A stylized illustration of a diverse group of people of various ages, ethnicities, and professions. The illustration is split vertically: the left half is in shades of blue and purple, and the right half is in shades of orange and yellow. The people are depicted in a flat, modern style with simple facial features and varied clothing.

CRISIS MANAGEMENT FOR COVID 19

Phase 43: Employer Responses to COVID Changes, & What You Need to Know About the \$1T Infrastructure Bill

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

INTRODUCTIONS



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WHAT WE'LL COVER

1

Employer Responses to
COVID Changes

2

\$1T Infrastructure Bill,
and Legal and
Regulatory Updates



1

Employer Responses to COVID changes



**Lyle S. Hanna SPHR,
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COVID 19 & Vaccines

CORPORATE STRATEGIES

- Mandate Vaccines
- Signed documents for religious or medical exception
- Must wear mask indoor if not vaccinated
- Must show negative test results weekly (or 72 hours)
- Masks optional in small group areas with consensus
- Vaccinated employees must closely watch symptoms and take proper precautions if symptoms arise
- If symptomatic, stay home!

[SHRM - Link to Video Here](#)

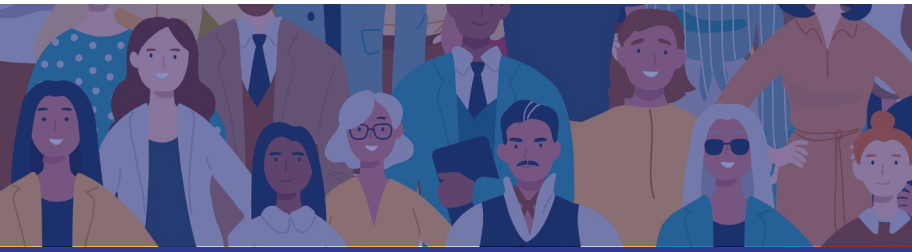
[AMAZON- Link to Video Here](#)

[SHRM - Alternate Link](#)

COVID 19 & Vaccines

CORPORATE STRATEGIES

[SHRM - Alternate Link](#)



1

Employer Responses to COVID changes



Joseph Bongiovi
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1

Employer Responses to COVID changes



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A colorful illustration of a diverse group of people of various ages and ethnicities, smiling and standing together. The illustration is positioned at the top left of the slide, partially overlapping the blue background.

2

Legal Update and Guidance



James M. Morris, Esq.

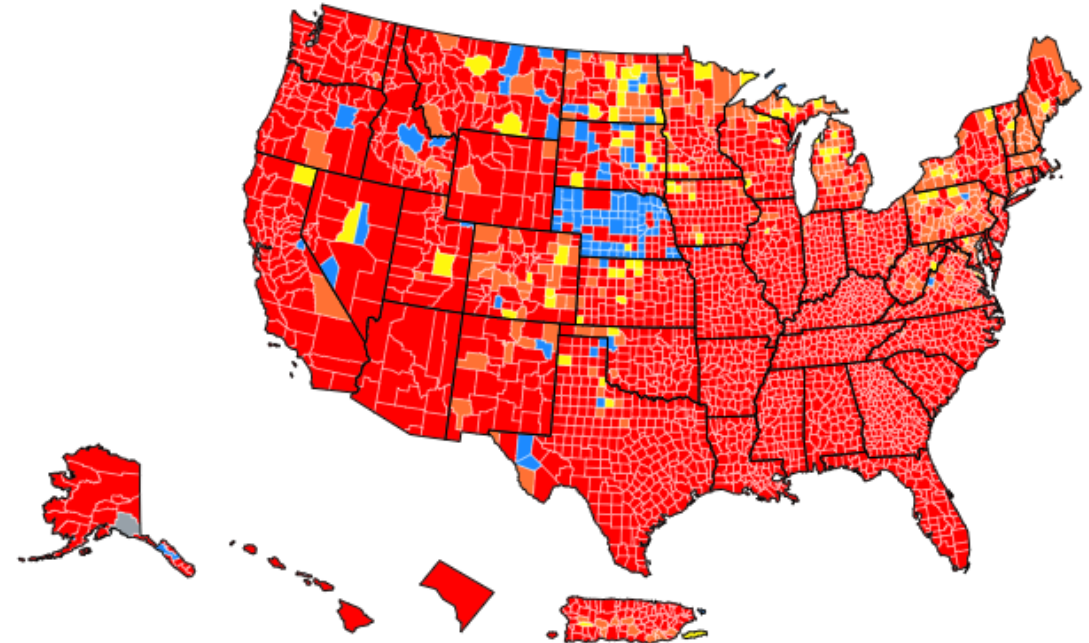
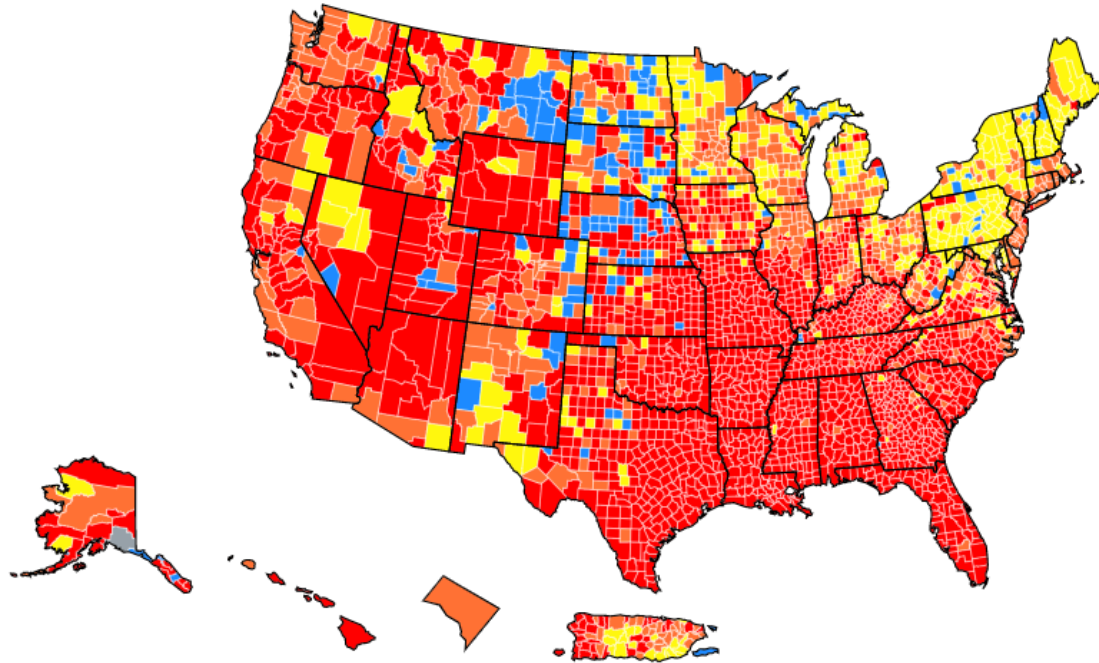
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2

Mass Changes to Mask Guidelines

CDC Mapping and Illustrations

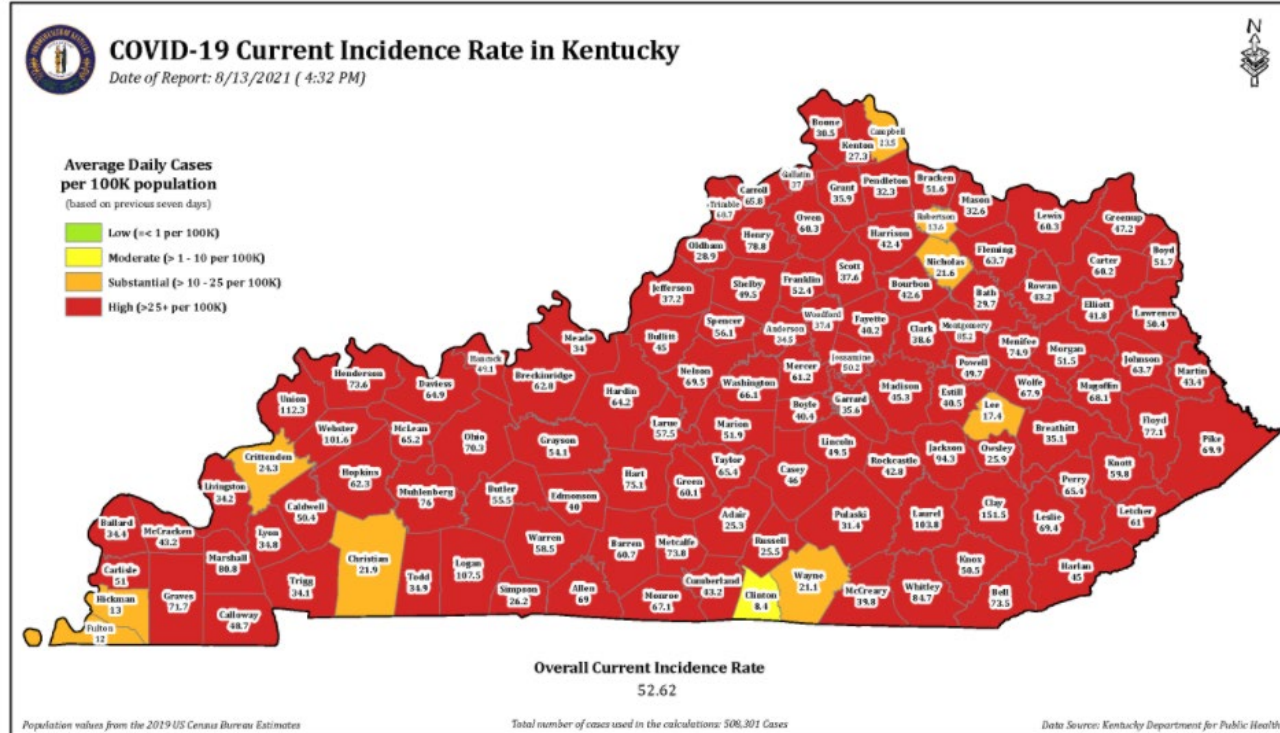
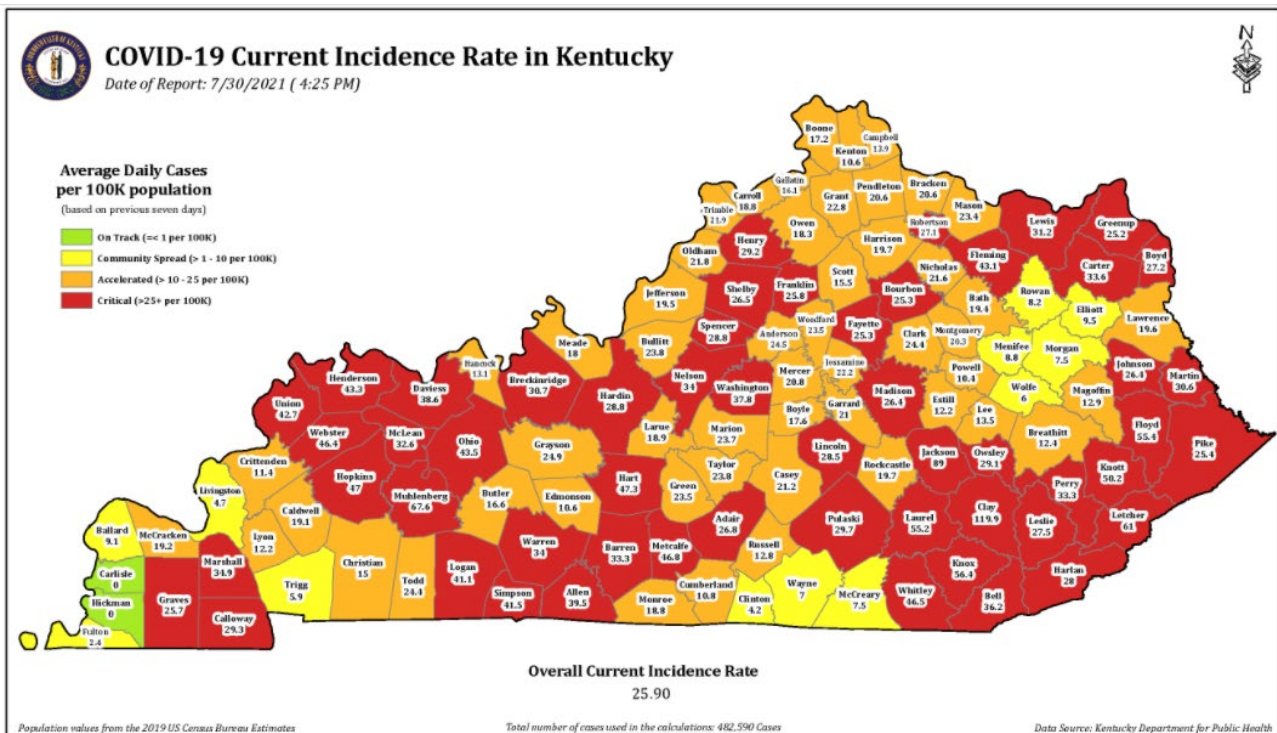
Comparing August 2 to August 16



2 Kentucky's Changed Status

Like much of the country, Kentucky is drastically changing from Orange and Yellow to Red

Comparing August 2 to August 16



2 Kentucky's Changed Status

New Recommendations for Red Zone Counties to attempt to reduce the current trend:

RED ZONE REDUCTION RECOMMENDATIONS

- **Increase vaccination efforts** to reach unvaccinated persons
- **Encourage masking as an effective way to reduce spread**
- Encourage **physical distancing** and **maximize usage of outdoor spaces for gatherings**
- Encourage **medically vulnerable persons to avoid social activities with unvaccinated persons**
- **Consider postponing large public events**
- Engage **community partners and stakeholders to implement a strong communication plan**

2 Legal Challenges for Employer Mandates

7/27/2021 CDC Guidance Raises Additional Questions and Concerns

- CDC announced guidelines that fully-vaccinated people mask in all “public indoor settings” in areas of high and substantial COVID-19 transmission.
- This guideline has created substantial confusion over what “public indoor settings” means and whether workplaces qualify as “public indoor settings”
- OSHA has now spoken.... Unfortunately, the guidance is not clear even as to which workplaces the masking recommendation applies

2 Legal Challenges for Employer Mandates

OSHA and CDC Confusion

New “recommendations” for fully vaccinated workers in areas of substantial or high community transmission wear masks ... to protect unvaccinated” and if employees are around COVID-19, they should be required to wear masks for up to 14 days or a negative test at least 2-5 days after contact

“Recommendations” are “advisory in nature and informational in content” and “intended to help employers and workers who are located in areas of substantial or high community transmission who should take appropriate steps to prevent exposure and infection regardless of vaccination status”

With OSHA, there is no such thing as a “recommendation.” Remember, Employers ALWAYS have a General Duty to implement appropriate steps to protect Employees from a “recognized hazard”

As a practical matter we would expect OSHA to consider masks as “required” in areas of “substantial or high community transmission.”

2 Legal Challenges for Employer Mandates

8/13/2021: OSHA Provides Confusing Mask Update in the Absence of ETS

- The ***executive summary*** says, very generally, “Fully vaccinated people in areas of substantial or high transmission should be required to wear face coverings inside.”
 - That recommendation does not appear in the main body that it supposedly summarizes
 - Instead, the body mentions the CDC’s recommendation in the context of OSHA’s suggestion that employers supply employees with face coverings, but does not adopt the CDC Guideline
- The ***Appendix*** then provides a much narrower interpretation, stating “Employers should take additional steps to mitigate the spread of COVID-19 among unvaccinated or otherwise at-risk workers due to the following types of workplace environmental factors, especially in locations of substantial or high transmission [per the CDC’s guideline].”
 - Lists workplaces that pose a “heightened risk [of COVID-19 transmission] due to workplace environmental factors” as “manufacturing; meat, seafood, and poultry processing; high-volume retail and grocery; and agricultural processing settings.”
 - Then recommends to go beyond the “general precautions” provided in the main guidance, including to “[r]equire ... fully vaccinated workers in areas of substantial or high community transmission, to wear masks whenever possible, [and] encourage and consider requiring customers and other visitors to do the same.”

2 Legal Challenges for Employer Mandates

OSHA and CDC Confusion

So, where does that leave an Employer that (1) is not in one of those listed “heightened risk” industries, or (2) is outdoors, or (3) includes only vaccinated, not-at-risk employees, or (4) is not located in an area of substantial or high community transmission?

OSHA seems to suggest that an employer need not require masks of fully-vaccinated employees
HOWEVER:

- OSHA has not adopted the CDC Guideline
- OSHA does not define “public indoor setting.”
 - OSHA only uses the term “public indoor setting” with regard to “public-facing workplaces such as retail establishments”
 - OSHA does not reference employee masking in “public indoor settings,” only Customer masks

OSHA leaves numerous unanswered questions:

- When and where masks are required
- An employer who knows that employees at its heightened-risk workplace are fully vaccinated, but does not know who may be at-risk could violate ADA by inquiring. If the employer “assumes” employees are at risk, it could cause additional liability.

2 Legal Challenges for Employer Mandates

Managing Vaccinated and Unvaccinated Employees

Employers may encourage and mandate vaccination against COVID-19, subject to exceptions for covered disabilities under the ADA/religious beliefs. The EEOC confirmed this position.

- Except in Montana, policies that distinguish between vaccinated and unvaccinated employees are generally permissible (again, subject to medical and religious requests for accommodation).
- Employers can require unvaccinated employees to test themselves weekly, and require those employees to bear the cost of test kits, subject to minimum wage and pay deduction laws.
- Access to company property or company-sponsored events may be limited to the vaccinated
- Some employers have offered paid quarantine leave to vaccinated individuals, but not unvaccinated individuals (subject to local and state laws)
- Some employers have started adding health coverage surcharges for unvaccinated employees as a way to increase vaccination rates (like smokers, at \$20 to \$50 per month)
 - May affect employee morale
 - May constitute a program that would be covered by HIPAA Wellness Rules
- Reducing or deducting from employees' pay would typically be an improper deduction

On July 26, 2021, the IRS released Notice 2021-46 to provide additional guidance on the COBRA subsidy under the American Rescue Plan Act of 2021 (ARPA), updating the May 18, 2021 Notice:

- Available if the initial qualifying event was a reduction in hours or an involuntary termination of employment, and an election to remain on COBRA for an extended period due to a second qualifying event (e.g., a disability determination), even if election did not occur prior to 4/1
- Clarifies that eligibility for other group health coverage or Medicare disqualifies for COBRA subsidy
- The “common law employer” is “the current common law employer for AEI whose hours have been reduced or the former common law employer for those individuals who has been involuntarily terminated from employment.”

Actual Infrastructure:

- \$1.2 trillion for the building and repair of roads, bridges, ports, airports, public transit, broadband, power grid modernization, and other projects
- Also addresses climate changes by providing funding related to electric vehicles, alternative fuels, and carbon capture, shrinks red tape associated with major projects, and reduces pollution

What is not in the bill is more important to businesses:

- No PRO Act.
- Does not address paid leave, child care, Medicare expansion, unemployment insurance reforms, or other “social infrastructure” matters.
 - These issues are now being debated in the \$4,000,000,000,000 Relief Reconciliation Bill
- The Employee Retention Tax Credit (ERTC), established by the CARES Act and extended in the American Rescue Plan Act of 2021, will terminate early on October 1, 2021

Meanwhile, the Pregnancy Accommodation Bill (requiring accommodations) is now close to law. On August 3, 2021 the matter was overwhelmingly supported and sent to the Senate Floor for approval.

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