

**367.4911 Excavator or person responsible for excavation to notify operator's notification center of work schedule -- Duties of entities responsible for excavation and demolition. (Effective January 1, 2022)**

- (1) (a) Each excavator, or person responsible for an excavation, planning excavation, or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, unless a future start date is agreed upon as provided in KRS 367.4917(7), notify each affected operator's designated protection notification center of the excavator's intended work and work schedule.
- (b) The two (2) full working days provided for in paragraph (a) of this subsection have elapsed if all affected operators have notified the person.
- (2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.
- (3) Each excavator shall provide each applicable protection notification center with adequate information regarding:
  - (a) Name and phone number of the excavator or person requesting the underground facility locate;
  - (b) Approximate location and type of work being performed by the excavator, including if the request involves a fiber-to-the-premises broadband deployment excavation;
  - (c) Name and phone number of work site contact;
  - (d) Estimated start date and start time of excavation; and
  - (e) The excavation or demolition site location or locations, each of which shall not exceed five thousand (5,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and street address, including the nearest cross street.
- (4) If more than one (1) excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.
- (5) The excavator shall inform and provide to excavation or demolition site employees:
  - (a) The underground facility location provided by each operator;
  - (b) Any related safety information provided by each operator; and
  - (c) The locate request identification number assigned by each protection notification center.
- (6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
- (7) If, after the response time provided by KRS 367.4909(5), the excavator finds evidence of an unmarked underground facility at the site, he or she shall immediately notify a protection notification center. When an excavator has complied with subsection (1) of this section and evidence of an unmarked

underground facility is uncovered, the operator shall have six (6) business hours to identify the underground facility.

- (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues or if:
  - (a) The markings of any underground facility have been removed or are no longer visible; or
  - (b) The excavator has changed the work plan or location previously filed.
- (9)
  - (a) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.
  - (b) Any individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, who conducts or is responsible for any excavation or demolition that results in underground facility damage to an underground facility or system used for producing, storing, conveying, transmitting, or distributing gas, petroleum, petroleum products, or hazardous liquids, shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.
  - (c) If the underground facility damage causes concern for public or workplace safety, the excavator, or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, shall notify appropriate public safety agencies of the location and nature of the safety concern.
  - (d) If the underground facility damage results in the escape or suspected escape of any flammable, toxic, or corrosive gas or liquid, the excavator, or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under KRS 367.4915, shall cease excavation or demolition activities and immediately report to the appropriate authorities by calling 911 emergency telephone number.
- (10) When excavation or demolition is necessary within the tolerance zone, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility, except that mechanized equipment may be used:
  - (a) To remove the pavement or other manmade hard surface if used during the initial penetration only to the depth necessary and if an individual other than the equipment operator visually monitors the excavation activity;
  - (b) To remove indigenous rock if used during the initial penetration only to the extent necessary, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility. However, if the underground facility contains flammable, toxic, corrosive, or hazardous products, the excavator

shall notify the facility owner of the excavator's intent prior to removing indigenous rock;

- (c) To remove materials that are more than twelve (12) inches in any direction from the outer edge of the located facility if the excavator visually identifies the precise location of the underground facility or visually confirms that no facility is present within the depth of the excavation, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility; and
  - (d) To place shores into an existing excavation or remove shores from an existing excavation.
- (11) Upon request by an operator or when the proposed excavation location cannot be accurately identified, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(10)(k). After marking the boundaries, the excavator shall contact the protection notification center or centers. The requirements of KRS 367.4909(5) to (11) are reestablished upon the operator receiving notification of this marking from the protection notification center or centers. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.
- (12) If an operator has failed to give a positive response within the timeframes provided in KRS 367.4909(5), the excavator shall submit a second notice to the protection notification center. If one (1) working day after receiving a second notice request as provided in KRS 367.4909(6), the operator has still failed to give a positive response, an excavator that has fully complied with this section shall not be deemed liable for any damages to an underground facility that would have been located if the operator had complied with the operator's duties under KRS 367.4909, except for damages to a person or an underground facility due to negligence or intentional misconduct of an excavator. This subsection shall not apply to any underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq.

**Effective:** January 1, 2022

**History:** Amended 2021 Ky. Acts ch. 80, sec. 3, effective January 1, 2022; and ch. 105, sec. 1, effective June 29, 2021. -- Amended 2018 Ky. Acts ch. 70, sec. 4, effective July 14, 2018. -- Amended 2015 Ky. Acts ch. 31, sec. 3, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 100, sec. 3, effective July 15, 2014. -- Amended 2012 Ky. Acts ch. 137, sec. 4, effective July 12, 2012. -- Amended 2008 Ky. Acts ch. 180, sec. 3, effective July 15, 2008. -- Amended 2000 Ky. Acts ch. 222, sec. 3, effective July 14, 2000. -- Created 1994 Ky. Acts ch. 425, sec. 6, effective January 1, 1995.

**Legislative Research Commission Note** (1/1/2022). This statute was amended by 2021 Ky. Acts chs. 80 and 105, which do not appear to be in conflict and have been codified together.