

American Staffing Association

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October 25, 2021

Hon. Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: Application of Proposed OSHA Vaccine/Testing Mandate to Temporary Employees

Dear Secretary Walsh:

On behalf of U.S. temporary and contract staffing agencies, the American Staffing Association requests that the proposed OSHA Emergency Temporary Standard consider the unique nature of temporary work and the disproportionate costs staffing agencies would incur for testing unvaccinated employees.

Staffing agencies recruit, hire, and assign employees to clients on an as-needed basis in a widely diverse range of businesses often on short notice and generally for short periods of time. Average temporary and contract employee employment in 2020 was just 9.6 weeks, with many jobs lasting as little as a few days. According to [ASA member surveys](#), annual turnover among temporary and contract employees in 2020 was an astronomical 443%, virtually all which were voluntary separations—compared with the national voluntary turnover average of 25%, according to [Glassdoor](#).

Because of their unique workforces, staffing agencies would have exponentially higher Covid-19 testing costs than employers in other sectors of the U.S. economy.

ETS Vaccine/Testing Mandate Should Exclude Temporary Jobs Required to be Filled for Short Periods of Time or on Short Notice

In recognition that the extraordinarily high turnover of temporary employees would result in disproportionately high potential testing costs on staffing agencies, we propose that the ETS exclude from the vaccine/testing mandate employees who, at the time of hire, are expected to be employed for very short periods of time. For this purpose, we propose that the mandate exclude employees expected work less than 30 days.

We further propose that, at the very least, the ETS not apply to staffing assignments that must be filled on short notice. Staffing agencies often receive job orders from clients with little advance notice—e.g., a night-time security guard needed to fill in for the regular guard who calls in sick. If the staffing firm does not have a pre-screened vaccinated worker in its candidate pool immediately available to fill such assignments, it would be practically impossible on such short notice to get a qualified candidate tested and cleared in time. This would adversely affect the staffing agency, the client whose critical labor needs would go unmet, and employees who would lose job opportunities.

To avoid this hardship, we urge that at a minimum the ETS include an exception from the vaccine/testing mandate if the staffing agency client has an urgent need for a worker, but the agency does not immediately have a qualified vaccinated employee available to timely fill the job—and does not have enough time to find a qualified unvaccinated employee who can take a Covid-19 test and obtain a negative result before starting work. To address this dilemma, we propose that the ETS provide that the vaccine/testing mandate shall not apply in cases where the staffing agency has less than 5 days from the date it receives a client job order within which to find a qualified candidate who is either vaccinated or can obtain a negative Covid-19 test, and it cannot do so.

Conclusion

The above exceptions to the vaccine/testing mandate under the OSHA ETS would help ensure that the nation's temporary and contract staffing agencies are treated fairly and on par with their employer counterparts in other sectors of the service economy.

Respectfully submitted,



Stephen C. Dwyer
Senior Vice President, Chief Legal and Operating Officer