



Written by [Cathy A. Spigarelli](#) on November 5, 2021

Published in the November 22, 2021 issue of [the New American](#) magazine. Vol. 37, No. 22

Grave Danger or Vaccine Coercion?

“Grave danger!” These are strong words that immediately conjure up images of a worker teetering off the edge of an unguarded rooftop or elbow-deep in an electrical panel with the power on. But would you use these words to describe the risk of COVID transmission in your office? As we approach the two-year mark of the COVID-19 pandemic with millions of Americans having some form of immunity, “grave danger” is not an apt description of the risk of COVID infection in most U.S. work environments. Yet, the Occupational Safety and Health Administration (OSHA) is set to release an Emergency Temporary Standard (ETS) that is based on the determination that workers are in grave danger due to exposure to COVID in the workplace, and therefore, the ETS is needed to protect them. Unfortunately, this ETS has little to do with worker protection and more to do with vaccine coercion by the federal government.



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On October 12, OSHA submitted the ETS to the Office of Management and Budget for review, and the rule is set to go into effect on January 4, 2022. The OSHA ETS will require employers with 100 or more employees to ensure their workers are fully vaccinated or require unvaccinated workers to produce a negative COVID test result weekly before coming to work. This is all to protect workers from the “grave danger” of COVID transmission in the workplace, or so they say.

If one accepts the stated ETS objective of worker protection from COVID transmission, the details of the standard do not add up. If the vaccinated — and we know this to be true — can become infected by and transmit the SARS-CoV-2 virus, do they not present a danger to their vaccinated and unvaccinated co-workers? The COVID vaccine does not eliminate the risk of COVID transmission in the workplace, so why exclude the vaccinated from weekly testing? Contrary to the messaging of the media and government that vaccination protects others, COVID vaccines only offer some protection to those who receive them. One must question the true objective of the ETS, and this should make it difficult for OSHA to substantiate a “grave danger” claim during the legal challenges that most definitely lie ahead. And while they are at it, OSHA should be forced to explain why a “grave danger” exists at an employer with 100 employees, but not at one with 99.

If mitigating COVID transmission is the goal of the ETS, it makes logical sense to require a negative COVID test result for all employees. But the ETS only requires this testing for the unvaccinated. A more



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effective strategy for mitigation of viral transmission between co-workers would be to make this a requirement for all workers, vaccinated and unvaccinated alike (given that vaccination does not stop transmission or infection). Giving the vaccinated a pass from demonstrating they are COVID-free is illogical and creates doubt about the true motivation behind this standard. In addition, the ETS, not surprisingly, neglects to offer exemption to those with natural immunity (some 120 million Americans as of May 2021, according to the CDC), something that has been shown to create robust protection from COVID infection. The goal of the ETS is clearly *not* solely to prevent the transmission of disease in the workplace. If it were, the ground rules would look a lot different.



Is this really necessary? Requiring employees to get a vaccine with dangerous side effects for a disease with a 99-percent-plus survival rate, especially when much of the workforce has either already been vaccinated or has natural immunity, makes little sense. *(Photo credit: South_agency/GettyImagesPlus)*

According to the CDC, as of October 6, daily COVID cases had decreased by more than 11 percent, and this trend has continued to date. Most Americans have some form of immunity, either natural or vaccine-induced, so maybe herd immunity has been achieved, or at least will be achieved in the near future. Yet, the Biden administration insists on coming late to the party and creating chaos for employers by adding burdensome regulations that contribute little in terms of solutions for a problem that is waning. OSHA will have to answer the question: Why now? What has changed since the pandemic began in March 2020 that we now, when the number of cases and deaths are on the decline, need a vaccine mandate and burdensome weekly testing? It is not because the pandemic is currently raging out of control. Instead, this is happening because the Biden administration is frustrated with the 40 percent of Americans who remain short of being fully vaccinated (<https://usafacts.org/visualizations/covid-vaccine-tracker-states/>) according to current CDC dogma. This is yet another example of politics (and the need for power and control) getting in the way of public-health progress.

For all the reasons mentioned above, it will be challenging for OSHA to prove that the ETS objective is worker protection, and that a grave danger exists. And further difficulty was created by the Biden administration itself. On September 9, President Biden spoke to the American people and openly stated that he is frustrated with unvaccinated Americans, but that he had a plan. “First, we must increase vaccinations among the unvaccinated with new vaccination requirements.” He then went on to



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announce the OSHA ETS. Knowing full well that the federal government does not have legal authority to enforce a vaccine mandate, he nevertheless hatched a plan to coerce the unvaccinated through the OSHA ETS, effectively making life difficult for the unvaccinated. Biden's admission that the ETS is about vaccine coercion rather than worker protection should make defending this ETS challenging, if not impossible.

It didn't take long after Biden's speech for 24 state attorneys general to threaten the Biden administration with legal action over what they consider an illegal use of an OSHA ETS. In a letter directly to the president, nearly half the state AGs have sent the message that Biden's plan is disastrous and counterproductive. They warn that Americans will leave the job market rather than comply, and this will add further strain on the labor market, "burdening companies and [therefore] threatening the jobs of even those who have received a vaccine." They make a solid point. One of the worst scenarios for employee safety is working long hours and struggling in a stressful work environment, such as at an understaffed business. In addition, high-priority safety initiatives, such as fall protection, machine guarding, and the control of hazardous energy, become diluted when lower-risk issues such as COVID transmission are treated as a high priority. COVID transmission is not a work-related hazard, but rather a hazard affecting the world in general. What's next for OSHA? Regulations on flu transmission at work, second-hand smoke on the job, or the spread of STDs between co-workers? The ETS dilutes and diminishes OSHA's ostensible mission to protect the American worker from job-specific hazards and substances in the workplace. It is not OSHA's place to protect workers from the hazards of the world (outside of work). OSHA was never intended to regulate public health.

From a legal perspective, the ETS will be challenged over violation of the Constitution and overstepping of executive authority. The state of Arizona has already filed a lawsuit challenging the ETS. Their basis? That it exceeds Biden's executive authority and is a violation of the Constitution's equal-protection clause via discrimination. The discrimination claim is based on the lack of a vaccine requirement for those unlawfully entering the United States while holding U.S. citizens to a different standard. The 24 state AGs agree that the Biden administration has overstepped its bounds, stating, "Your edict is also illegal." Congress oversees maintaining the balance of power between Federal and State governments, and traditionally, the states have had the responsibility for local public health. OSHA, a federal Executive Branch agency, will now be stepping on state toes. The state AGs state that Congress would need to weigh in before such a radical change in the constitutional balance of power could take place. In addition, OSHA has not been empowered to "regulate private health decisions made outside of work." The AGs let Biden know that he has veered out of his lane, stating, "Congress has not clearly granted you the authority to impose your sweeping vaccine mandate, which would have enormous social, economic, and political consequences."



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Bigger fish to fry: Laying aside the fact that OSHA is unconstitutional, there are plenty of potentially dangerous work environments with real workplace hazards that the agency should be focusing on. All the hype about vaccines is a waste of time and a distraction. *(Photo credit: RicAguiar/E+/GettyImagesPlus)*

To understand the potential outcome of the legal challenges made against OSHA's ETS, it may be beneficial to look to the past. Historically, OSHA has issued nine ETSs, with six of these being legally challenged. Only one of these was upheld by a court. The rest were stayed or vacated. So, unless a court issues a stay that prevents ETS enforcement, the ETS requirements will be put in place as we wait for the legal system to do its job. By the time a court reaches a decision to uphold the ETS or not, vaccine coercion and widespread weekly testing could be implemented throughout much of corporate America. Coercion of the unvaccinated American public will have happened just as the Biden administration planned. Coercion, keep in mind, is the unjust use of force to compel people or populations to take action against their will. When a run-of-the-mill criminal does this, it is called blackmail and is a crime.

The use of illegal and unjust mandates that exceed executive authority and do not stand up to legal scrutiny in court was a tactic used repeatedly by state governments at the beginning of the pandemic. In the state of Wisconsin, as in many other states, citizens were illegally forced to wear masks for months because of a mandate from Governor Tony Evers. Eventually, this mandate was overturned by the courts, but the objective to mask all Wisconsinites for months was achieved. Change happened despite the illegal approach taken. The same manipulative strategy may be what we are witnessing now with the OSHA ETS.

According to Bloomberg Law, "a federal court of appeals might very well conclude that he [Joe Biden] is not permitted to exceed the statutory rulemaking authority in the OSHA Act by either unnecessarily bypassing the rulemaking process for new standards or by issuing a standard that is a public health directive camouflaged as a workplace safety and health rule." Hopefully, the courts will see their way to a stay order for this ETS and not put an already-burdened corporate America through the ringer with another onerous regulation.

Representatives Virginia Foxx (R-N.C.) and Fred Keller (R-Pa.) attempted to guide and counsel OSHA on this matter. They strongly urged OSHA "to consider the real-world experiences of employers and their



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employees, experiences of OSHA State Plans, the evolving nature of the disease and associated public health guidance, and the promising deployment of new vaccines before rushing to enact sweeping new mandates that may create unsound policy with no improvement to workplace safety.” In other words, put down your political weapons and do what is right for public health, employers, and employees.

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