An illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a mix of warm and cool tones. The text is overlaid on a dark blue vertical bar on the left side of the image.

# CRISIS MANAGEMENT FOR COVID-19

## Phase 28 - Week 32: Performance Management for COVID Times & Updated Guidance, Legal Changes, and Legislation

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

# INTRODUCTIONS



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# WHAT WE'LL COVER

1

Kentucky Supreme  
Court Weighs In,  
Kentucky's Ongoing  
COVID-19 Crisis,  
OSHA Guidance, and  
IRS Warnings

2

Performance  
Management for COVID  
Times



1

- Kentucky Supreme Court Weighs in on Executive Powers
- Kentucky's Ongoing COVID-19 Crisis
- Federal Updates



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## ***Kentucky Supreme Court Approves Governor Executive Orders and Limitations***

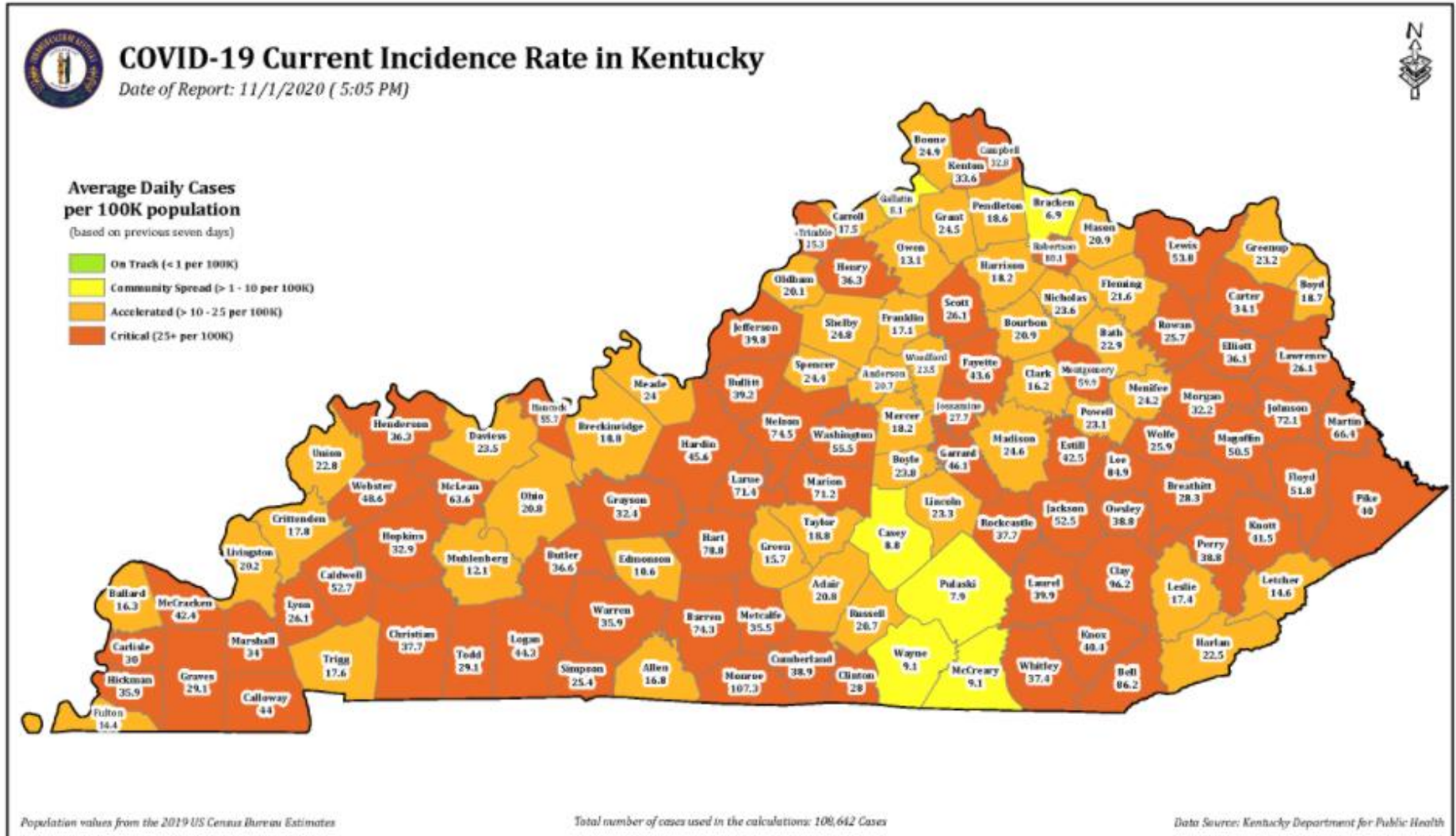
***On Thursday, November 12, 2020 the Kentucky Supreme Court issued a 103-page Opinion Affirming Beshear. The Unanimous Opinion (7-0) addresses the numerous questions posed by the emergency appeals as follows:***

- **Did the Governor Properly Declare a State of Emergency and Validly Invoke the Emergency Powers Granted to Him in Kentucky Revised Statute (KRS) Chapter 39A?**
- **“Yes... The Governor was authorized to act without deference to any determination by a local authority or emergency management agency.”**
- **Are the Governor’s Powers in the Event of an Emergency an Unconstitutional Delegation of Legislative Authority in Violation of the Separation of Powers Provisions of the Kentucky Constitution?**
- **“No... Kentucky has recognized the lawful delegation of legislative powers for decades, and we decline to overrule that precedent, especially in circumstances that would leave the Commonwealth without day-to-day leadership in the face of a pandemic affecting all parts of the state.”**
- **Was the Governor Required to Address the COVID-19 Emergency Solely Through Emergency Regulations Adopted Pursuant to KRS Chapter 13A?**
- **“No.... The General Assembly authorized the Governor to act through executive orders and regulations that supersede “[a]ll existing laws, ordinances, and administrative regulations.” KRS 39A.180(2).**

## *Kentucky Supreme Court Approves Governor Executive Orders and Limitations*

- **Do the Challenged Orders or Regulations Violate Sections 1 or 2 of the Kentucky Constitution Because They Represent the Exercise of “Absolute and Arbitrary Power Over the Lives, Liberty and Property” of Kentuckians?**
- “Yes... [but] only one subpart of one order regarding social distancing at entertainment venues that initially made no exception for families or individuals living in the same household...”
- The Supreme Court goes on to state that “several of the orders and regulations at issue were superseded or changed, rendering some of the challenges moot.” So, the Supreme Court declined to cover the issue....
- **Did the Boone Circuit Court Properly Issue Injunctive Relief Prohibited the Orders or Regulations?**
- “No... Even if some Plaintiffs arguably have established irreparable harm, that alone is insufficient to justify an injunction precluding enforcement of emergency orders and regulations directed to the protection of the health and safety of all Kentuckians.” [Emphasis in Opinion].
- **What this Opinion is not:** The Supreme Court addresses that this does not address the “face mask dispute,” nor does it address any “religious” challenges that had previously been addressed in Federal Court.
- **In many instances, the Supreme Court “punted” by pointing out that the Governor changed the Executive Order after the appeal was filed. The impact upon Kentucky businesses could be SUBSTANTIAL!**

# Kentucky's State-Wide COVID-19 As of 11/1/20







## KY COVID-19 Daily Summary 11/14/2020

<b>Total Cases*</b>	136,137
Confirmed	112,914
Probable	23,223
<b>Total Deaths*</b>	1,658
Confirmed	1,621
Probable	37
<b>Duplicates Removed**</b>	10

<b>Total New Cases Today</b>	3,303
<b>Total New Deaths Today</b>	11

\*Total cases and deaths include both confirmed and probable.

\*\*This number reflects duplicate cases and patients that did not meet case definition for confirmed cases.

## RED ZONE REDUCTION RECOMMENDATIONS

- Employers allow employees to **work from home** when possible
- Non-critical **Government offices to operate virtually**
- **Reduce in-person shopping**; order online or curbside pickup
- **Order take-out**; avoid dining in restaurants or bars
- Prioritize **businesses that follow and enforce mask mandate and other guidelines**
- **Reschedule, postpone or cancel public and private events**
- **Do not host or attend gatherings of any size**
- **Avoid non-essential activities** outside of your home
- **Reduce overall activity and contacts, and follow existing guidance**, including 10 steps to defeat COVID-19

**Age Distribution**  
**Does NOT include 'Unknowns'**

<b>Cases*</b>	<b>Age Range</b>	<b>Deaths</b>
5,457	<b>0-9</b>	1
15,259	<b>10-19</b>	0
26,357	<b>20-29</b>	1
19,990	<b>30-39</b>	10
19,678	<b>40-49</b>	29
18,652	<b>50-59</b>	95
14,806	<b>60-69</b>	257
9,232	<b>70-79</b>	445
6,641	<b>80+</b>	820

***Critical Information to keep in mind re: Death Rate***

Ages 0-29: 2 deaths out of 47,073 (.005%)

Ages 0-39: 12 deaths out of 67,063

Ages 0-49: 41 deaths out of 86,741

Ages 0-59: 136 out of 105,393 (0..13%)

Total Death Rate: 1,658 deaths out of 136,137

Percentage: 1.2%

\*Age given where age known

99.95%

1

## Kentucky Update From Federal Government

### *White House COVID-19 Task Force Kentucky Update (week ending 11/8/2020)*

Kentucky continues in the red zone for cases, 274 cases (**173 one month ago**) per 100,000 population, with the 21<sup>st</sup> highest rate (**21<sup>st</sup> one month ago**) in the country. Kentucky is now in the orange zone for test positivity, 24<sup>th</sup> highest rate nationally (**was 12<sup>th</sup> nationally**).

- Kentucky has been stable in new cases, and a decrease in test positivity rate over the last week.
- Jefferson, Fayette, and Kenton (replacing Warren)(31.8% of new cases (**41.5% one month ago**))
- 78% of all counties in Kentucky (**63% one month ago**), have moderate or high levels of community transmission (yellow, orange, or red zones), with 32% (**26% one month ago**) having high levels of community transmission (red zone).
- 27% (**14% one month ago**) of nursing homes had at least one new resident COVID-19 case, 40% (**31% one month ago**) had at least one new staff COVID-19 case, and 8% (**3% one month ago**) had at least one new resident COVID-19 death.







1

Kentucky Updates

*Kentucky's Potential Response – Limitations on Thanksgiving Holiday (subject to Governor's modification)*



# THANKSGIVING GUIDANCE

-  **Avoid in-person gatherings** with people who do not live in your household.
-  **Always wear a face covering or mask.**
-  **Maintain a social distance of at least 6 ft. or more.**
-  **Avoid large gatherings,** especially those held **indoors.**
-  **Do not host or attend crowded parades.**
-  **Avoid shopping in crowded stores** before, on, or after Thanksgiving.

## ***Governor Beshear Announces Potential Additional Actions in Response to Uptick in COVID-19 Cases***

On Saturday, November 14, 2020, shortly after the Supreme Court's Opinion affirming Governor Beshear's actions, Beshear announced potentially expanding the current protections, stating, during his daily briefing:

- **“If we don't grab ahold of those red zone county reduction recommendations, if we don't see those steps being done and ultimately see those numbers coming down, we are going to have no choice but to take additional steps as we move forward ... Please take this seriously. You are either a part of the solution fighting the good fight to help other people or you're helping to spread this virus.”**

Kentucky's “positivity rate” stands at 11.20%, and appears to reflect an upward trend. What does this mean?

- **The difficulty with the Supreme Court's limited Opinion, while cautioning that some of the actions were, potentially unconstitutional, the Opinion basically declares that the subsequent modifications to those Orders and Regulations made it “moot” or unnecessary to address.**
- **The problem for Kentucky businesses, however, is there appears to be another shut-down on the horizon**
  - **Imminent harm is no longer sufficient when compared to the health and safety of all Kentuckians**
  - **No current Federal monies available to assist Kentucky businesses**
  - **Colder weather, without outdoor areas, more confined locations, and spike...**

# 1 Reading the Tea Leaves of House, Senate & WH

## *Post-Election Disputes Continue....*

The latest from the tea leaves of COVID-19 relief packages:

- House Speaker indicated on Friday she wants the \$2T previous package voted on by Senate
- On Saturday, November 14, 2020, President Trump encouraged both parties to get back to the bargaining table
- Senate and House continue to be over \$1T apart
- Senate has suggested, instead, a short-term \$500B “Skinny Bill”
- House has rejected anything less than the \$2T previously on the table
- As no new talks have been scheduled, hopes of a resolution before the end of this year are fading, and businesses (and ultimately, the working class) will be the harmed parties

# 1 OSHA Issues new Guidance on Citations related to COVID-19

## ***On November 6, 2020, OSHA announced guidance related to COVID-19 Citations***

Guidance on understanding the most frequently cited violations found during COVID-19 inspections:

- Respiratory Protection
- Recording and Reporting Occupational Injuries and Illnesses
- Personal Protective Equipment and
- The General Duty Clause.

Examples given by OSHA for employer-based requirements include:

- Make sure to provide a medical evaluation before a worker is fit-tested or uses a respirator
- Establish, implement, and update a written respiratory protection programs and specific procedures
- Train/retrain workers to safely use respirators and/or other PPE in the workplace
- Store respirators and other PPE properly to protect from damage, contamination, & deformation
- Proper record-keeping of work-related fatalities, injuries, and illnesses



## 1 IRS Issues Warning on Phishing Scam

***On November 6, 2020, OSHA announced guidance related to COVID-19 Citations***

The IRS is warning consumers about a new COVID-19 text scam that could wipe out bank accounts

- The new phishing scam involves a text message that says: “You have received a direct deposit of \$1,200 from COVID-19 TREAS FUND. Further action is required to accept this payment into your account. Continue here to accept this payment ...”
- The text includes a link to a fake phishing web address.
- The IRS never solicits for bank or password information!

The IRS says people who receive the text scam should take a screenshot of the text message that they received and then include the screenshot in an email to [phishing@irs.gov](mailto:phishing@irs.gov) with the following information:

- Date/Time/Timezone that they received the text message
- The number that appeared on their Caller ID
- The number that received the text message

# Questions & Answers





2

## Performance Management for COVID Times



**Troy Landoch**  
*VP of Operations*  
*Hanna Resource Group*

TO REVIEW OR NOT TO REVIEW

# Performance Evaluations... What to do during Covid times?

Troy Landoch  
HRG - Vice President Operations  
November 16, 2020



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## POLL QUESTION #1

What do you think about performance reviews?

- A. I love them
- B. They are hit or miss
- C. They need some serious help
- D. They are completely useless



## HERE IS WHAT THE TWITTERSPHERE SAYS:

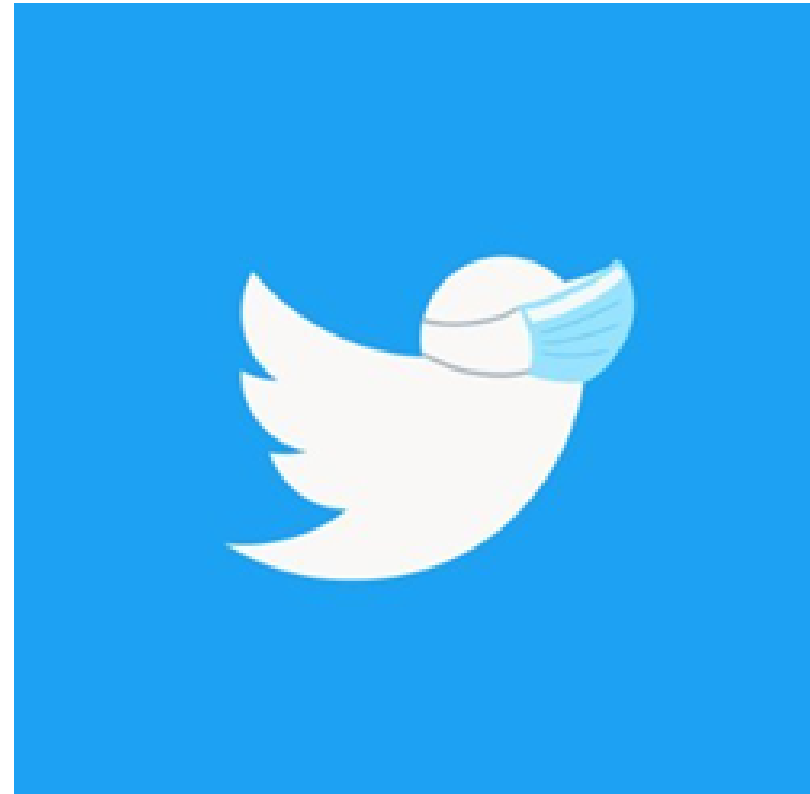
**@Fodando8:**  
Finished self-evaluation for annual review this afternoon. Can think only of going home and drinking. Was that the intended result?

**@pegtroph:**  
Didn't cry or yell during this year's performance review! #makingprogress

**@HRFella:**  
I enjoy the performance review process, said no HR person ever!

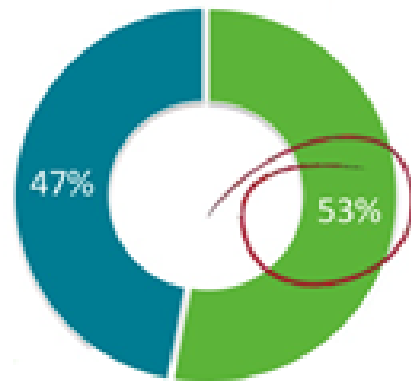
**@n\_dentl6:**  
Got my review and "work attire" was listed as a "strength". No mention of my actual performance. #Iwilltakeit

**@trevlev**  
I worked 60 hours a week and my evaluation was 6 minutes long. Hey boss, thanks for fitting me in your schedule! #now8to5



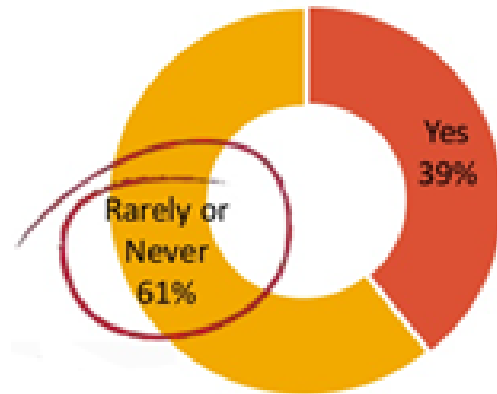
## AND THE RESEARCH CONFIRMS OUR FEELINGS

globoforce\*  
work human™



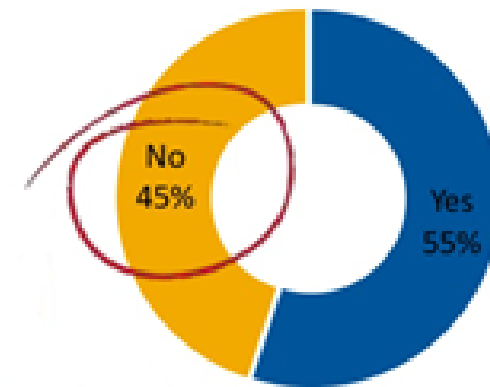
“More than half say performance reviews do not motivate them to work harder”

salary.com®  
The Power of You



“Do performance reviews lead to improved performance?”

SRM®  
BETTER WORKPLACES  
BETTER WORLD™



“Do you think annual performance reviews are an accurate appraisal for employees' work?”



## WHY IS IT SO CHALLENGING?

- An antiquated process, with fuzzy or no goals
- It's time consuming
- The employee experience is challenged
- The process kicks off at the end of the year

It's difficult...





## POLL QUESTION #2

Are you revising your performance management process this year?

- A. Yes
- B. No
- C. Not sure yet



# NOW IS THE TIME TO RE-EVALUATE

## Impact of COVID-19

- Remote workers
- Reduced hours
- Adjusted goals
- Furloughs
- Layoffs



# WORKPLACE BIASES



Organizations are more susceptible to biases that have negative impact on measuring performance!

## THE RECENCY BIAS

Bias toward  
overemphasis  
of recent  
behavior!



## THE PROXIMITY BIAS



Workers in the office get more done than those working from home!



# RATER BIAS

Leaders evaluate others based on their own skill level or are a “tough grader”!



## NEGATIVE BIAS



People focus on  
the negatives of a  
situation!



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# CHANGE THE QUESTIONS

pre-Covid-19

1. Did you reach your goals?
2. Are your behaviors aligned with company values?

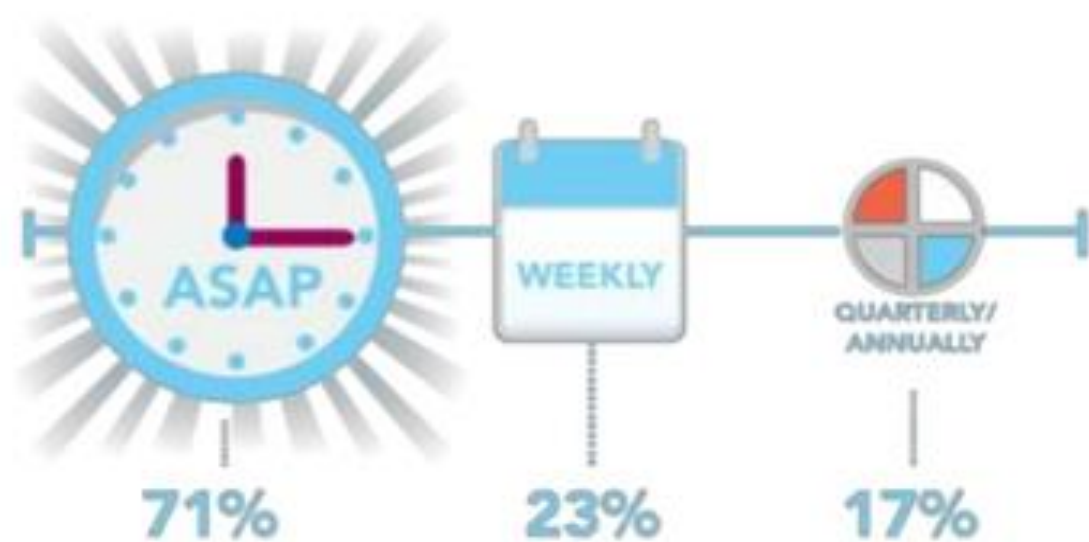
post-Covid-19

1. What are some additional tasks that you took on to get the company through the pandemic?
2. What skills or knowledge have you developed over the last year that enabled you to be successful?
3. How has the crisis allowed you to work on additional projects?
4. What challenge are you most proud of overcoming?
5. Have your career aspirations or development goals changed as a result of the pandemic?
6. Where would you like to see yourself grow?
7. How would you assess yourself this review cycle?
8. What would you do differently?
9. What have you learned?





## CHANGE THE FREQUENCY



Employees prefer immediate feedback!

## 6 KEYS TO BETTER REVIEWS



# Questions & Answers



**HRCI (Strategic/Business): 540070**  
**SHRM: 20-PARPC**



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