



January 10, 2022

**Re: Employers Association of New Jersey (EANJ) and New Jersey Business and Industry Association (NJBIA) Comments Regarding Docket No. OSHA-2021-0007 COVID-19 Vaccination and Testing: Emergency Temporary Standard**

Dear Edmund C. Baird, Associate Solicitor Occupational Safety and Health Administration, Office of the Solicitor, U.S. Department of Labor,

On behalf of the Employers Association of New Jersey and the New Jersey Business and Industry Association which are collectively comprised of over 12,000 member companies in the Garden State, we write to you in strong opposition to the Occupational Safety and Health Administration's Emergency Temporary Standard which creates a COVID-19 vaccination or testing mandate for all employers with 100 or more employees. EANJ and NJBIA have been strong advocates for COVID-19 vaccinations in the workforce. We have continually provided information regarding the latest health and safety guidance to our members and empowered them to encourage their workforces to get vaccinated. However, we have continually spoken out against one-size-fits-all mandates that do not take into consideration the varied needs of employers based on their work setting, industry and workforce needs.

EANJ and NJBIA have conducted several surveys of our memberships to better inform our advocacy and get firsthand insight on how vaccination and testing mandates impact employers. The following joint comments are based on member surveys representing a cross-section of industries, including manufacturing, retail, warehouse, transportation and business services.

In the early stages of the COVID-19 pandemic in 2020, by far the biggest challenge faced by employers was keeping up with the sheer volume of health and safety information applying to the workplace and to the workforce. Nearly 60% of employers have delayed their return-to-work dates due to the Delta variant. As a result, many are still managing remote workers and roughly half require masks at work regardless of vaccination status. About 40% have fully adopted a more or less permanent hybrid work schedule that allows employees who can work from home to continue to do so. The new Omicron variant has begun to place another layer of uncertainty about return-to-work and permanent remote work plans on employers.

While mostly encouraging workers to get vaccinated, approximately 84% of surveyed employers do not require a COVID-19 vaccine as a condition of employment, although about one in three were open to a requirement. Of this cohort, the perception that workers would resist a vaccine requirement poses a significant obstacle to implementation. Even in a highly vaccinated state like New Jersey, the fear of resistance to a vaccination requirement has left employers worried about

the impact mandates will have on their workforces. Our state continues to face a significant workforce crisis across industries. If even a small fraction of employees chooses to leave their workplace due to a mandate or vaccine requirement, there is not a pipeline of new potential employees available to fill the gaps. This could place significant strain on our already struggling economy as we continue on the path of economic recovery.

About one in ten surveyed employers actually require a COVID-19 vaccine as a condition of employment with exceptions for medical reasons or sincerely held religious beliefs. Nevertheless, about half of employers already require employees to inform the company of their vaccination status, although most do not require the vaccine. The information is used to determine who can work without a mask and to encourage non-vaccinated employees to receive the vaccination with paid time off.

The majority of employers – 67% - report that implementing a full return-to-work schedule depends on whether employees feel confident and safe enough to return. Accordingly, “getting back to normal” depends on employers demonstrating that the workplace is safe enough to return. Thus, small employers are already incentivized to follow Centers for Disease Control and Prevention recommendations and other relevant guidance without OSHA’s emergency temporary standard.

Safety of the workforce has been a priority of the business community long before the coronavirus pandemic. During this unprecedented time, employers have gone to extraordinary lengths to follow federal, state and local health protocols and keep employees safe to the fullest extent possible. Every employer should be given the flexibility to keep their employees safe while using their best judgement to accommodate their business type, environment and workforce needs. Businesses in New Jersey are still reeling from some of the longest and most far-reaching business closures and capacity limits in the nation. OSHA’s emergency temporary standard requiring vaccination or once weekly testing for businesses with 100 or more employees will put a strain on businesses of all types across the nation, including struggling businesses in New Jersey. We urge the Occupational Safety and Health Administration to reconsider and rescind their one-size-fits-all mandate on the business community that does not take into account the varied needs and preferences of businesses and their workforces. We urge OSHA not to extend this far-reaching mandate in the future to capture small employers that have acutely bore the brunt of COVID-19's economic impacts. If extended, small businesses will not have the capacity to properly comply with the conditions of the ETS.

We appreciate the opportunity to submit comments on this matter. If you have any questions or would like additional information, we can be reached at [msiekerka@njbja.org](mailto:msiekerka@njbja.org) and/or at [john@eanj.org](mailto:john@eanj.org).

Sincerely,

John J. Sarno

President, EANJ

Michele Siekerka

President & CEO, NJBIA

