

FACT SHEET: JCN Small Business Vaccine Mandate Legal Action

What Action is Being Taken?

The Job Creators Network (JCN)—a leading national small business advocacy organization—along with some of its members has filed a lawsuit against the Biden administration to block a recently unveiled Emergency Temporary Standard (ETS). The lawsuit is being supported by the Job Creators Network Foundation’s Legal Action Fund.

JCN and its members are represented by Boyden Gray and Associates, a law and strategy firm founded by Ambassador C. Boyden Gray, formerly White House Counsel to President George H.W. Bush. The legal team is led by Jonathan Berry, former head of rulemaking for the U.S. Department of Labor (OSHA’s parent agency), and R. Trent McCotter, former Deputy Associate Attorney General of the United States.

At the direction of the White House, the Occupational Safety and Health Administration (OSHA) unveiled an ETS rule that will force employers with 100 or more workers to carry out a vaccine mandate for staff, or workers will be responsible for getting a weekly test and wearing a mask. Affected businesses will also be on the hook to cover paid time off for workers to receive the vaccine. Businesses that don’t comply can be fined up to \$14,000 per violation.

The Small Business Administration (SBA) generally defines a small business as an employer with 500 or fewer workers. The vaccine mandate will therefore apply to a sizable portion of the small business community and the tens of millions of people they employ.

Several JCN small business members—as well as an employee—that will be directly impacted by the ETS are signing on to the legal action as plaintiffs. Includes:

- **Lawrence Transportation Company in Rochester, MN (Eric Lawrence, CEO):**

Lawrence Transportation Company is a refrigerated truckload carrier

located in Rochester, Minnesota that forms an important part of our country's critical supply chain. The family-owned business that dates back decades employs more than 100 people.

- **Guy Chemical Company in Somerset County, PA (Guy Berkebile, President):**
Guy Chemical Company is a chemical manufacturer in Somerset County, Pennsylvania that specializes in silicone products and packaging for the consumer and industrial markets. Founded in 1995, Guy Chemical employs more than 160 people, ranging from unskilled laborers to production managers, chemists, and engineers.
- **The Rabine Group of Companies in Illinois (Gary Rabine, Founder):**
The Rabine Group of Companies consists of over a dozen separate entities in Illinois that employ more than 300 people in total. The operations focus on repairing roofs, parking lots, doors, commercial docs, and HVAC systems, as well as snow removal.
- **Independent Bakers Association (Nicholas Pyle, President):**
The Independent Bakers Association is a national trade association that represents more than 200 independently owned wholesale bakeries and allied businesses. Many of these companies are small businesses that will be impacted by the Emergency Temporary Standard.
- **Pan-O-Gold Baking Company in St. Cloud, MN (Howard R. Alton III, President and CEO):**
Pan-O-Gold Baking Company is a bread product producer based in St. Cloud, Minnesota that serves nine states and employs more than 1,300 people. With three state-of-the-art baking facilities, they are one of the largest fresh bread suppliers in the Midwest.
- **Hog Technologies in Stuart, FL (James Crocker, Founder and President):**
Founded in 1988 in South Florida, Hog Technologies is a world market leader in water blasting technology. Starting as a small pressure cleaning company primarily serving residential properties, the company has now grown to employ 194 people and operate in 56 countries around the world.

- **Terri Mitchell, Employee of Guy Chemical Company:**

Terri Mitchell is the administrative manager at Guy Chemical. She is responsible for interviewing new employees and all aspects of hiring, along with other HR tasks such as keeping track of contracts. Terri has had the coronavirus and has tested positive for the antibodies. Because of the natural protection, she is determined not to receive the vaccine.

Following two federal court rulings staying the ETS, the case has been moved via lottery to the Sixth Circuit Court of Appeals. On November 19th, JCN [filed a notice](#) with the court and [sent a letter](#) to President Biden regarding the White House's continued bullying of small business owners to comply with its employer vaccine mandate after it had temporarily been blocked.

How Will the Rule Impact Small Businesses?

The rule would exacerbate what's already the worst labor shortage in recorded U.S. history by requiring employers to terminate some existing staff who wish not to get vaccinated or get weekly tests. It will also shrink the pool of job applicants available for hiring.

Associated staffing shortages would force businesses to reduce capacity and economic output, causing financial harm to businesses, employees, and the communities in which they are located.

The rule also creates new expenses and potential liability for businesses—including costs associated with tracking employee vaccination and covering paid time off for staff to receive and recover from the vaccination. There is also a question whether the employer or the government will be liable if an employee suffers an adverse effect from the vaccine.

Employers who don't comply will face significant financial penalties. Many small businesses are already operating on slim profit margins in the current economy. These new costs will further strain profitability, reducing some employers' ability to maintain competitiveness and provide workers with wage increases to match 30-year high inflation.

Why the Rule is a Stretch of Executive/OSHA Authority

An ETS is a tool that is intended for limited, targeted circumstances because it sidesteps the traditional rulemaking process. Instances in which OSHA has successfully implemented an ETS are rare. Historically, many have been struck down by the courts. This ETS should therefore be viewed skeptically.

Even by pandemic-era standards, OSHA's employer mandate represents a stretch of executive power. OSHA does not have the authority to deputize small businesses as the vaccine police. Even if it did, there is neither grave danger nor necessity to issue such a sweeping regulation. The Supreme Court held 40 years ago that OSHA does not have the authority to regulate broad swaths of the national economy. This mandate will have dire consequences on an already stuttering economy.

Considering the coronavirus has been prevalent in the U.S. since March 2020 and given cases and deaths have fallen dramatically since the Delta wave crested, the situation is neither new nor poses a grave danger. New therapeutics have also been approved that reduce the severity of the disease if contracted. And increasing voluntary vaccinations—combined with the rate of natural immunity—are also reducing the rates of cases and deaths.

Never before has the federal government mandated vaccines for so many Americans—let alone at the order of the President, without clear support from Congress through legislative action.