



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

November 24, 2021

Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
200 Constitution Ave NW
Washington, DC 20210

Assistant Secretary Parker,

I am writing to you today to request clarity and additional guidance on behalf of the citizens and employers of New Hampshire after the U.S. Court of Appeals for the Fifth Circuit granted a Motion to stay (the "Stay") the Occupational Safety and Health Administration's ("OSHA") Vaccination and Testing Emergency Temporary Standard ("ETS") – the vaccine mandate.

Despite OSHA suspending the implementation of the mandate, the Biden Administration recently told employers to move forward with mandating the vaccine. This is leaving our businesses confused with mixed messages from the courts, the bureaucrats in Washington, and the White House.

As you are aware, New Hampshire has joined in litigation challenging the Biden Administration's vaccine mandate. Although I appreciate OSHA's initial compliance with the Fifth Circuit's decision requiring OSHA to suspend implementation and enforcement activities, the messaging from the Administration implies that if the Stay is lifted, prior to January 4, 2022 OSHA will seek to implement and enforce the ETS on its original timeline.

This is problematic for many reasons. First and foremost, the timeline included in the ETS was designed to allow for OSHA and businesses to plan for implementation, and to allow employees time to get vaccinated if they so choose. Absent sufficient time, there is a real potential that employers would not be able to come into compliance should the Court rescind the Stay, including the draconian requirement that businesses lay off employees during the holidays if they are unwilling or unable to get fully vaccinated on the ETS timeline.

Without clarity it appears that in the short term, the Stay provides no benefit to the States, its citizens, and the impacted employers. This problematic reality is unjust and defies logic. Businesses that have struggled to keep their doors open throughout this pandemic should be permitted the benefit of the Stay to see this litigation through prior to implementing what New Hampshire believes to be an unconstitutional mandate.

While New Hampshire remains confident that we will prevail in the litigation, I am requesting that OSHA promptly provide clarifying guidance of the ETS and that the January 4, 2022 deadline be extended by at least two months after any stay is potentially lifted to allow employees who wish to comply with the ETS reasonable time to become fully vaccinated. Absent that action, families and businesses are left with mixed messages from Washington and face draconian decisions during the holiday season. Heavy handed decisions from Washington have left everyone confused – and the citizens and businesses of New Hampshire deserve clarity.

Respectfully,



Christopher T. Sununu
Governor