



555 12th St NW, Suite 1001
Washington, D.C. 20004

1-800-552-5342
NFIB.com

December 6, 2021

Dear Senator:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in strong support of S.J.Res. 29, a joint resolution providing for congressional disapproval of the Biden Administration's vaccine and testing mandate. **S.J.Res. 29 will be considered an NFIB Key Vote for the 117th Congress.**

On November 5, 2021, the Occupational Safety and Health Administration (OSHA) published the "COVID-19 Vaccination and Testing: Emergency Temporary Standard (ETS)" in the *Federal Register*. This ETS requires employers of 100 or more employees to force employees to undergo vaccination, weekly COVID-19 testing and masking, or lose their job.

NFIB objects strongly to the federal government's commandeering of America's small and independent businesses to serve as the government's instruments of coercion against their own employees. The government should not force small and independent business owners to fire employees if the employees will not be vaccinated against COVID-19 or undergo masking and COVID-19 testing and report the results to employers. With the ETS, and in addition to its substantial compliance costs, OSHA threatens monetary penalties or imprisonment if small and independent business owners do not do OSHA's bidding against their employees.

America's small and independent business owners should have the freedom to decide for themselves whether they will or will not impose upon employees in their businesses, as a condition of employment, a requirement to undergo vaccination or testing. This ETS is an unprecedented intrusion into the employee/employer relationship and will harm small businesses in the tight labor market that they currently are facing.¹

Moreover, an ETS is an extraordinary deviation from the important process of notice and comment rule making that provides an opportunity for small and independent business owners to be heard. For this reason, section 6(c) of the Occupational Safety and Health Act requires for issuance of an emergency temporary standard: (a) an emergency, (b) grave danger from exposure to toxic or

¹ In November, 48% of all small business owners reported job openings they could not fill, according to NFIB's monthly jobs report. Moreover, 29% of owners reported labor quality as their top business problem in November, a 48-year record high. See Holly Wade, *Labor Market Challenges Breaks 48-Year Record as Biggest Issue Impacting Small Businesses*, NFIB Research Center (Dec. 2021), <https://assets.nfib.com/nfibcom/2021-Nov-Jobs-Report-FINAL.pdf>.

physically harmful substances or agents or new hazards, and (c) resulting protection from the danger. OSHA has failed to meet this standard and has abused the ETS process. This has led multiple courts to already declare the ETS to be unlawful.

Small business owners continue to do their part to end the COVID-19 pandemic and protect their workers. It is important for Congress to reject this unprecedented intrusion into the employer/employee relationship and the regulatory overreach of this ETS. **NFIB urges adoption of S.J.Res. 29 and will considered it an NFIB Key Vote for the 117th Congress.**

Sincerely,

A handwritten signature in black ink that reads "Kevin Kuhlman". The signature is written in a cursive, slightly slanted style.

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB