

A stylized illustration of a diverse group of people of various ages, ethnicities, and genders. They are dressed in a variety of clothing, including business attire, casual wear, and traditional garments. The illustration is positioned on the right side of the slide, partially overlapping the text area.

# CRISIS MANAGEMENT FOR COVID 19

## Phase 49: OSHA & Vaccine Mandate Updates!

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

# INTRODUCTIONS



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



**James M. Morris, Esq.**  
*Juris Doctor, MPA*  
*Morris & Morris, P.S.C*



**Tyler J. Morris, Sr. Esq.**  
*Juris Doctor*  
*Morris & Morris, P.S.C*



**Allison Pettrey**  
*SHRM-CP, PHR*  
*Manager HR Outsourcing*  
*HRG*



**Autumn Blakeman**  
*MBA, SHRM-CP*  
*Manager Assessments*  
*& Analytics*  
*HRG*

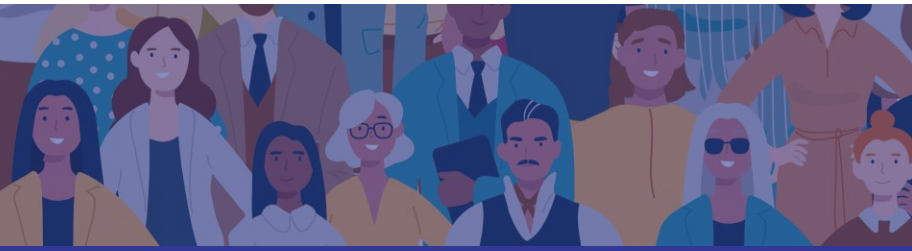


**Chase Adams**  
*M.S. SHRM-CP*  
*Mgr Organizational D*  
*evelopment*  
*HRG*

# WHAT WE'LL COVER

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Quick Hit Update:  
Vaccine/Mask Mandates Under Siege  
What Next?



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# Vaccine/Mask Mandate Updates



**James M. Morris, Esq.**  
Juris Doctor, MPA  
Morris & Morris, P.S.C



**Tyler J. Morris, Sr. Esq.**  
*Juris Doctor*  
*Morris & Morris, P.S.C*

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Courts Shut Down Mandate

*Courts Throughout the United States Have Issued Injunctions Against Each of the Mask/Vaccine Mandates*

Three Different Federal Mask/Vaccine Mandates have been issued:

1. OSHA Emergency Temporary Standard (ETS) affecting employers with more than 100 employees
  2. Safer Federal Workforce Task Force Mandate any employer issuing into contracts with the United States
  3. The Centers for Medicare and Medicaid Services' (CMS) interim final rule requiring vaccination of employees working in facilities receiving Medicare or Medicaid funding
- As predicted back in January, 2021, one by one, each of these Mandates have been rejected by Federal Courts throughout the United States.



## *Sixth Circuit Will Decide the Fate of OSHA's Enforcement of Mask/Vaccine Mandates*

- There is no ruling yet from the Sixth Circuit Court of Appeals on the consolidated challenges to OSHA's COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS)
- The Sixth Circuit has allowed briefing on whether to lift the Fifth Circuit Court of Appeals' stay of the ETS through December 10, 2021
- The stay is likely to remain in place until at least that date
- In response, OSHA extended the deadline for the public to submit comments in response to the ETS has been extended from December 6, 2021, to January 19, 2022.
- Nearly 94,000 comments on the ETS have already been filed with the DOL
- Ultimately, the issue will likely end up being heard by the United States Supreme Court

- On November 29, 2021, a Preliminary Injunction was issued by a Federal Judge sitting in Missouri, issued a Preliminary Injunction precluding enforcement of the Center for Medicare and Medicaid Services' (CMS) interim final rule entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination" for ten states
- On November 30, 2021, a Federal Judge sitting in Louisiana extended the Preliminary Injunction for all Fifty States
- Earlier, on November 20, 2021, a Federal Judge sitting in Florida declined to issue a Preliminary Injunction
- This fast-developing situation is being handled differently in the Fifth, Eighth, and Eleventh Circuits, and may end up being yet another "lottery" case

- On November 30, 2021, Judge Gregory Van Tatenhove, of the Eastern District of Kentucky entered a Preliminary Injunction preventing enforcement of Executive Order (EO) 14042 against federal contractors and subcontractors in Kentucky, Ohio, and Tennessee
  - Only applied the Injunction, pursuant to Sixth Circuit Precedent, to Kentucky, Tennessee and Ohio, but mentions that it impacts all states in a similar manner.
  - Nationwide stay has not yet been ordered
- We believe that it is just a matter of time before this, too, results in a nationwide preliminary injunction.



- The December 6 deadlines for employers covered by the ETS were as follows:
  - Put together a written company policy on vaccination.
  - Determine which employees are vaccinated and which are not.
  - Obtain proof of vaccination from the vaccinated employees, and maintain records and a roster of vaccination status.
  - “Provide support” for vaccination.
  - Require employees to notify the company promptly if they test positive
  - Require unvaccinated employees to wear proper face coverings when indoors
  - Provide all employees with how the company’s policy, and penalties
  - Report any work-related COVID fatalities or hospitalizations to OSHA within 24 hours

We are recommending that employers do the following while the stay remains in effect:

- Prepare written policy, establish appropriate procedures, and make announcement
- Determine whether to mandate vaccination (making exceptions for medical conditions or religion), or whether to allow employees to opt out of vaccination for other reasons, provided that they are willing to undergo weekly COVID testing.
- Create a process for dealing with reasonable accommodation requests.
- Determine how to best maintain records of vaccination, or for opting out of vaccination, and begin gathering proof of vaccine, as well as process for proof of testing (find third party vendor for COVID-19 testing)
- Take all of the other steps required to be in compliance with the 12/6/21 deadline
- Prepare all other written materials required by the ETS.
- Sixth Circuit will be the primary focus for the mandates in the coming weeks/months

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