

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

WHAT IS AN ANSWER?

The employer will be served with a complaint from the Commissioner of Workplace Standards of the Commonwealth of Kentucky's Labor Cabinet. Before the case can proceed to the Attorney General's office for a hearing, the employer must respond to the Complaint. This response is called an *ANSWER*. **An answer is a different document than the "Notice of Contest" that the employer previously sent to the Labor Cabinet.**

The complaint will contain numbered paragraphs in which the Commissioner of Workplace Standards asserts factual statements and claims that the employer allegedly violated certain regulations governing work place safety and health. The answer should admit or deny each of these factual statements and claims. If the employer cannot admit or deny a factual statement or claim because it does not have the knowledge or information to do so, it must state that fact and the Review Commission will deem such a response as a denial. **Please be advised that the Review Commission will treat as true any claims not denied or deemed denied for lack of information or knowledge.** The answer must also assert any affirmative defenses that the employer intends to prove at the hearing, including, for example, statute of limitations and unpreventable employee misconduct defenses. The Review Commission warns that an improperly drafted answer may create adverse legal implications for the rest of the employer's case. For example, defenses not pled in the answer may be considered waived. Therefore, the Review Commission suggests that employers seek legal counsel to answer the complaint and preserve any available affirmative defenses.

An example is included in these materials to demonstrate the proper format of an answer. The answer must a caption containing the parties' names and case number. The answer must also be signed by an appropriate representative of the employer and certify that a copy was sent to the attorney for the Labor Cabinet who filed the complaint and any other parties in the case. Owners of sole proprietorships may prepare, sign and file an answer without the assistance of an attorney. Employers operating as corporations, limited liability companies or other artificial entities must file an answer and otherwise participate in proceedings before the Review Commission through a licensed Kentucky attorney. Please see "Attachment A" – KBA Advisory Ethics Opinion U-64.

The original of your Answer must be mailed to:

A copy of your Answer must be mailed to the attorney whose name is on the complaint at:

**KOSH Review Commission
#4 Millcreek Park
Frankfort, KY 40601**

**Kentucky Labor Cabinet
Workplace Standards Legal Division
Mayo-Underwood Bldg., 500 Mero St., 3rd FL
Frankfort, KY 40601**

***During the COVID pandemic, the Review Commission is also requiring employers to e-mail an electronic copy of the answer to the Review Commission using the e-mail address Jenny.Kays@ky.gov and to the attorney for the Labor Cabinet whose name and e-mail address should be stated below the signature block of the Complaint.**

WHAT HAPPENS NEXT?

After the answer is received by the Review Commission, the case will be forwarded to the Attorney General’s Office, Division of Administrative Hearings. When this occurs, the employer will receive formal written notice. The case will then be assigned to a hearing officer and scheduled for a telephonic prehearing conference. The hearing officer will discuss the case with the employer or its attorney and the attorney for the Labor Cabinet during the telephone conference. A date for the hearing of the case will be scheduled when it becomes obvious that the parties cannot reach a settlement. Employers and their attorneys may address any additional questions they might have about the pretrial process or the hearing to the hearing officer.

IMPORTANT ADDRESSES and PHONE NUMBERS:

KOSH Review Commission

#4 Millcreek Park
Frankfort, KY 40601
(502) 573-6892
(502) 573-4619 fax
Web: www.koshrc.ky.gov

Kentucky Labor Cabinet

Workplace Standards Legal Div.
Mayo-Underwood Building
500 Mero St, Frankfort, KY 40601
(502) 564-3070
Web: www.labor.ky.gov

Division of Administrative Hearings

Attorney General’s Office
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
(502) 696-5300
Web: www.ag.ky.gov/hearings.htm