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OSHA Alert

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Kentucky passes HB 398, shifts to federal OSHA standards

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Kentucky's HB 398 aligns state workplace safety regulations with federal OSHA standards, overriding the governor's veto and impacting private sector employee protections.



What's the impact?

- HB 398 pivots away from more stringent state-specific regulations, which may make compliance easier for employers.
- The bill limits the Kentucky Occupational Safety and Health Standards Board's ability to enforce regulations stricter than federal standards, affecting private sector employees while maintaining state authority over public sector regulations.

On March 27, 2025, the Kentucky General Assembly enacted House Bill 398 (HB 398), which will significantly impact the regulation of workplace safety and health in the Commonwealth of Kentucky. HB 398 aligns Kentucky safety regulations with federal workplace safety standards, which many believe are less protective than the set of state-industry-specific regulations currently in place in the state. Three days earlier, on March 24, 2025, Kentucky Governor Andy Beshear vetoed HB 398 citing concerns over the bill's impact on worker safety. On March 27, the

Commonwealth's House and Senate each met the simple majority required to override Beshar's veto.

Following federal OSHA standards

Under the Occupational Safety and Health Act of 1970, a state may either operate its own state-managed plan or adopt federal OSHA (Fed OSHA) standards. A State Plan must be at least as effective as Fed OSHA in protecting worker safety and, often, State Plan regulations are more stringent than those imposed by Fed OSHA. Kentucky is a State Plan jurisdiction, and the Kentucky Occupational Safety and Health (KY OSH) Standards Board, a part of the Kentucky Education and Labor Cabinet's Department of Workplace Standards (Cabinet), has the authority to adopt, modify, or repeal safety and health standards, which include several standards unique to Kentucky. These standards include those regulating worker exposure to hazardous materials, high-voltage electrical lines, and falls over 10 feet. With the passage of HB 398, Kentucky sheds its State Plan status and joins the ranks of 30 other states that adhere to Fed OSHA standards.

HB 398 amends several sections of Kentucky's occupational safety and health standards and limits the KY OSH Standards Board's ability to adopt, promulgate, or enforce any regulation that is not promulgated by Fed OSHA or the US Department of Labor or that is more stringent than the corresponding federal provision. This change only applies to private sector employees in the state, as the Cabinet will retain authority to promulgate and enforce regulations pertaining to public employees. HB 398 aims to strike a balance between worker safety and increased regulatory transparency for employers, including small employers and those operating in multiple states. Bringing Kentucky regulations in line with federal regulations should make compliance easier for employers located in several jurisdictions. However, opponents to the bill believe its enactment will ultimately reduce worker protections in the state and eradicate protections currently in place.

Key changes to Kentucky's occupational safety and health standards

INSPECTION PROCEDURES

HB 398 amends Kentucky Revised Statutes (KRS) section 338.111 to grant employers the right to have "representatives" present during a worksite inspection related to occupational safety and health. This is an increase from the single representative allowed under the prior statute.

EMPLOYEE PROTECTIONS

KRS section 338.121 is revised to allow authorized employee representatives to request an inspection if they believe a violation or imminent danger exists in the workplace. The

commissioner must investigate complaints where reasonable grounds evidence any violation or danger. Previous statutory language did not require representatives to be authorized by employees. The amendments also amend the language to require evidence of violations or danger.

ADDITION OF "DE MINIMIS" VIOLATION CATEGORY

Changes to KRS section 338.991 include the ability to issue a notice of de minimis violation to an employer for violations having direct or immediate relationship to safety or health. De minimis violations shall not be assessed a civil penalty.

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