



# Kentucky Transformational Employment Program (KTEP)

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A Guide to Voluntary Participation in Recovery Friendly Retention, Workplace, and Legal Protections



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## Acknowledgments:

This resource was adapted from Indiana’s Family and Social Services Administration, Division of Mental Health and Addiction in partnership with the Wellness Council of Indiana.



## Division of Mental Health and Addiction

## About:



### **Kentuckiana Health Collaborative**

The Kentuckiana Health Collaborative is a non-profit coalition of healthcare purchasers and healthcare stakeholders working to solve the complex health problems that face our local community with the goal of improving the health status and healthcare delivery in Greater Louisville and Kentucky. Our collaborative is particularly useful in solving problems where multiple sectors can accomplish more together than alone. The KHC works to accomplish this mission through a variety of healthcare measurement and community health initiatives that leverage employer engagement, multi-stakeholder collaboration, and education to transform and optimize healthcare.



KENTUCKY  
CABINET FOR HEALTH  
AND FAMILY SERVICES

### **Kentucky Cabinet for Health and Family Services**

The Cabinet for Health and Family Services is the state government agency that administers programs to promote the mental and physical health of Kentuckians and support Kentucky’s families.



### **Kentucky Chamber Foundation**

The Foundation, a Kentucky nonprofit corporation recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, was incorporated in 1997 to advance a consistent business perspective in education, workforce development, health and wellness, and other pressing issues facing Kentuckians' well-being. The Foundation's mission is to support research, programs, and training initiatives that support the Commonwealth of Kentucky and its citizens. The Foundation furthers its mission through workforce development, criminal justice reform, and opioid addiction response in conjunction with the Kentucky Chamber of Commerce.

### **Kentucky Office of Drug Control Policy**

The Office of Drug Control Policy is tasked to coordinate Kentucky's response to substance misuse. Our goal is to change the way substance misuse is handled in Kentucky, reducing the problem, and making the Commonwealth a model for other states. We have joined prevention/education, treatment, and law enforcement in a united effort to confront this epidemic and have made great strides. As we plan for the future, we know the success of our initiatives depends on the involvement and support of grassroots coalitions, local and state agencies, as well as community and faith-based organizations throughout Kentucky.



### **Kentucky Opioid Response Effort**

The Kentucky Opioid Response Effort (KORE) seeks to expand and sustain a comprehensive, equitable recovery-oriented system of care to end the opioid epidemic that has reached into every community in Kentucky. Through the administration of federal funding from the Substance Abuse and Mental Health Services Administration (SAMHSA), KORE supports the implementation of evidence-based prevention, treatment and recovery supports to effect change at the state, community, family and individual levels.



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# About Senate Bill 191

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The Commonwealth of Kentucky enacted Senate Bill 191 (SB 191) to foster economic opportunities for individuals impacted by substance use and to facilitate access to substance use disorder treatment. SB 191 provides tools and incentives needed for employers to implement the Kentucky Transformational Employment Program (KTEP), a program allowing for employer-facilitated substance use disorder treatment for employees who have tested positive during employment-related drug screens. This includes:

- Any person with a conditional offer of employment who tests positive on a pre-employment drug screen; and
- Any currently employed individual who tests positive on a drug test or self-discloses use

The following best practice guidelines have been established to assist employers with qualified employees and employment candidates who agree to participate in KTEP.

Implementing KTEP and these guidelines will help increase the number of employable individuals in Kentucky, improve talent retention, and help support people with substance use disorders. Additionally, the law provides that employers will not be liable for a civil action alleging negligent hiring, negligent retention, or negligent acts by the employee because of an employee's substance use disorder if a standardized system where these best practices are implemented is in place.

To supplement these guidelines, the Kentuckiana Health Collaborative (KHC) in partnership with the Kentucky Cabinet for Health and Family Services (CHFS) is also providing a series of training videos with informational resources for employers choosing to take advantage of KTEP.

**To review Senate Bill 191 in its entirety, visit:**  
<https://apps.legislature.ky.gov/record/20rs/sb191.html>

**To access the training videos, visit:**  
<https://kentuckycomeback.com/ktep/>



# Adopting the Program

Employers have an ethical and legal responsibility to provide a healthy and safe work environment for their employees. It is in an employer's best interest to protect both their workplace and their workforce with measures that help to prevent, foster treatment, and support remission and recovery for employees impacted by substance misuse and substance use disorders. With a science-based understanding of substance use disorders, employers can establish KTEP, which allows them to standardize the identification and intervention of substance misuse or substance use disorder among their employees and position all parties to maintain healthy and productive employability.

Employers may be familiar with terms such as Fair Chance Employment or Second Chance Employment, which aim to ensure that individuals in recovery or impacted by substance use have a fair chance to work. However, Transformational Employment aims to guarantee more than just a chance, but the opportunity to transform an employee's life and employer's workforce through supporting and connecting employees impacted by substance use with meaningful employment. With Transformational Employment, Kentucky businesses can build recovery-friendly workplaces that are productive, retention-oriented, and that afford employees impacted by substance use the opportunity to find and maintain long-term recovery and success on the job.

Substance use disorder is a chronic, but treatable, brain disease. With an individualized approach that provides for evidence-based care, including medications and behavioral therapies, individuals with substance use disorder can achieve disease remission and long-term recovery. In the late 1970s, the criminalization of drug use rapidly expanded and intensified.

Instead of focusing on increasing access to evidence-based treatment services, efforts to curb rising drug use focused on arresting, prosecuting, and incarcerating people for drug offenses. These punitive approaches have proven ineffective at curbing drug use and overdose deaths and instead, have caused significant harm. People with drug convictions are denied public assistance, discriminated against in seeking necessary services such as housing and employment, and experience other systemic disadvantages. Institutionalized racism and bias have also increased systemic disadvantages for Black, Indigenous, and people of color, as well as people with lower incomes.

These approaches and outcomes have caused great harm and significantly delayed the potential progress that could have been made in addressing substance misuse and substance use disorder over recent decades. Now society, including employers, have an opportunity to change course.

Along with proper diagnosis and behavioral and medical management, employees with substance use disorder require the same workplace approaches as with other chronic health conditions such as diabetes. Under the Americans with Disabilities Act (ADA), employers are required to provide reasonable accommodations for employees with a known disability, unless doing so would cause undue hardship. For more information on the

## KTEP and a Drug-Free Workplace Program

Some industries are required to implement Drug Free Workplace Programs (DFWP). KTEP is complementary to a DFWP. A comprehensive program includes five components that can be customized to the operations and culture of the employer's workplace and workforce, as determined by the Substance Abuse and Mental Health Services Administration (SAMHSA.) Find more information on DFWPs at <https://www.samhsa.gov/workplace>.

ADA and accommodation for those with substance use disorders, visit [https://khcollaborative.org/member\\_resource/opioids-the-workplace/legal-considerations/](https://khcollaborative.org/member_resource/opioids-the-workplace/legal-considerations/).

Adopting KTEP has many benefits for the employer, as well as employees and the broader community. Retaining and supporting prospective and current employees who may be impacted by substance use can be a culturally, ethically, operationally, and financially sound decision.

## How to Enroll

Enrolling in KTEP is an easy process. Enrollment is facilitated by the Kentucky Chamber Foundation and can be completed at <https://kentuckycomeback.com/ktep/>. Here, there is an enrollment form that will require the following information:

- Company Name
- Company Address
- Number of Employees at Company
- Company Industry
- Point of Contact for Company
- Point of Contact Phone Number
- Point of Contact Email Address

This information is collected for information purposes only and will not be shared or distributed with entities external of KTEP.

# Establishing Protocols and Processes

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For an employer to enjoy the protections under SB 191, the employer must implement and consistently apply a standardized system that follows these best practice guidelines for KTEP, although participation is voluntary. Preparing for and standardizing these processes before an employee enrolls is key to an employer's success.

## A Person with a Conditional Offer of Employment

If any person with a conditional offer of employment tests positive for illegal drug use, the employer will explain that the employment process will be suspended, rather than terminated, until the offeree completes the required steps of KTEP. Once the offeree has completed the steps and is reported as being ready for work by a qualified treatment provider, the offeree should undergo a new pre-employment drug screen and begin regular employment after a negative screen result. See figure 1.1 for a flow chart of this process.

## An Existing Employee

For concerns of safety and liability, the employer will need to standardize when to keep an employee on duty if they screen positive on a drug and/or alcohol screen. However, if the positive screen is due to the employer having reasonable suspicion of the individual being under the influence of a substance, the individual can be removed from duty and not reinstated until a qualified treatment provider assesses them as part of KTEP. In other drug screening situations – such as post-accident, random screens, or self-disclosure– if the employee screens positive, removal can be determined by the circumstances involved and as articulated in the employer's written drug and alcohol policy.

After an employee has screened positive or self-disclosed use, they are offered participation in KTEP and informed that completing the steps are terms of employment. Once they have completed the required steps and are reported by the qualified treatment provider as authorized to return to work, the employee will resume work activities with any necessary accommodations as determined by the provider.

An existing employee who has completed or is in the process of completing the program may also face disciplinary actions as determined by their situation at the time of their drug and alcohol policy violation. The returning employee may also be subject to follow-up testing as determined by the employer's drug and alcohol policy and/or treatment as specified by the provider. See figure 1.2 for a flow chart of this process.

## Drug or Alcohol Screening

Historically, individuals who tested positive on a drug screen were deemed unemployable to the detriment of both employers and employees. The implementation of an objective and standardized screening system is a first step in establishing KTEP and transforming how substance misuse and substance use disorders are addressed in the workplace.



The result of a workplace drug or alcohol screen can objectively determine whether the employee or offeree has drugs or alcohol in their system at a certain, scientifically provable level. A drug test does not place value on an individual's morality, judgment, behaviors, or disease state – only the presence or absence of a substance.

Employers are not responsible for determining the meaning of an employee or offeree's positive drug screen. However, by implementing an objective system of testing and intervention, employers can maintain the individual's employment status while referring them to resources that can determine if or what next steps are clinically necessary.

## Establishing an Objective Drug Screening System

An employer should only apply a pre-employment drug screen to an applicant who is otherwise qualified for the position and to whom a conditional offer of employment has already been extended. Unless required by a higher authority than the employer, (e.g., the U.S. Department of Transportation), a pre-employment screen will be for drugs only. An existing employee may be tested under several applications to which they are subject under the employer's drug and alcohol policy, such as post-accident testing, random testing, or testing through reasonable suspicion of influence. Caution should be taken to assure that employees' rights are protected, especially because under the Fourth Amendment, a drug test is "search and seizure" and per the ADA, an alcohol test is considered a medical exam.

Determining how many and which drugs are included in the screen should be established by the employer ahead of time. This practice should be consistently followed.

## Assessment and Referral

After someone tests positive on a drug or alcohol screening and is offered participation in KTEP, the employer should refer the individual to a qualified treatment provider for a clinical assessment, and if necessary, to additional clinically recommended services such as substance use disorder treatment or counseling.

A clinical assessment is the diagnostic process to assess whether an individual who tests positive for alcohol or other drugs needs treatment for a substance use disorder. The assessment should be performed by a qualified, licensed treatment provider with specialized training and experience diagnosing addiction. The assessment can involve more than a single session and may also include the application of a written assessment tool. The provider will determine the presence and/or severity of the individual's condition and whether services are recommended. Not everyone who is assessed will have a diagnosis of substance use disorder.

The provider will make treatment recommendations for the offeree or employee. If the provider determines that the offeree does not have a substance use disorder that requires treatment, the employer can initiate another pre-employment drug screening. Time elapsed between the initial screening and second screening can be determined by the employer's drug and alcohol policy. If the offeree screens positive on a second drug screen, the employer can rescind the employment offer or terminate employment. If the provider determines that an existing employee does not have a substance use disorder, they may authorize them to return to work.

Depending upon the treatment being recommended to the KTEP participant, they may even continue working while attending traditional outpatient treatment, which can include individual and/or group counseling, family therapy, education groups, and other therapies.

Individuals who need a higher level of treatment may be referred to a higher level of care. In these situations, they can live at home (and possibly even keep working) while attending counseling sessions most days or evenings of the week. Finally, a person may be referred to residential or inpatient treatment.

## Return to Work and Follow-Up

After someone is assessed and referred to treatment, it is important for the employer to stay informed about their progress. This highlights the importance of aligning with a treatment provider who fully understands the offeree or employee's needs. Ideally, the provider is proactive in sending reports and return-to-duty paperwork.

The employer should only ask for and receive information from the treatment provider that is of business importance and relevance, as it relates to employee participation and adherence to treatment recommendations, such as the following:

- Whether the employee is participating in treatment recommendations;
- Whether the employee needs to be off work while they adhere to the recommendations;
- A timeline of when the provider projects that the employee may be ready to resume duty;
- Announcement that the employee is authorized by the provider to resume duty; or
- Any limitations, accommodations, or additional actions that may be needed by the employee

***Written consent from the employee is necessary for personal information to be shared between the employer and the treatment provider.*** If the offeree or employee does not consent to their information being shared (i.e., participation and adherence to treatment recommendations), the employer may consider it a failure to adhere to the program.

## Return-to-Work Recommendations

Typically, the return-to-work recommendations and stipulations are included in a letter or a standardized form provided by the treatment provider. When an employer selects or works with a provider, the employer should ask about how the provider handles this. Best practices include:

- A written return-to-duty clearance;
- Recommendations for the employee;
- Documentation of workplace readiness for the offeree or employee; and
- A statement that the employee may safely return to work

The recommendations may also reference additional terms mentioned in the agreement between the employer and the offeree or employee. For offerees who are not recommended for further treatment, a negative drug screen can resume the hiring process. For employees who are not recommended for further treatment, the qualified treatment provider can authorize them to return to work.

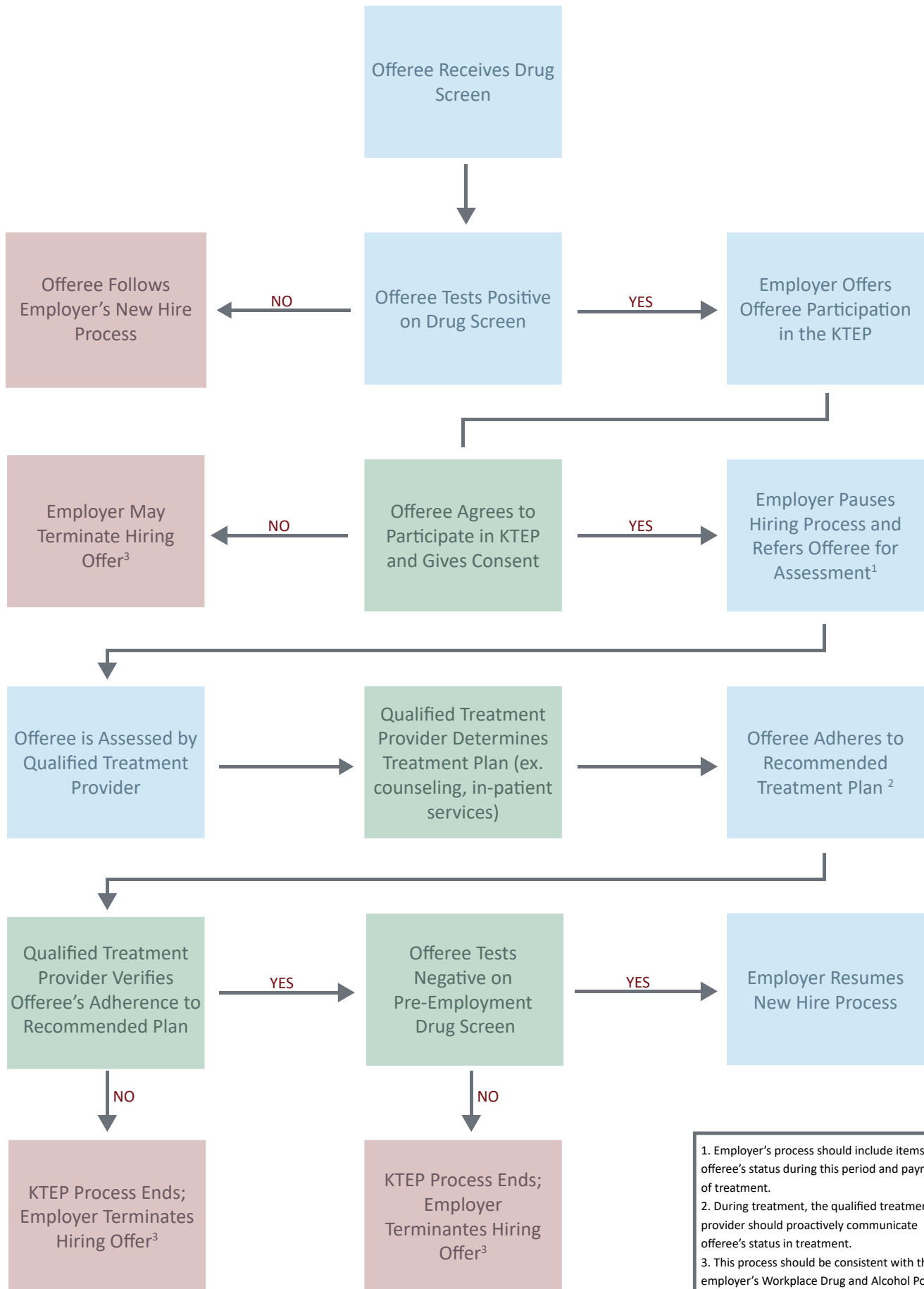
## Additional Violations

If an employee refuses to complete an assessment or does not adhere to the provider's treatment recommendations, the employee may be terminated. Under SB 191, an employer may terminate or offer KTEP again to an existing employee for additional positive drug screens.

In either of these cases, the employer should determine their written policy before a situation presents itself and

should include those guidelines in their written policy. Of course, all consequences should be standardized and consistently applied – especially within the same workforce classification.

**Figure 1.1: Process for Offerees Participating in KTEP**



1. Employer's process should include items like offeree's status during this period and payment of treatment.  
 2. During treatment, the qualified treatment provider should proactively communicate offeree's status in treatment.  
 3. This process should be consistent with the employer's Workplace Drug and Alcohol Policy.

**Figure 1.2: Process for Existing Employees Participating in KTEP**



1. Employer's process should include items like employee's status during this period, disciplinary actions, and payment for treatment.
2. During treatment, the qualified treatment provider should proactively communicate employee's status in treatment.
3. Depending on the recommended plan, the employee may be eligible to return to work while completing treatment.
4. This process should be consistent with the employer's Workplace Drug and Alcohol Policy.
5. This process may include reasonable accommodation for the employee.

# Policy Guidance

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The employer should operationally structure the administrative steps and protocols of the company's KTEP in a written policy for management to follow consistently.

## Written Agreement

As the individual is going through KTEP, there should be a written agreement between the employer and the individual to communicate expectations and support the interests of all parties. The terms of the arrangement should be outlined in this participation agreement and signed by the offeree or existing employee as well as the employer. This agreement should be a standard form created by the employer. Because it is a legal agreement that will intersect with all kinds of other authorities to which the employer is subject, the agreement should be fully reviewed and supported by the employer's legal counsel before implementation.

This agreement should include:

- A statement of understanding that this is an opportunity being granted to the individual following a workplace violation and completing the process is terms of employment;
- Identification and permission for an exchange of information between the employer and the treatment provider pertaining to the clinical assessment and referral, including the requirement that the employee/offeree consented to sharing treatment information pertinent to the employer;
- Permission for the employer to receive work-related reports about the employee such as information about employee timeline, limitations, or accommodations related to return to work;
- Specifics about who is to pay for services and any specific terms for any payment required from the employee;
- Acknowledgment that returning to work is contingent upon a written clearance from a qualified treatment provider;
- What alcohol and other drug screening will be required during and after the assessment;
- Acknowledgment that the employee is subject to meet the company's standards of conduct, job duties, and work standards applicable to all other employees;
- Consequences of another violation following the one for which the agreement is being signed;
- Circumstances under which the employee could be terminated or not return to work;
- Time off entitlements (if applicable); and
- Any other terms specific to the situation with the employee

In drafting this agreement, employers should consider and, where relevant, refer to any other authorities that could impact this agreement. For example, employers with 50 or more employees may be subject to the Family Medical Leave Act (FMLA). Of course, offering participation in KTEP will intersect with other corporate human resources policies and practices, such as time off, leave of absence specifics, and corporate entitlements (i.e. short-term disability benefits). Also, the offeree or existing employee may have to meet requirements of other authorities specific to the position (e.g. credentialing boards for medical professionals or state laws for specific industries.)



## Confidentiality

Regulations such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and 42 CFR Part 2 help protect the privacy of those participating in KTEP. The operational responsibilities of these regulations fall on those directly involved with providing, billing, or paying for the healthcare services (e.g., health insurance, addiction treatment providers). These entities must obtain written authorization from the offeree or employee to share certain confidential information with another party, including an employer.

Employers are subject to the Americans with Disabilities Act (ADA) and are responsible for maintaining the confidentiality of any disability-related information that is collected and may only disclose it under very limited circumstances. Therefore, employers need to have strict procedures in place to protect the privacy and confidentiality rights of their employees and adhere to these regulations.

Employers must be sure to:

- Secure any information including an employee's records involving drug test results, as well as assessment and treatment reports, in a confidential manner that is separate from any personnel files;
- Share this information internally only with those who are within the applicable chain-of-authority and need the information to perform their responsibilities in support of the employee; and
- Take care in adhering to the specifics when the employee has provided written authorization to disclose specific information to specific entities for specific purposes

## Compensation and Time Off

From the time that an employee is removed from duty, they are typically on leave until they are recommended to return to work by the provider.

If it is determined that the employee needs treatment for a substance use disorder that would keep them off of the job, the employer's written policy should outline what time off the employee is entitled to under applicable policies such as vacation, sick or personal time, short-term disability, and/or leave of absence policies, or the FMLA.

# Paying for Services

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Per SB 191, it is the employer's choice whether to pay none, a portion of, or all the costs for any of the services necessary for the offeree or employee following the clinical diagnostic assessment.

## Employer-Sponsored Insurance

According to the Substance Use and Mental Health Services Administration (SAMHSA), being under insured or uninsured is cited as the primary barrier to individuals getting substance use disorder treatment. By law, the Mental Health Parity and Addiction Equity Act (Parity Act) requires a health plan to apply equal coverage to mental health and substance use benefits as they do for other medical and surgical benefits. Therefore, individuals with healthcare insurance should have substance use disorder treatment coverage; however, the Parity Act is often difficult to monitor.

Employees covered by employer-sponsored insurance who are participating in KTEP should be encouraged to contact their insurance carrier to ask questions about their specific needs and circumstances. As navigating insurance coverage and treatment options can be difficult, particularly if the individual navigating is in active addiction, enrolling the assistance of a patient navigator may be a helpful service. In shopping for or investing in insurance, individuals and employers committed to providing adequate coverage for addiction treatment need to ask about things such as:

- What services, quality of care, outcomes, and stages of treatment and recovery are covered;
- Whether pre-authorization is required and who needs to issue that authorization;
- Recommended duration of treatment options, pending provider recommendations;
- How payment is structured, including deductibles, co-payments, coinsurance, and maximum out-of-pocket considerations; and
- In-network provider options as well as coverage and costs for out-of-network providers

For more information on best practices for designing benefits to support employees in the prevention, treatment, and recovery of substance misuse and substance use disorders, employers should reference the Kentuckiana Health Collaborative's [Opioids and the Workplace](#) employer toolkit.

## Medicaid

Some employees and offerees who are not covered under employer-sponsored insurance may qualify for free or low-cost health insurance through Medicaid or Kentucky Integrated Health Insurance Premium Payment (KI-HIPP).

While both options include coverage for those needing help with a substance use disorder, individuals still may have to pay some out-of-pocket expenses. If you have questions or to find out if someone may be eligible, visit [kynect.ky.gov](http://kynect.ky.gov) or call 1(855)306-8959.

## Wage Assignments

If the employer and the employee choose to assign the employee's wages to assist in paying for services, amounts may be deducted from the employee's wages to pay for a part of the employee's substance use disorder treatment services. The wage assignment cannot reduce the employee's remaining net compensation below the federal minimum wage at any time. The part of the KY Code that focuses on assignment of wages and requisites can be viewed in KRS 405.465.

# Identifying Assistance Providers and Plans

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A major element of KTEP, DFWP, or other written drug and alcohol policies is to have a plan for assistance that outlines where employees will be sent for an assessment following a positive test or other program violations. This plan should also be applicable for the employee who voluntarily asks for help for themselves or a family member. Ideally, this information will be published or posted in visible locations throughout the employer's work environment.

## Keys to Success

There are a variety of provider options for assessment and substance use disorder treatment. In selecting a provider, employers need to understand their benefits and what is available to their employees. Employers should also be mindful of these keys to success.

- The services must be high quality. Employers should seek out a [Behavioral Health Service Organization \(BHSO\)](#) and [Alcohol and Other Drug Treatment Entity \(AODE\)](#) credentialed addiction treatment service provider. The more knowledgeable and experienced the provider, the more accurate the assessment and successful the treatment.
- The services should involve options for behavioral therapies and Medications for Opioid Use Disorder (MOUD).
- Services need to be affordable and accessible to the employee.
- The provider should be willing to proactively provide regular progress reports to the employer.
- The services must be timely to assure the employee is cleared to return-to-work – healthy, safe, and ready to be productive – as soon as possible.
- The admission process should be transparent and should include what steps to take in the event intake is not possible due to capacity.
- The provider should be willing to provide follow-up recommendations to the employer.

Employers should establish a relationship with a provider or Employee Assistance Program that meets these criteria and keys to success in advance of KTEP participation. By having a pre-determined contact and process flow, referring offerees and existing employees for assessment and treatment can be a more effective process with less chance for disengagement, financial strain, or mistreatment.

## Provider Options

In selecting a qualified assessor and/or treatment provider, employers need to be critical shoppers to assure that their needs and the needs of their employees are met efficiently and effectively. Although an employer may set an employee up for their assessment, the employee has the ultimate decision on which treatment provider they want to work with. Assessment and referral options for employers may include Community Mental Health Centers, drug and alcohol counselors, private practitioners, treatment centers, or their employee assistance program.

Not all providers will be licensed to provide all substance use disorder treatments or assessments. It is the provider's responsibility to practice within their scope and licensure. For a list of addiction treatment facilities in Kentucky, visit the Kentucky Cabinet for Health and Family Services' [Provider Directory](#).

## Employee Assistance Programs

An Employee Assistance Program (EAP) serves two clients: the employee and the employer. Employees and family members have access to a contracted number of sessions with a counselor per problem, per year. During these sessions, the EAP will conduct an assessment, provide brief counseling, or refer the employee if there is a problem that requires more in-depth treatment (e.g., clinical depression, substance use disorder).

An employer can refer an employee to their EAP for an assessment as part of KTEP. If an employer has an EAP, they should opt to use their services as part of KTEP. If the EAP is unable to provide the recommended services to the individual, they can also research the employee's insurance and other benefits to find a treatment provider that is appropriate, affordable, and accessible to the employee.

If an employer has mandated this assessment, the EAP will provide a report about the assessment and subsequent recommendations and will continue monitoring the employee's progress until they return to work.

The cost of EAP varies, depending on employee count and other services included in the contract. A real benefit of EAP, since it is generally a pre-paid service, is that employees can reach out for services – confidentially and voluntarily – before there is a triggering critical incident.

Because the focus of EAP programs is to optimize mental health and emotional well-being to support personal and work-related issues, EAP contracts can produce positive returns in direct cost savings and even more savings in the indirect costs associated with poor work performance. Research indicates the typical return on investment for an EAP is three dollars or more for every one dollar invested. However, when selecting and contracting with an EAP, it is important for the employer to understand exactly what they can expect from the provider. For example, the contract should include:

- Specifics about what services are provided to employees and management (e.g., assessment, referrals, educational resources, case management);
- How often the EAP will provide a utilization report;
- How and how often the EAP will market their services to employees and their families;
- What the employer can expect when making a referral (e.g., average wait times, frequency of follow-up reports); and
- Network adequacy including culturally representative and competent care

# Accountability and Data Collection

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In order to measure short- and long- term investment and success from SB 191, the state will regularly collect data from participating employers. Employers should submit the following data on an annual basis from the date of program enrollment to the Kentucky Chamber Foundation at <https://kentuckycomeback.com/ktep/>.

- Number of individuals who accepted the offer to be referred for treatment assessment as part of KTEP
- Number of individuals who declined the offer to be to be referred for treatment assessment as part of KTEP
- Number of employees retained after completing KTEP
- Number of new hires gained after completing KTEP

This information is collected for information purposes only and will not be shared or distributed with entities external of KTEP.



# Resources

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A number of resources are available from trusted partners to assist employers in the successful implementation of this program.

- [Kentucky Chamber Foundation](#) | For individualized support for the implementation of KTEP, employers can reach out to the Kentucky Chamber Foundation at <https://kentuckycomeback.com/ktep/>.
- [Kentucky Cabinet for Health and Family Services Provider Directory](#) | This website provides information about behavioral health providers and addiction treatment facilities across the Commonwealth of KY.
- [Kentuckiana Health Collaborative \(KHC\)](#) | The KHC is an employer-led multi-stakeholder organization that works to improve community health, healthcare quality, equity, and affordability throughout Kentucky and Southern Indiana. Employers can contact the KHC for information and guidance on healthcare data and benefit design. Contact the KHC at [info@khcollaborative.org](mailto:info@khcollaborative.org).
- [Opioids and the Workplace Employer Toolkit](#) | The Opioids and the Workplace Employer Toolkit is a resource for employers that details best practice data analytics, benefit design, and workplace policies for employers to support their employees who are impacted by substance use or chronic and acute pain.
- [Kentucky Chamber Workforce Recovery Program for Business](#) | The Kentucky Chamber Workforce Recovery Program works with businesses to help audit existing policies and make recommendations for best practices to maintain a drug-free workplace while supporting a recovery-friendly culture.
- [Kentucky Comeback](#) | Kentucky Comeback is aiming to build a broad-based coalition to dramatically transform the state's approach to addiction and criminal justice in Kentucky.

# Implementation Checklist

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## Before

- ❑ Enroll in the Kentucky Transformational Employer Program (KTEP) at <https://kentuckycome-back.com/ktep/>
- ❑ Review the KTEP guidelines
- ❑ Complete the KTEP training videos
  - ❑ *The Impact of Substance Use In The Workplace*
  - ❑ *Preventing, Treating, and Supporting Recovery from Substance Use Disorder as a Chronic Brain Disease*
  - ❑ *Legal Considerations for a Recovery Friendly Workplace*
  - ❑ *Creating a Policy and Building a Culture That is Right for Businesses and Employees*
  - ❑ *How to Participate in the Kentucky Transformational Employment Program*
- ❑ Develop or revise a written drug and alcohol policy that complies with the KTEP guidelines
- ❑ Establish file retention processes for employees participating in KTEP
- ❑ Review current employee benefit offerings and determine opportunities for improvement
- ❑ Establish a relationship with a qualified treatment provider or existing EAP
- ❑ Review all proposed elements with employer and union leadership (if applicable) and legal counsel
- ❑ Share the program, policy, and processes with employees

## During

- Offer participation in KTEP to an offeree or existing employee after a positive drug screen
- Obtain signed consent from the offeree or employee authorizing the employer to provide and receive documentation confirming participation and completion in treatment services
- Refer the offeree or employee to a qualified treatment provider for assessment
- Determine how the written drug policy applies to employees, including leaves of absence and reasonable accommodation depending on the provider's recommendation
- If the offeree or employee needs treatment, establish communication with a treatment provider to be notified when they adhere to the given recommendations
- Administer a second pre-hire drug screen to the offeree or obtain a return-to-duty provider authorization for an existing employee

## After

- Submit required data to the Kentucky Chamber Foundation at <https://kentuckycomeback.com/ktep/> on an annual basis
- Internally evaluate business and employee population health outcomes

# Frequently Asked Questions

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## Senate Bill 191

### Where can I view Senate Bill 191?

To review SB 191 in its entirety visit: <https://apps.legislature.ky.gov/record/20rs/sb191.html>

### What is the benefit to me as an employer to implement the Kentucky Transformational Employment Program (KTEP)?

While the Commonwealth of Kentucky enacted SB 191 to foster economic opportunities for individuals impacted by substance use and to facilitate access to substance use disorder treatment, implementing KTEP will help increase the number of employable individuals in Kentucky, improve talent retention, and help support people with substance use disorders.

Adopting KTEP has many benefits for the employer, as well as employees and the broader community. Retaining and supporting prospective and current employees who may be impacted by substance use disorder can be a culturally, ethically, operationally, and financially sound decision.

It is also in an employer's best interest to protect both their workplace and their workforce with measures that help to prevent, access treatment, and support remission and recovery for employees impacted by substance use.

## Enrollment and Implementation

### How do I enroll?

Enrolling in KTEP is an easy process. Go to <https://kentuckycomeback.com/ktep/> to complete the enrollment form.

### If my organization enrolls, what are we expected to do?

After enrolling in KTEP, employers are expected to review these guidelines in depth and complete the complementary training videos. Once familiar with this content, employers can begin revising their policies and procedures to ensure that they are compliant with KTEP. Additionally, employers should evaluate their workplace culture to find ways to promote a recovery friendly culture.

Once offerees agree to engage in KTEP, employers are expected to facilitate a referral to an assessment and, if necessary, treatment and facilitate an employee's return to work once the program is completed. Compliance to employee privacy laws are required during this process.

On an annual basis, employers are expected to submit participatory data at <https://kentuckycomeback.com/ktep/>.

## Is there any assistance available for KTEP implementation?

For assistance in implementing KTEP, visit <https://kentuckycomeback.com/ktep/>. The Kentucky Chamber Foundation will assist in getting necessary information and resources.

## How do I complete training for KTEP?

The training videos related to KTEP implementation are available at <https://kentuckycomeback.com/ktep/>. Topics include: 1) *The Impact of Substance Use in the Workplace*; 2) *Preventing, Treating, and Supporting Recovery from Substance Use Disorder as a Chronic Brain Disease*; 3) *Legal Considerations for a Recovery Friendly Workplace*; 4) *Creating a Policy and Building a Culture That is Right for Business and Employees*; and 5) *How to Participate in the Kentucky Transformational Employment Program*.

## What happens if an offeree or current employee tests positive on a drug screen but chooses not to participate in KTEP?

If a person with a conditional offer of employment tests positive for illegal drug use, the employer should explain that the employment process will be suspended until the offeree completes the required steps of KTEP. If the offeree refuses to participate in KTEP, the employer can terminate the hiring process consistent with the employer's Workplace Drug and Alcohol Policy.

If an existing employee receives a drug screen (ex., post-accident, random, reasonable suspicion) and tests positive, the employee is offered participation in the KTEP process and is informed that adhering to the steps are terms of employment. The employer determines appropriate actions based on the employer's Workplace Drug and Alcohol Policy.

## What should be included in the drug and alcohol policy?

The components of a drug and alcohol policy should include the policy rationale and goals, expectations and compliance, consequences and appeals, and benefits and assurances.

For more guidance, watch the training video *Creating a Policy and Building a Culture That is Right for Business and Employees* or visit the [Workplace Policies](#) section of the [Opioids and the Workplace](#) employer toolkit

## What happens if an offeree or an existing employee who tests positive on a drug screen, agrees to participate in KTEP, but does not have a substance use disorder that requires treatment?

Following KTEP guidance, a qualified treatment provider will make a clinical assessment of the individual who tests positive on a screening for alcohol or other drugs to determine if the person needs treatment for a substance use disorder. If based on the clinical assessment, the provider determines the person does not have a substance use disorder that requires treatment, the employer can initiate another drug screening for an offeree. Time elapsed between the initial screening and second screening can be determined by the employer's drug and alcohol policy. If the offeree screens positive a second time, the employer can rescind the employment offer if compliant to the company's drug and alcohol policy. For an existing employee who tests positive but does not have a substance use disorder, the provider can provide a return-to-work authorization and recommendations.

Each employer may approach this situation differently in compliance with federal and state guidelines, specific industry regulations, and their drug and alcohol policy. Each employer's process should be standardized and

clearly stated in their drug and alcohol policy.

## **If someone cannot continue to work while receiving treatment for their substance use disorder, do organizations have to hold their position?**

Under Senate Bill 191, employers are expected to have a position available for an offeree or employee when they are ready to return to work. This may or may not be the same position that they were originally hired for.

## **Why does the state want participation data?**

Any information submitted to enroll in KTEP or to report yearly participation is used to track engagement and success of the program over time. It is not distributed to entities outside of the KTEP process.

## **Related Laws and Programs**

### **What liability do organizations have in case of an accident?**

SB 191 provides that employers will not be liable for a civil action alleging negligent hiring, negligent retention, or negligent acts by the employee because of an employee's substance use disorder if a standardized system, such as the best practices outlined in the KTEP guidelines, is in place.

### **What legal issues or authorities might relate to KTEP implementation?**

As with many workplace interventions, there are also legal considerations. Employers should familiarize themselves with relevant laws, consult their labor and employment attorney, and if relevant, their labor relations team. Here, employers will find the laws that they should be aware of as well as general guidance to potential issues.

For more information, watch the *Legal Considerations for a Recovery Friendly Workplace* training video or refer to the [Legal Considerations](#) portion of the [Opioids and the Workplace](#) employer toolkit.

### **How does KTEP impact a Drug-Free Workplace Program?**

Some industries are required to implement Drug-Free Workplace Programs (DFWP). KTEP is complementary to a DFWP. A comprehensive DFWP program includes five components that can be customized to the operations and culture of the employer's workplace and workforce, as determined by the Substance Abuse and Mental Health Services Administration (SAMHSA.) Find more information on the DFWP at <https://www.samhsa.gov/workplace>.

### **How is employee privacy protected during KTEP implementation?**

Regulations such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and [42 CFR Part 2](#) help protect the privacy of those participating in KTEP. The operational responsibilities of these regulations fall on those directly involved with providing, billing, or paying for healthcare services (e.g., health insurance, addiction treatment providers). These entities must obtain written authorization from the offeree or employee to share certain confidential information with another party, including an employer.



Employers must be sure to:

- Secure any information including an employee's records involving drug test results, as well as assessment and treatment reports, in a confidential manner that is separate from any personnel files;
- Share this information internally only with those who are within the applicable chain-of-authority and need the information to perform their responsibilities in support of the employee; and
- Take care in adhering to the specifics when the employee has provided written authorization to disclose specific information to specific entities for specific purposes

## Assessment and Treatment

### How do organizations determine where to send offerees or existing employees for assessment and treatment?

Employers should identify a partner for assessment and referral in advance of establishing KTEP. Partners should be critically evaluated to ensure services are high quality, evidence-based, affordable, accessible, equitable, and offer strong communication processes. Ultimately, it is the employee's decision where to go for treatment and assessment. However, by referring offerees and employees for assessment and treatment, the employer can create a more effective process with less chance for disengagement, financial strain, or mistreatment.

For more information on identifying high quality treatment providers, watch the *Preventing, Treating, and Supporting Recovery from Substance Use Disorder as a Chronic Brain Disease* training video or refer to the Kentuckiana Health Collaborative's [Opioids and the Workplace](#) employer toolkit.

### How will organizations know if the employee or offeree is adhering to the recommended treatment?

After someone is assessed and referred to treatment, it is important for the employer to stay informed about their progress. This highlights the importance of aligning with a treatment provider who fully understands the offeree's or employee's needs. Ideally, the provider is proactive in sending reports and return-to-duty paperwork. The employer should only ask for and receive information from the treatment provider that is of business importance and relevance, as it relates to employee participation and completion of treatment recommendations, such as the following:

- Whether the employee is participating in treatment recommendations;
- Whether the employee needs to be off work while they complete the recommendations;
- A timeline of when the provider projects that the employee may be ready to resume duty;
- Announcement that the employee is authorized by the provider to resume duty; or
- Any limitations, accommodations, or additional actions (e.g., follow-up testing frequency and duration) that may be needed by the employee

Written consent from the employee is necessary for personal information to be shared between the employer and the treatment provider. If the offeree or employee does not consent to their information being shared, the employer may consider it a failure to adhere to the program.

## Can a current Employee Assistance Program (EAP) program be used to implement KTEP?

Yes, if your organization has an EAP, you should opt to use their services as part of KTEP. An employer can refer an existing employee to their EAP for an assessment as part of KTEP. If necessary, the EAP can also research the employee's insurance and other benefits to find a treatment provider that is appropriate, affordable, culturally competent, and accessible to the employee. If an employer has mandated this assessment, the EAP will provide a report about the assessment and subsequent recommendations and will continue monitoring the employee's progress until the employee returns to work.

## Who is responsible for treatment costs?

Per SB 191, it is the employer's choice whether to pay none, a portion of, or all the costs for any of the assessment or services necessary for the employee following the clinical diagnostic assessment.

Treatment costs can be covered by employer-sponsored health insurance. Offerees or employees who are not covered under employer-sponsored health insurance may be eligible for Medicaid.

By law, the Mental Health Parity and Addiction Equity Act (Parity Act) requires a health plan to apply equal coverage to mental health and substance use benefits as they do for other medical and surgical benefits. For more information on best practices for designing benefits to support employees in the prevention, treatment, and recovery of substance misuse and substance use disorders, employers should reference the [Benefit Design](#) section of the Kentuckiana Health Collaborative's [Opioids and the Workplace](#) employer toolkit.

## Starting or Returning to Work

### What happens when the employee returns to work?

Typically, the return-to-work recommendations and stipulations are included in a letter or a standardized form provided by the treatment provider. When an employer selects or works with a provider, the employer should ask about how the provider handles these aspects of the work flow. Best practices include:

- A written return-to-duty clearance;
- Recommendations for the employee;
- Documentation of workplace readiness for the offeree or employee; and
- A statement that the employee may safely return to work

The recommendations may also reference additional terms mentioned in the agreement between the employer and the offeree or employee. For those who were assessed and not recommended for further treatment, a negative drug screen can initiate the return-to-work process or resume the hiring process for an offeree. Return-to-duty clearance from a provider can initiate the return-to-work process for an existing employee.

### How are additional violations handled?

Under SB 191, an employer may terminate or offer KTEP again to an existing employee for additional positive drug screens or self disclosure. The employer should determine their policy before a situation presents itself and

should include the guidelines in their written policy. Of course, all consequences should be standardized and consistently applied – especially with the same workforce classification.

## **Can someone participate in the program more than once?**

An offeree or employee can participate in the program more than once. The employer may also terminate the hiring process or employment if a KTEP participant tests positive on a drug screen after completing the assessment, referral, and treatment (if recommended). This is at the discretion of the employer and should be pre-determined in the drug and alcohol policy.