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December 19, 2021

Douglas L. Parker  
Assistant Secretary of Labor  
Occupational Safety and Health  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 20210

Submitted electronically

Re: Docket No. OSHA–2021–0007 [RIN 1218–AD42], COVID–19 Vaccination and Testing;  
Emergency Temporary Standard

Dear Assistant Secretary Parker:

A Better Balance is writing to comment on the Emergency Temporary Standard (“ETS”) regarding COVID-19 vaccination and testing that was issued in Federal Register Number 2021-23643 on November 5, 2021. A Better Balance (“ABB”), a national nonprofit advocacy organization based in New York, uses the power of the law to advance justice for workers so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, our expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. When we value the work of providing care, which has been long marginalized due to sexism and racism, our communities and our nation are healthier and stronger.

To that end, we have been leaders in the fight for paid sick leave around the country for over a decade. And in this unprecedented crisis, we have worked with lawmakers and agencies at the federal, state, and local levels to draft, pass, and implement emergency sick leave legislation and paid vaccine leave in relation to COVID-19.

**We understand that the ETS is currently stayed due to recent litigation and we encourage the agency to ensure that the ETS is viable through revisions.**

As we approach the third year of this pandemic, workers are still facing a grave and significant risk to COVID-19. Within one week in late-December, Michigan had reported 99 new outbreaks from workplace settings; Tennessee reported 250 COVID-19 outbreaks, 144 of which were in workplaces; Washington State reported 84 outbreaks, of which 80 were in workplaces. And other



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states similarly experienced outbreaks predominantly in the workplace.<sup>1</sup> The agency must mitigate the spread of COVID-19 in the workplace by implementing a modified ETS that targets sectors of workers and workplaces that have been hardest hit by COVID-19.

We understand that the agency may wish to re-evaluate the scope of the ETS in response to recent litigation. We fully support the agency's efforts to implement this rule, including if it is narrowed in scope to ensure that it withstands legal scrutiny. For example, early on in the pandemic, it became clear that certain industries and sectors, such as meatpacking, manufacturing, construction, and wholesale trade,<sup>2</sup> are particularly high-risk for workplace spread of COVID-19. We know that more workers have died from COVID-19 in meat and poultry plants to date during the pandemic than died from all causes in the industry in the past 15 years<sup>3</sup>—and Black, Latinx, and immigrant workers in meatpacking and poultry plants have been disproportionately impacted by the devastating spread of COVID-19 in meat and poultry plants.<sup>4</sup> While all workplaces are potential vectors for COVID-19 outbreaks and all workers who cannot work from home need and deserve to be protected, we especially implore the agency to amend the ETS to apply workplaces that present occupation-specific risks related to COVID-19.

**In particular, it is crucial that any iterations of this ETS preserve the requirements of § 1910.501(f), which requires that covered workers have access to paid leave to receive and recover from the COVID-19 vaccine.**

While it is well understood that receiving the COVID-19 vaccine is the most effective way to prevent the spread of COVID-19 and serious illness associated with it,<sup>5</sup> since vaccinations have been available, workers nationwide have struggled to receive the vaccine because they have not had time off to receive the vaccine and recover from related side effects. From early on in the vaccine distribution effort in the U.S., workers—especially Black and Latinx workers—were hesitant to get vaccinated because of concerns about missing work to receive and recover from the vaccine.<sup>6</sup> Workers have been clear that access to paid time off to get vaccinated and recover from any side effects would make them more likely to get vaccinated.<sup>7</sup>

The need for vaccine leave has remained a constant, even several months after vaccines were initially made available to adults in the U.S. In June 2021, workers whose employers provided paid time off to get the vaccine or recover from any side effects were 24% more likely to have received at least one dose of the vaccine than workers whose employers provided no paid vaccine leave.<sup>8</sup> And, as with most work-related issues, historically marginalized workers have been the most likely to suffer from a lack of vaccine leave. For example, workers with lower household incomes (under \$40,000) are less likely than high income earners to have access to paid leave to receive and recover from the vaccine.<sup>9</sup> This barrier to access has resulted in much lower vaccination rates for low-income adults as compared to higher-income adults.<sup>10</sup> Section 1910.501(f) of the ETS would help make covered workers safer in their workplaces as it would

make vaccinations much more accessible for many workers who would be otherwise unable to obtain the vaccine for fear of missing work and the lost income that may result from taking unpaid time off to get vaccinated.

For many of those who are covered by the emergency rule, the ETS and any forthcoming versions of the ETS may be their only source of paid vaccination leave. An estimated 34 million workers lacked paid sick time prior to the pandemic,<sup>11</sup> and access rates have stayed relatively static during the time the pandemic has raged. Nearly half of workers who are paid less than \$15 per hour do not have paid sick time, and that figure increases to 67 percent among workers making less than \$11 per hour.<sup>12</sup> It is critical that any future iterations of the ETS give covered workers a right to paid time off in relation to the COVID-19 vaccine.

At a minimum, a COVID-19 standard must include provisions for:

- 1) A COVID-19 worker protection plan. This plan must be in writing for employers with more than 10 employees. The plan must be made available to workers and their representatives at no cost. Workers must have input into this plan prior to it being finalized. Workers must be trained in the procedures and policies outlined in the plan.
- 2) Implementation of mitigation measures for all workers at no cost to employees including:
  - a. Vaccines (including paid time off to access vaccines and to recover from temporary reactions)
  - b. Regular testing (twice weekly)
  - c. Providing high quality face coverings to all workers (and respirators if necessary)
  - d. Physical distancing
  - e. Improved ventilation
  - f. Routine cleaning/disinfection and the provision of hand sanitizers and ability to wash hands frequently
  - g. Employee training and education in a language and vocabulary workers understand
  - h. Isolation/quarantine requirements for sick and exposed workers (including provisions for medical removal pay)
- 3) Reporting and recording requirements that include:
  - a. Notification to public health agencies of two or more cases of COVID-19 of employees present in the workplace within a 14-day period
  - b. Notification to OSHA of two or more cases of COVID-19 among employees present in the workplace within 14 days
  - c. Recording and reporting to OSHA of all employee cases of COVID-19 that involved hospitalizations and death
  - d. Recording of all work-related COVID-19 cases among employees
- 4) Protections from retaliation from
  - a. Reporting a COVID-19 possible or confirmed infection



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- b. Requesting improved safety measures
- c. Raising concerns about current protections to the employer, employee representative, other employees, a government agency or the public such as through print, online, social or any other media.

\* \* \*

As of January 19, 2022, over 848,000 people have died of COVID-19 in the U.S.<sup>13</sup> COVID-19 is unlike any disease our society has encountered in recent history; it poses a grave threat to all communities globally, and workers and workplaces throughout the U.S. are no exception. The COVID-19 Vaccination and Testing ETS is undoubtedly necessary to protect employees from the acute danger that COVID-19 presents. Our best line of defense against this sizable threat for American workplaces is ensuring that our nation's workforce is vaccinated.

We appreciate the opportunity to submit this comment. If you have any questions or if we can provide any additional assistance, please contact A Better Balance at [cgomez@abetterbalance.org](mailto:cgomez@abetterbalance.org) or 212-430-5982.

Sincerely,  
A Better Balance

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<sup>1</sup> Union Pet'r's Br. Opp'n Emerg. Appl. for Immed. Stay 13-14, Dec. 30, 2021, *available at* [https://www.supremecourt.gov/DocketPDF/21/21A244/206888/20211230111100851\\_Union%20Petitioners%20Op%20position%20Brief%20signed.pdf](https://www.supremecourt.gov/DocketPDF/21/21A244/206888/20211230111100851_Union%20Petitioners%20Op%20position%20Brief%20signed.pdf)

<sup>2</sup> David P. Bui et al., *Racial and Ethnic Disparities Among COVID-19 Cases in Workplace Outbreaks by Industry Sector — Utah, March 6-June 5, 2020*, 69 *Morbidity and Mortality Weekly Report* 1133 (Aug. 21, 2020), *available at* [ncbi.nlm.nih.gov/pmc/articles/PMC7439983/pdf/mm6933e3.pdf](https://ncbi.nlm.nih.gov/pmc/articles/PMC7439983/pdf/mm6933e3.pdf).

<sup>3</sup> *See Census of Fatal Occupational Injuries (CFOI) — Current*, U.S. Bureau of Labor Statistics (Dec. 16, 2021), *available at* <https://www.bls.gov/iif/oshcfoi1.htm>

<sup>4</sup> The Centers for Disease Control and Prevention (CDC) estimates that 87% of all infections in the meat industry occurred among racial and ethnic minorities in the industry. *Update: COVID-19 Among Workers in Meat and Poultry Processing Facilities — United States, April–May 2020*, Ctrs. for Disease Control & Prevention (July 10, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6927e2.htm>.

<sup>5</sup> *See CDC COVID-19 Study Shows mRNA Vaccines Reduce Risk of Infection by 91 Percent for Fully Vaccinated People*, Ctrs. for Disease Control & Prevention (June 7, 2021), <https://www.cdc.gov/media/releases/2021/p0607-mrna-reduce-risks.html>.

<sup>6</sup> Samantha Artiga & Liz Hamel, *How Employer Actions Could Facilitate Equity in COVID-19 Vaccinations*, Kaiser Family Found. (May 17, 2021), <https://www.kff.org/policy-watch/how-employer-actions-could-facilitate-equity-in-covid-19-vaccinations/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Workers Are More Likely to Get a COVID-19 Vaccine When Their Employers Encourage It and Provide Paid Sick Leave, Though Most Workers Don't Want Their Employers to Require It*, Kaiser Family Found. (June 30, 2021), <https://www.kff.org/coronavirus-covid-19/press-release/workers-are-more-likely-to-get-a-covid-19-vaccine-when->



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their-employers-encourage-it-and-provide-paid-sick-leave-though-most-workers-dont-want-their-employers-to-require-it/.

<sup>9</sup> Liz Hamel et al., *KFF COVID-19 Vaccine Monitor: September 2021*, Kaiser Family Found. (Sept. 28, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-september-2021/>.

<sup>10</sup> *COVID-19 Vaccination Rates: State-level and Subpopulation Evidence from the Household Pulse Survey—Update 4*, State Health Access Data Assistance Ctr. (Mar. 25, 2021), <https://www.shadac.org/news/covid-19-vaccination-rates-state-level-and-subpopulation-evidence-household-pulse-survey-0>.

<sup>11</sup> *National Compensations Survey: Employee Benefits in the United States, March 2020*, U.S. Bureau of Labor Statistics (Sept. 2020), <https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf>.

<sup>12</sup> *See Table 6. Selected Paid Leave Benefits: Access*, U.S. Bureau of Labor Statistics (Sept. 23, 2021), <https://www.bls.gov/news.release/ebs2.t06.htm>.

<sup>13</sup> *Daily Updates of Totals by Week and State*, Ctrs. for Disease Control & Prevention (Jan. 19, 2021), <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>.