred. The law firm has excelled at involving its partners, associates, and employees in the awareness and education critical to the prevention of child abuse and neglect, even during a pandemic.



We're excited to share highlights of the September 17, 2020 Groundbreaking ceremony signaling the start of construction on our new Covington, KY headquarters building.
<https://youtu.be/InvDLeYOs24>



Summary of COVID-19 Relief Bill Signed December 27, 2020

by Kelly Holden | kschoening@dbllaw.com

The \$900 billion COVID-19 relief bill was signed into law on 12/27/2020, and is a lengthy 5,500 pages. A quick summary of the major provisions affecting employers is as follows:

- Sick leave provided pursuant to the Families First Coronavirus Response Act (FFCRA) is NOT extended but if an employer provides paid sick leave, employer are eligible for tax credits through 3/31/2021.
- \$300 unemployment supplement through 3/14/2021. The prior supplement in 2020 had been \$600 but it expired on 7/31/2020.
- Pandemic Unemployment Compensation for part-time and gig workers for 13 more weeks. Applications for new applicants will close on 3/14/2021 but for those who have applied, it will extend through 4/5/2021. Proof of income will be required.
- \$100 per week for self-employed workers who have at least \$5000 in annual income but are disqualified from PUA because of ineligibility for regular state unemployment.
- States can waive overpayment of unemployment if claimant was not at fault.
- Unemployment will be fully funded by the federal government through mid-March.
- Extension of \$5,250 per year payment by employers to repay employee's student loans through 2025. This loan repayment must be paid pursuant to a §127 written program.
- Employee retention tax credit extended through 6/31/2021 with several new provisions.

- 100% deduction for meal expenses rather than 50% as long as food or beverages are provided by a restaurant. This expires at end of 2022.

Some other highlights of the Act are as follows:

- \$600 per child stimulus check under the CARES Act for individuals who make less than \$75,000 (married couples making less than \$150,000). For those making \$75,000-\$99,000, the amount

will be prorated. Anyone making more than \$99,000 will not receive a check. Adult dependent children are not included in the definition of children.

- PPP and Economic Injury Disaster Loan (EIDL) monies will be available to businesses. This second round of PPP2 loans is available to businesses that previously received PPP loans. They must have less than 300 employees, have used all of PPP funds, and be able to show 25% decline in gross revenue in any 2020 quarter as compared to 2019. Also, businesses with 500 or fewer who are eligible for other SBA 7(a) loans, sole proprietors, independent contractors, and some self-employed individuals, not-for-profits including churches, may also apply. The application process has changed somewhat during this round, so it is best to talk with your SBA lender immediately to determine if your business qualifies.

- Live venues, independent movie theaters and cultural institutions will have access to \$15 billion in funding.



- Funding for emergency rental aid and extension of national eviction moratorium through 1/31/2021.
- Assistance for transportation (airlines, transit, state highways, airports and city buses).
- Funding for colleges and schools, including HVAC repair, to mitigate virus transmission