The background of the slide is a stylized illustration of a diverse crowd of people. The figures are rendered in various colors (blue, orange, green, purple) and are all wearing face masks. Some are looking forward, while others are looking to the side. The overall style is modern and graphic.

# CRISIS MANAGEMENT FOR COVID 19

## \*\*Special Session\*\*

### Phase 39: Updated Mask Guidance

*Presented by:  
Hanna Resource Group  
and  
Morris & Morris, PSC*

# INTRODUCTIONS



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# WHAT WE'LL COVER

1

Updated CDC Guidance,  
Vaccination, Mask Guidance,  
and COVID-19 Restrictions

2

Sample Communications



1

# Update on CDC, EEOC, OSHA, Kentucky Laws, and Company Policies and Procedures



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# 1 180° About-Face!

*On Thursday, May 13, 2021, the CDC Shocked Everyone, Reverses Course with “New” Guidance!*

**5/14: CDC announced “Interim Public Health Recommendations for Fully Vaccinated People”**

## **Key Points:**

- Resume activities without wearing masks or physically distancing
- Resume domestic travel and refrain from testing before or after travel, or self-quarantine
- Refrain from testing before leaving, and self-quarantine after, International Travel
- Refrain from testing and quarantine following a known exposure if asymptomatic
- Refrain from routine screening testing

## **Executive Summary Provided by CDC:**

- “Fully vaccinated people no longer need to wear a mask or physically distance ***in any setting***, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including business and workplace guidance”
- “Fully vaccinated people can refrain from testing following a known exposure unless they are residents or employees of correctional or detention facility or a homeless shelter”

# 1

## COVID-19 Vaccines

*EEOC Vaccine Refresher (December 16, 2020)  
(addressing applicability of EEO Laws, including ADA,  
Rehabilitation Act, GINA, and Title VII (pregnancy))*

“EEO laws do not interfere with or prevent employers from following CDC or other federal, state, and local public health authorities’ guidelines and suggestions”

- Administration of Vaccine by an employer is not a “medical examination” for purposes of ADA
- Pre-screening inquiries are subject to the ADA standards for disability-related inquiries
- Asking for or requiring proof of receipt of vaccination is not a disability-related inquiry
- Asking pre-vaccination screening questions before administering vaccine implicates GINA
- Must provide reasonable accommodations for religious beliefs unless an undue hardship
- If an Employee cannot get vaccinated because of a disability or religion, and there is no reasonable accommodation, then it would be lawful to exclude the employee from workplace.
- Title II of GINA is not implicated when an employer administers a vaccine to employees or requires employees to provide proof that they have received a COVID-19 vaccination

**What happens when CDC Pandemic Designation goes away? EEOC compliance reverts?  
When? What timeframe will Employers have? What immunity/liability will exist?**

# 1

## OSHA Guidance on COVID-19

### *OSHA'S January 29, 2021 Guidance regarding COVID-19, Masks, and Employee Protection*

- Recommends employers “[p]rovide all workers with face coverings (i.e., cloth face coverings, surgical masks)” at no cost “unless their work task requires a respirator.”
- Recommends employers “[r]equire any other individuals at the workplace (e.g., visitors, customers, non-employees) to wear a face covering,” with certain exceptions.
- Recommends employers make COVID-19 vaccines available at no cost to employees and that employers ensure vaccinated workers “continue to follow protective measures”

To date, no update or further guidance has been provided....

So, what is “required” or “recommended”?

Where is the Emergency Temporary Standard? (It has been put into final framework or announcement sometime after May 18, 2021). What impact does new announcement have on ETS? Why do we need ETS if masks are not required?



# 1 180° About-Face!

*On Thursday, May 13, 2021, the CDC Shocked Everyone, Reverses Course with “New” Guidance!*

**6/11: Kentucky Lifts Nearly All Mask Mandates**

**7/1: University of Kentucky returns to on-site work**

**CDC announced “Interim Public Health Recommendations for Fully Vaccinated People”**

## **Key Points:**

- Resume activities without wearing masks or physically distancing, except as above
- Resume domestic travel and refrain from testing before or after travel, or self-quarantine
- Refrain from testing before leaving, and self-quarantine after, International Travel
- Refrain from testing and quarantine following a known exposure if asymptomatic
- Refrain from routine screening testing

## **Executive Summary Provided by CDC:**

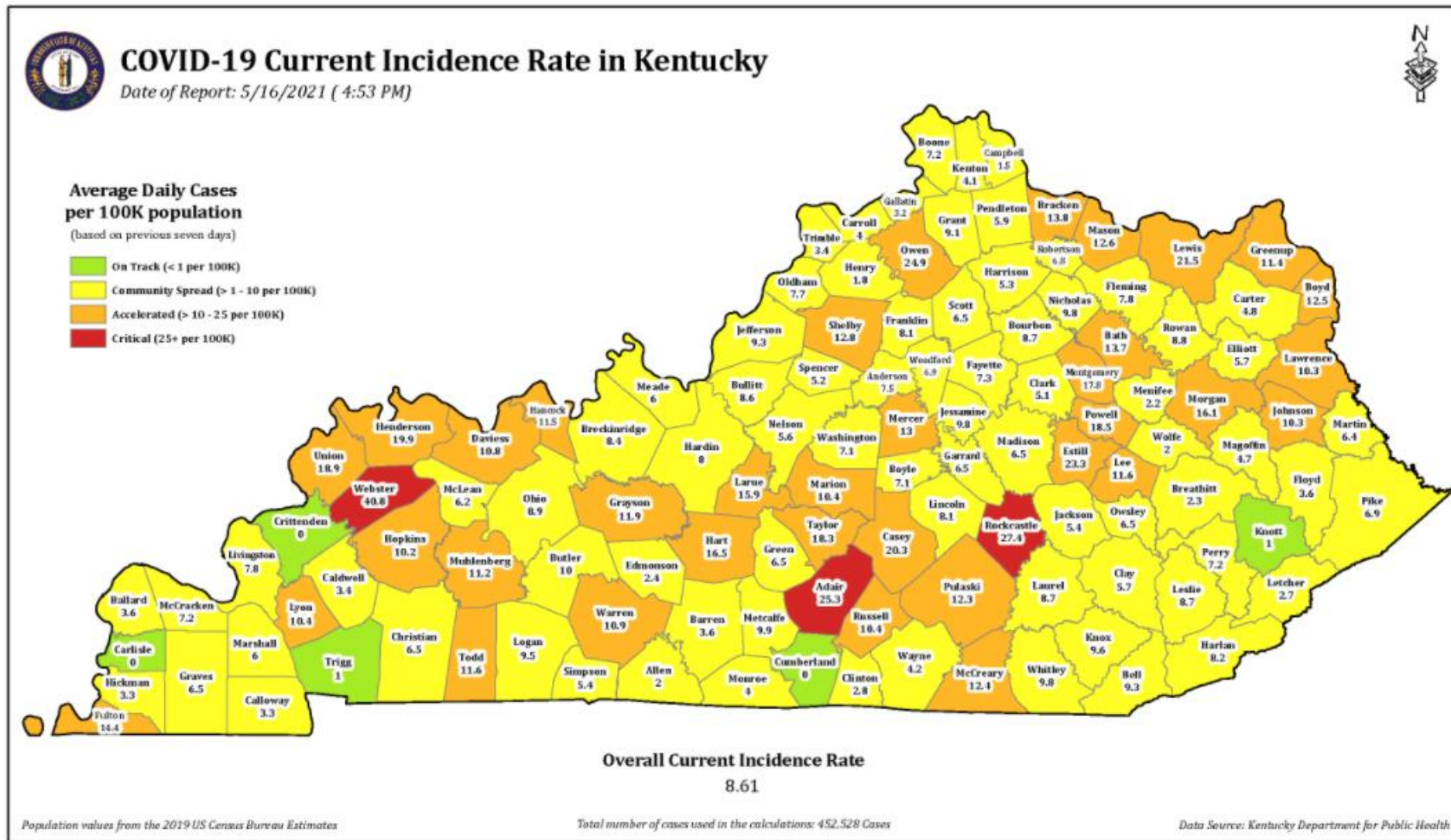
- “Fully vaccinated people no longer need to wear a mask or physically distance ***in any setting***, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including business and workplace guidance”



1

# Kentucky Daily Cases per 100k

## Kentucky COVID-19 Status as of 5/15/2021



# 1 Kentucky Vaccine Update



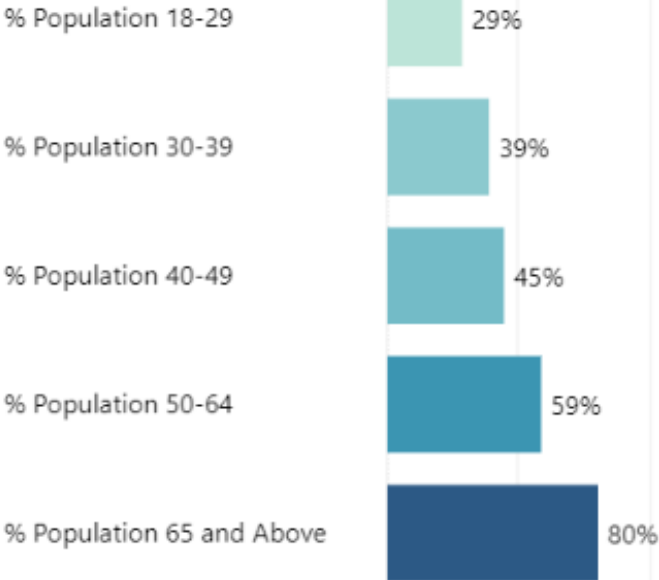
## Summary-At Least One Dose

Total State Population	4,440,204
Total State Population Vaccinated	1,908,850
% of Total State Population Vaccinated	43%
Total State Population Vaccinated $\geq$ 18 Years of Age	1,842,893
% of Total State Population Vaccinated $\geq$ 18 Years of Age	54%
Total State Population Vaccinated $\geq$ 65 Years of Age	554,194
% of Total State Population Vaccinated $\geq$ 65 Years of Age	80%

## First Dose Administered By Age Group

Population 12-17	20,089
Population 18-29	206,331
Population 30-39	219,223
Population 40-49	253,208
Population 50-64	527,401
Population 65 and Above	554,194
Population Unknown	82,536

## % First Dose Administered By Age Group



# 1 180° About-Face!

*On Thursday, May 13, 2021, Governor Beshear followed suit (with apparent prior notification) issued extensive changes to current Mask Mandate*

**5/13/21: Governor sent a tweet indicating “immediate implementation” of new guidance... but, then issued a new Executive Order**

- **Modifies all previous mask mandates**
- **“Any person who has received the final dose of a COVID-19 vaccine at least 14 days prior is not required to wear a face covering in any setting, except as set forth in this Order”**
  - **Must still wear a mask on all planes, buses, trains, and other forms of public transit**
  - **All K-12 educational facilities**
  - **Healthcare**
  - **Long-Term Care**
  - **Correctional Facility**
  - **Homeless Shelter**
  - **Immunocompromised**
- **Encourages all local, county and city government to adopt and incorporate EO requirements**
- ***Does not modify pre-existing Executive Orders .... Work, School, Bars & Restaurants, etc.!***

# 1 180° About-Face!

## *Ongoing Confusion on Kentucky's Mask Mandate!*

Kentucky's Healthy at Work Mandate Requires:

### Minimum Requirements

- Physical Distancing
- Facial Coverings
- Hand Washing and Sanitizing
- Ventilation
- Telework
- Common Areas
- Sanitation
- Daily Temperature/Health checks

Events with 1,000 or fewer persons in a single room or space are limited to the lesser of 60% capacity or the maximum number of individuals that permits appropriate physical distancing.

Events with greater than 1,000 persons in a single room or space are limited to the lesser of 50% capacity or the maximum attendance that permits appropriate physical distancing.

# 1 Kentucky Mask Status

*With the conflicting Tweets, Declarations, Executive Orders, and Announcements, what applies?!*

- **Kentuckians must still wear masks while indoors at public facilities and outdoors when in crowds of more than 1,000**
- **Healthy at Work has not been amended**
- **Healthy at School has not been amended**
- **Current Executive Order does not address restaurant and bar limitations on capacity**
- **Until May 28, all Kentucky bars and restaurants are still required to abide by a curfew; no bar seating is available; capacity is limited to 60%**
- **After May 28, and until June 11, curfew will be lifted; bar seating will be allowed; capacity will be limited to 75%. Masks will still be required**
- **Until May 28, venues with more than 1,000 people are limited to 50% capacity**
- **After May 28 until June 11, venues with more than 1,000 people can increase to 60% capacity**
- **On June 11, nearly all mask mandates will be lifted**

# 1 Kentucky Mask Status

## *Local and National Business Reactions to De-Masking Mandate*

**The impact of the Governor's and CDC's directives was immediate – if not still confusing:**

- **UK announced return to in-person work structure 7/1/21, and UL and WKU announced immediate lifting of mask mandate for vaccinated individuals on campus**
- **Costco, Publix, Sam's Club, Simon (Mall owner throughout US), Trader Joe's, and Walmart, all no longer require masks for vaccinated customers**
- **Starbucks is now “optional for vaccinated customers beginning Monday, May 17, *unless local regulations require them by law*”**
- **Target, CVS, Macy's, and Walgreens are still “evaluating the CDC Guidelines”**

**Problem for Kentucky establishments is the ongoing confusion between the Governor's tweets, versus his “Mask Order” versus his “Healthy-At-Work Order”! These state-by-state delays in cleaning up policies are creating confusion, delay, and broad-based announcements from different organizations:**



# 1 How companies are handling

## *Costco Policy Announcement*

Based on this new guidance regarding vaccine effectiveness, beginning May 14, 2021, we are modifying our policy regarding face coverings in some U.S. Costco locations.

### **U.S. locations with no state or local mask requirements - revised policy**

In Costco locations where the state or local jurisdiction does not have a mask mandate, we will allow members and guests who are fully vaccinated to enter Costco without a face mask or face shield. We will not require proof of vaccination, but we ask for members' responsible and respectful cooperation with this revised policy. Face coverings will still be required in healthcare settings, including Pharmacy, Optical, Hearing Aid. Costco continues to recommend that all members and guests, especially those who are at higher risk, wear a mask or shield.

### **U.S. locations with state or local mask requirements - no policy change**

In those Costco locations where the state or local jurisdiction does have a mask mandate, we will follow the state or local regulations and continue to require members and guests to wear a face mask or face shield. Children under the age of 2 are exempt. If a member or guest has a medical condition that prevents them from wearing a mask, they must wear a face shield.



# 1 How companies are handling

## *Walmart Policy Announcement*

**On May 14, 2021, Walmart issued a corporate press release to all Walmart Field Associates:**

**First, Walmart addressed Vaccination Incentives:**

- “\$75 incentives to U.S. field associates as a thank you for getting vaccinated”
- Applies to all current U.S. Walmart, Sam’s Club and Supply Chain associates below the level of facility manager
- Applies to everyone who has already been fully vaccinated and those who get vaccinated in the future
- Must provide proof of vaccination, and the \$75 will be added to paycheck after it is processed.

**Secondly, Walmart addressed mask mandates:**

- “Based on the latest CDC guidance, fully vaccinated associates will not need to wear a mask” starting 5/18
- “Fully vaccinated” means it has been two weeks since a person received final dose
- Applies to all facilities, including stores, clubs, distribution centers, fulfillment centers and offices.
- Unvaccinated associates must still wear face coverings, per CDC guidance.
- Walmart is still reviewing whether masks may still be required for certain job codes for health and sanitation

**Finally, Walmart Customers are no longer required to wear a mask – pending local policies**

- Beginning 5/14, vaccinated customers and members are welcome to shop without a mask
- However, masks will also continue to be required by some city and state ordinances

# 1 How companies are handling

## *Disney World Policy Announcement as of 5/14/21*

In line with today's decision by Orange County Mayor Jerry Demings to [lift the outdoor mask requirement](#), Walt Disney World has modified its face mask policy to state that masks are no longer required outdoors.

The new rules take effect on Saturday, May 15, 2021.

Please note that the Centers for Disease Control and Prevention [guidelines](#) still recommend that unvaccinated people wear masks indoors and outdoors with just a couple of exceptions.

Disney is also reminding guests that neck gaiters, open-chin triangle bandanas, and face coverings containing valves, mesh material, or holes of any kind are not acceptable face coverings based on guidance from health authorities.

Face coverings are required for all Guests (ages 2 and up) and Cast Members. Please bring your own face coverings and wear them in all indoor locations, except when actively eating or drinking while stationary and maintaining appropriate physical distancing. Face coverings are optional in outdoor common areas at Walt Disney World Resort, but are still required upon entering and throughout all attractions, theaters and transportation.

# 1 How companies are handling

## *Kroger, Home Depot, and Meijer (Non)-Response to CDC Mask Policy*

On Friday, May 14, 2021, Kroger issued an official Press Release, stating:

- “At this time, The Kroger Family of Companies continues to require everyone in our stores to wear masks”
- “As we have throughout the pandemic, we are reviewing current safety practices, the CDC’s latest guidance, and soliciting feedback from associates to guide the next phase of our policy”
- Kroger is also offering a one-time \$100 payment to employees who choose to get vaccinated

Following suit, Meijer Grocery Stores, announced, on Friday, May 14, 2021:

- “While we are aware of new CDC guidance, many state or local orders in the Meijer footprint remain in effect regarding masks. In order to help ensure the continued health and safety of all its team members and customers, Meijer continues to require face coverings by anyone entering a Meijer store”

Likewise, Home Depot announced, on Friday, that its stores would also continue with mask requirements

Many national organizations appear to be taking a “wait and see” approach – or else, their legal departments were caught off-guard, and are attempting to determine proper compliance strategies

# 1 Employer Considerations

## *So, what should Employers Do with regard to Mask Mandates?!*

With all of the confusion regarding the CDC's announcement, and the Governor's announcements, employers who are interested in relaxing mask requirements in the workplace should consider:

1. Check state and local laws and orders, because CDC is not the final authority
  - For Kentucky-based establishments, this means requiring indoor face mask policies, social distancing, and 60% capacity
  - Check local ordinances for additional limitations and policies
2. OSHA has not yet come out with new guidance. Its current policy recommends that all employees must continue to follow protective measures such as wearing a face mask and remaining physically distant
  - Although OSHA's guidance is several months old, it is still under a Presidential Order to create new "Temporary Emergency Standards" – so companies must be ready to follow on zero notice
3. Employers need to determine whether removal of masks and physical distancing will negatively impact customer experiences
  - May need to maintain a consistent policy throughout locations (Kroger, Home Depot, Meijer)
4. Employers need to carefully consider ramifications of vaccination policy (enforcement pitfalls/liability)
5. Create a formal policy, in either event, and properly document policies in accordance with ADA/EEOC
6. In the case of union, or unionization effort, consider impact of union CBA on mask mandates



2

## Sample Communication



**Lyle S. Hanna SPHR,  
SHRM-SCP**  
*President and CEO  
Hanna Resource Group*

## 2 Sample Communications

### ***COVID 19 MASK POLICY - Sample***

Our COVID-19 mask policy will now be optional for employees who are fully vaccinated and who choose to provide proof of vaccination. This change will be effective Monday, May 17. Masks continue to be required for those who are not vaccinated and those who prefer not to disclose their vaccination status.

Employees who choose to provide proof of vaccination may provide documentation (such as a COVID-19 Vaccination Record Card, or similar documentation from a pharmacy or vaccine provider) by scanning a copy to HR or providing a print copy. *It is important that employees do not provide any other medical information as part of proof of vaccination verification.*

There is no better way to crush the pandemic in coming weeks than to persuade the vaccine-skeptical to get a shot. It is the best way for them to protect themselves from the risk of Covid hospitalization and death. “If you are not vaccinated, you are not safe,” Dr. Rochelle Walensky, the C.D.C. director, [said yesterday](#). More vaccinations are also the best way to protect children and the immunocompromised. (New York Times, 5/17/21)



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