

November 19, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Biden,

Despite two recent federal court rulings staying the employer vaccine mandate, the White House continues to willfully ignore the judiciary and call on businesses to continue implementing the rule by January 4, 2022, as if these judicial decisions never occurred. This position puts small business job creators in an untenable position, unsure whether to comply with White House guidance and incur the significant costs associated with implementing the mandate or follow the rulings thus far from the courts.

Yesterday, White House Press Secretary Jen Psaki reiterated the White House position that businesses, including small businesses with 100 to 500 employees, "move forward" with the employer vaccine mandate. "That was our message after the first stay issued by the Fifth Circuit. That remains our message and nothing has changed." Despite the federal court stays, she said, "We are still heading towards the same timeline."

By ignoring recent court rulings, the White House is expanding its executive overreach. The White House has already ignored Congress with its vaccine mandate federal power grab. 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. Now, it is ignoring the courts—a coequal branch of government. The judiciary is the last place where Americans can seek relief from unconstitutional and illegal government actions. We expect the White House to respect and listen to the judiciary rather than barnstorming ahead and bullying businesses to comply with this rule whose legal fate is in serious jeopardy.

The White House is even ignoring the position of its own Occupational Safety and Health Administration (OSHA), which announced this week that it will suspend enforcement of the mandate in response to the U.S. appeals court's recent decision to freeze this mandate. The White House's position is increasingly isolated from other branches of government and even executive branch agencies. By urging small businesses to comply with the mandate despite the federal court stay, the White House signals that it smells defeat on this issue and is simply trying to get as much compliance as possible before a final court decision.

This conflicting guidance is unfair to small businesses simply trying to get their businesses back to pre-pandemic levels. By following the White House guidance, they are incurring expenses and time-consuming setup costs. Will the White House reimburse small businesses for these expenses if the courts permanently strike down the rule?

Job Creators Network filed a lawsuit to stand up for small businesses affected by this

unconstitutional mandate and block it from taking effect. We expect the White House to respect the rule of law and observe the court's temporary stay. Today, our lawyers filed [a notice](#) with the Sixth Circuit Court of Appeals—which is now hearing all challenges to the mandate—informing it of the White House's actions and urging the Court to promptly hear and resolve the legal challenges to the mandate, given the White House's actions.

OSHA does not have the authority to enact such a sweeping public health mandate. Even if it did, there's neither the grave nor immediate conditions required for such an emergency regulation. Covid cases are decreasing, new therapeutics have been developed, and we are approaching herd immunity.

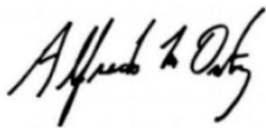
This mandate is not a small ask of America's employers. Businesses are just recovering from the pandemic. They are dealing with the highest inflation in over 30 years, and they are struggling to deal with a supply chain and labor shortage crisis. Now is the worst time to deputize them as the health police.

The mandate would exacerbate these shortages by requiring employers to terminate 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.

For these and other reasons, we believe the employer vaccine mandate is illegal. So far the courts agree with our position. White House guidance should reflect this reality. It's only fair to America's hardworking small employers who have been through so much already.

Sincerely,

Alfredo Ortiz

A handwritten signature in black ink that reads 'Alfredo Ortiz'.

President and CEO
Job Creators Network