

House Bill 398 (Rep. Walker Thomas)

Federal Alignment of Occupational Safety and Health Regulations



Why Kentucky Occupational Health and Safety Regulations Were Amended?

Currently, Kentucky is one of 22 states and territories that have their own occupational health and safety program, known as a “state plan,” in addition to the federal Occupational Health and Safety laws. While a state plan allows employers to work with local enforcement, it also allows states to exceed Federal OSHA baseline requirements.

The Kentucky General Assembly ensured Kentucky’s business climate remains competitive through pro-growth public policy. In 2021, the legislature took the first step, through House Bill 475, to restrict the promulgation of any regulation more stringent than federal OSHA.

How Does This Impact Kentucky Business?

Aligning with federal OSHA standards will simplify the compliance process for new and current businesses in the Commonwealth while maintaining employee safety. Eliminating some of the burdensome red tape on contractors and manufacturers will promote growth in these industries in Kentucky.

Federal regulations protect employees. Research suggests that states that follow federal OSHA standards tend to have lower injury and illness rates.

What Does House Bill 398 Accomplish?

- Clarify that the Cabinet may not enforce any current regulation that is more stringent than federal standards. This change would ensure full conformity with federal rules as they change from administration to administration and would ensure employers are not forced to comply with two different sets of rules.
- Prevent frivolous claims by amending who can request an inspection and requiring evidence to support alleged violations.
- Define timeframes for filing a complaint and resolutions to complaints to limit interruption to business operations.
- Authorize the cabinet to utilize “de minimis” classification for citations that do not have a direct or immediate correlation to safety or health.

What House Bill 398 Does

- House Bill 398 requires that **Kentucky adhere to federal occupational safety and health regulations** and not be more stringent than federal rules. We have adopted similar legislation for other types of rules before.
- House Bill 398 **aligns Kentucky with 29 federal program states** that follow federal rules, not more stringent regulations. Additionally, it will **align Kentucky with Indiana**, which has passed similar legislation, and **Ohio, West Virginia, and Missouri**, which are federal program states.
- House Bill 398 **authorizes the state to include a representative of the employee** and speak to other employees during an inspection.
- House Bill 398 **ensures the state finalizes the outcome of a complaint** and any related discrimination complaints within a specified, not subjective, timeframe that aligns with federal requirements.
- House Bill 398 **protects employers' existing rights**, including their right to have their day in court without court and legal fees being a deterrent, in alignment with the federal Equal Justice Act.
- House Bill 398 **authorizes the state to issue a de minimis violation** when there is no direct or immediate correlation to safety and health, such as missing a paperwork deadline.

What House Bill 398 Does Not Do

- **House Bill 398 does *not* overhaul Kentucky's occupational safety and health regulatory program.** Most rules align with federal laws. In fact, the bill will impact only a few existing regulations, and even then, it may only impact part of a rule. Kentucky already has a law that prohibits the promulgation of regulations that are more stringent than the federal rules.
- House Bill 398 **does *not* leave workers unprotected from falls.** Federal rules have clear fall protection standards.
- House Bill 398 **does *not* leave workers unprotected from hazardous material risks.** Federal rules have clear protection standards.
- House Bill 398 **does *not* leave public workers, including firefighters, unprotected.** The current law authorizes the state occupational safety and health office to adopt specific regulations to ensure the protection of public employees is not changed.
- House Bill 398 **does *not* change Kentucky's state program status.** Kentucky will still operate a state occupational safety and health program, and state employees will enforce rules in accordance with federal regulations.
- House Bill 398 **does *not* let employers off the hook** for ignoring important safety and health rules. No changes are made to penalties or to the state's authority to respond to complaints or investigate serious incidents. Businesses must report incidents and accidents with hospitalizations, amputations, loss of an eye, or fatalities to occupational safety and health. HB 398 does not change this.