



November 5, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20001

Dear Mr. President:

Today, November 5, 2021, the Occupational Safety and Health Administration (OSHA) published an Emergency Temporary Standard (ETS) mandating “COVID-19 Vaccination and Testing” under section 6(c)(1) of the Occupational Safety and Health Act. The ETS, one of the most far-reaching and aggressive standards in OSHA’s fifty years of existence, requires employers with 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination and/or weekly testing policy. The ETS was promulgated without the benefit of public notice and comment. It is effective immediately and employers must comply with most requirements within 30 days and with testing requirements within 60 days. We respectfully request that these time periods be extended to 90 days and 120 days respectively.

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation’s largest private-sector employer, supporting one in four U.S. jobs — 52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the nation’s economy.

Retailers nationwide are already concerned about our ability to provide the goods and services to our customers this holiday season given the COVID-19 pandemic, chronic supply chain challenges, and the ongoing workforce shortage. In August 2021, the last month with available Bureau of Labor Statistics data, there were over 10 million open jobs across the economy, 1.19 million of which are in the retail industry. The nation remains 4.2 million jobs short of the number it had before the pandemic began in March 2020. The civilian labor force participation rate remains significantly below pre-pandemic levels. It is against this backdrop that our industry will attempt to hire an additional 500,000 workers for this holiday season.

This complex new federal mandate will only exacerbate these difficulties. To implement the new mandate, retailers will need to fully assess their workforce to determine who is and who

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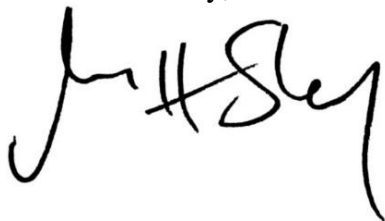
is not vaccinated; create a weekly testing regime for unvaccinated employees; review and adjudicate requests for religious and disability-based exemptions to the mandate; establish new paid time off policies for employees to receive the vaccine; and begin new extensive recordkeeping processes.

Furthermore, while the ETS outlines specific requirements and obligations for the employer community to meet, it also provides avenues for different, potentially more stringent requirements if negotiated via collective bargaining agreements with representatives of the employers' employees. This means that between now and the preliminary compliance date of December 5, employers will need to negotiate and come to agreement with their employees and/or labor organizations about vaccination and testing policies as well as other employment policies related to COVID-19. These negotiations can be complex, intricate, and difficult to finalize, making the current compliance timeline extremely burdensome for many retailers across the country.

Since the Administration's announcement of the OSHA ETS on September 9, NRF has questioned the need to declare an "emergency" and implement the rule at this time. For over a year and a half, retailers have taken extraordinary measures to keep their employees, customers and communities safe during the COVID-19 pandemic, including mask mandates, curbside pick-up, capacity limits, and plexiglass check-out. Since the introduction of the vaccines in late 2020, retailers have distributed, encouraged, incentivized and, in some instances, mandated the vaccine. These efforts have contributed to improvements in both mitigating the spread of the virus and promoting of the vaccine. The seven-day average number of cases in the United States has plummeted by more than half since September 9. Fully 80 percent of adults now have had at least one shot and 70 percent of adults are now fully vaccinated.

For these reasons, NRF strongly urges the Administration to work with employers so that we can effectively mitigate the spread of the virus in 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Shay". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Matthew Shay
President & CEO