

United States Senate

WASHINGTON, DC 20510

October 28, 2021

Jeffrey Zients
COVID-19 Response Team Coordinator
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Zients,

We write to request immediate clarification regarding your recent comments on Executive Order 14042, which requires employees of federal contractors and subcontractors to be fully vaccinated no later than December 8, 2021.¹ While we believe the Executive Branch does not have the constitutional authority to take these invasive actions and the President's mandates will threaten the livelihoods, earned benefits, and financial health of untold numbers of hardworking Americans and their families, we are seeking clarification regarding potential flexibility on the December 8, 2021 deadline and if unvaccinated employees will be terminated.

On September 9, 2021, President Biden issued an Executive Order to mandate vaccination of federal contractors and subcontractors.² Additional guidance was issued by the Safer Federal Workforce Task Force on September 24, 2021, and specifically states that:

“Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than December 8, 2021. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.”³

This Task Force guidance is silent on any punitive actions that must be taken, including termination, should such requirements not be met.⁴ This has created confusion among contractors

¹ Executive Order, “Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors”, September 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>.

² Ibid.

³ Safer Federal Workforce Task Force: COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (Sept. 24, 2021), Pg. 5, *See also* pg. 11, https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf.

⁴ Ibid.

as both employers and employees fear that in order to be retained they must be fully vaccinated. At the October 27, 2021 White House Press briefing you stated that there would be flexibility, specifically that companies "will follow their standard HR processes and that for any of the probably relatively small percent of employees that are not in compliance they'll go through education, counseling, accommodations and then enforcement" and "We're creating flexibility within the system ... There is not a cliff here".⁵ Both of these statements would allow for significant flexibility for employers, however, there has been no evidence of this flexibility beyond your comments. While we applaud and appreciate your verbal commitment, there must be formalized guidance for employers to confidently provide flexibility to their employees.

Without concrete flexibility, employers will be forced to fire hardworking Americans who choose not to get vaccinated. This not only undermines the significant work Congress and the Trump Administration did to save millions of jobs, it also exacerbates the workforce shortages employers are already facing. While you stated at the White House press conference "we do not expect any disruptions", we are already facing significant nation-wide disruptions to the workforce.⁶ For example, ports are weeks behind in their processing and there is a shortage of truck drivers to deliver goods. The Advisory Committee on Supply Chain Competitiveness, a federal advisory committee, already recommended to the Biden Administration that they should allow military, veterans, and National Guardsmen to voluntarily take paid truck driving jobs to clear overwhelmed and backed-up ports.⁷

This problem is not limited to ports and truck drivers – airlines are experiencing a pilot shortage, our hospitals are experiencing a nursing shortage, and grocery stores struggle to find employees who can restock the shelves when there are supplies. The President's mandate also comes at a time when further workforce shortages or job loss could negatively impact the holiday season for many families. The demand for workers is strong, but there are simply not enough workers to fill positions. Without clear and immediate flexibility communicated to employers, the Administration will be forcing employers to terminate loyal employees who are willing to work when businesses are facing significant challenges in hiring—and after Congress has invested trillions to save their jobs.

We all want to put this pandemic behind us for the benefit of our health, our families, and our economy, but we cannot lose sight of the massive, negative impacts that this mandate will have on hardworking Americans and their families, especially during the holidays. We urge you to publish clarifying guidance on employer flexibility before November 1, 2021 so that employers are able to develop a process to protect their hard-working employees.

⁵ Shepardson, David. "White House signals flexibility over Dec. 8 vaccine deadline" (Oct. 27, 2021) Reuters <https://www.reuters.com/world/us/white-house-signals-flexibility-over-dec-8-vaccine-deadline-businesses-2021-10-27/>.

⁶ Ibid.

⁷ Letter to Secretary Raimondo, Advisory Committee on Supply Chain Competitiveness, August 11, 2021, <https://www.trade.gov/sites/default/files/2021-09/2021%20ACSCC%20Workforce%20Driver%20Recommendation%20-%20FINAL.pdf>.

Sincerely,

Handwritten signature of Dan Sullivan in blue ink.

Dan Sullivan
United States Senator

Handwritten signature of Mike Braun in blue ink.

Mike Braun
United States Senator