

OFFICE OF THE GOVERNOR

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STATE OF ALABAMA

December 3, 2021

Via electronic submission: <https://regulations.gov>

Hon. Douglas Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
200 Constitution Ave. N.W.
Washington, D.C. 20210

Re: The Emergency Temporary Standard on COVID-19 Vaccination and Testing issued by the Occupational Safety and Health Administration and published Nov. 5, 2021, Docket No. OSHA-2021-0007

Dear Assistant Secretary Parker:

I ask that the Occupational Safety and Health Administration not adopt as a final standard or rule its COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) published November 5, 2021. I think the ETS is misguided and that any final standard based on it would be a mistake.

An executive order I signed on October 25, 2021, which is enclosed with this letter, said the best way to encourage COVID-19 vaccinations in Alabama is through education, transparency, communication, and persuasion—not government coercion. My administration encourages COVID-19 vaccinations as safe and effective but opposes overreaching COVID-19 vaccination mandates imposed by government.

My executive order also said several COVID-19 policies announced by President Biden, including mandates imposed by the ETS, threaten to increase vaccine skepticism in Alabama and to severely disrupt the State's economy. I still believe that.

In its November 12, 2021 order staying the ETS, a panel of the U.S. Court of Appeals for the Fifth Circuit noted that certain private employers had every right to challenge the ETS in part because the proposed COVID-19 mandate "threatens to decimate their workforces (and business prospects) by forcing unwilling employees to take their shots, take their tests, or hit the road."

Alabama is not part of the Fifth Circuit. But I believe the effects of the ETS, and a final standard based on it, could be just as harmful to businesses in Alabama. That's because many working-age Alabamians, especially younger adults, have not gotten vaccinated against COVID-19, even though the vaccine has been widely available in Alabama for much of this year.

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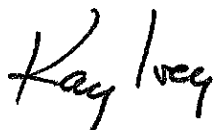
In fact, the COVID-19 vaccination dashboard run by the Alabama Department of Public Health showed that as of yesterday, 41.5 percent of Alabamians aged 18-24, 50.5 percent of those aged 25-49, and 67.4 percent of those aged 50-64 had gotten at least one dose of a COVID-19 vaccine. That means significant percentages of Alabama's workforce have *not* received at least one dose of a COVID-19 vaccine. Given all the efforts to educate and persuade Alabamians of the vaccine's safety and effectiveness, I can only conclude that many Alabamians have profound—and sincere—medical, religious, or other reasons not to take it.

In light of this data, I believe that enforcement of the ETS may lead many Alabamians to quit their jobs and leave the workforce—in the middle of a substantial labor shortage, no less—or to seek work at businesses not covered by the mandate. Such disruption would interrupt people's careers and threaten their livelihoods and the well-being of their families. Such disruption also would damage the productivity and bottom lines of businesses statewide.

If a federal court strikes down the ETS, well and good. If not, I ask that OSHA not continue its provisions under a final standard. The economic damage likely would be great. Ending the provisions sooner rather than later could lessen the damage likely to be caused by them.

I believe the best way to encourage COVID-19 vaccinations in Alabama, and elsewhere, is through education, transparency, communication, and persuasion, not government mandates.

Sincerely,

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

Kay Ivey
Governor

Enclosure



EXECUTIVE ORDER NO. 724

COMBATING OVERREACHING COVID-19
VACCINATION MANDATES

WHEREAS the best way to encourage COVID-19 vaccinations in Alabama is through education, transparency, communication, and persuasion—not government coercion;

WHEREAS it is therefore the policy of my Administration to encourage COVID-19 vaccinations as safe and effective but to oppose overreaching COVID-19 vaccination mandates imposed by government;

WHEREAS the federal government has announced that it will unilaterally impose onerous new COVID-19 vaccination policies for various categories of individuals and businesses, including federal employees, federal contractors, healthcare workers, and businesses—nationwide—with 100 or more employees;

WHEREAS these new federal COVID-19 vaccine mandates threaten to increase vaccine skepticism in Alabama and to severely disrupt the State's economy;

WHEREAS these new federal mandates rest on dubious legal grounds and constitute significant federal overreach by the Biden Administration;

WHEREAS multiple States, including the State of Alabama through its Attorney General, are expected to assert immediate legal challenges to stop this egregious and illegal federal overreach;

WHEREAS state government should set an example by encouraging—but not requiring—COVID-19 vaccinations among its employees and contractors; and

WHEREAS the Alabama Constitution of 1901 establishes the Governor as the State's "chief magistrate" and bestows on the Governor both the "supreme executive power of this state" and the duty to "take care that the laws be faithfully executed," *see* Ala. Const. art. V, §§ 113, 120;

NOW, THEREFORE, I, Kay Ivey, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby order and direct all of the following actions to oppose the Biden Administration's overreaching federal COVID-19 vaccine mandates and to ensure that the State of Alabama never forces anyone to take an unwanted COVID-19 vaccine:

1. **Cooperation with the Alabama Attorney General.** Effective immediately, all agencies, boards, commissions, and other entities within the executive branch of state government shall cooperate to the fullest extent possible with the Office of the Alabama Attorney General in furtherance of litigation brought by the State to challenge any federally imposed COVID-19 vaccination requirement.
2. **Nonenforcement of federal COVID-19 vaccination mandates.** Effective immediately, no agency, department, board, commission, or other entity within the executive branch of state government shall, under color of state law, seek to impose a penalty on any business or individual for noncompliance with any federally imposed requirement that has the purpose or effect of (a) forcing an individual to receive a COVID-19 vaccination or (b) requiring a business to force its employees to receive a COVID-19 vaccination. To the extent any such entity is required or compelled to impose such a penalty as a result of federal law, the entity shall take all practical steps to notify the affected business or individual that the State of Alabama does not approve, condone, or otherwise endorse the imposition of such penalty.
3. **Protections for executive branch employees.** Effective immediately, all agencies, departments, boards, commissions, or other entities within the executive branch of state government shall enforce, to the maximum extent possible, any and all protections afforded to public employees in their workplace by Alabama Act No. 2021-493 concerning the issuance, publication, or sharing of immunization records not otherwise required by law or concerning vaccination requirements imposed as a condition for receiving government services or for entry into a government building.
 - a. **Reports of noncompliance.** Public employees aggrieved under this section may continue to make a report of violation to the

Office of the Alabama Attorney General, which shall include the agency alleged to have violated Act No. 2021-493, the date and location of the alleged violation, and any other relevant facts necessary to conduct a reasonable investigation into the alleged violation.

- b. **Enforcement and confidentiality.** The Office of the Alabama Attorney General shall make reasonable investigation into any complaint received under this section and take appropriate steps to facilitate enforcement of Act No. 2021-493. All enforcement activities undertaken under this section shall be conducted to preserve the confidentiality of an aggrieved employee to the maximum extent permissible under law.
4. **Protections for executive branch contractors.** Effective immediately, no agency, department, board, commission, or other entity within the executive branch of state government shall, under color of state law, include in any agreement—including any contract, contract amendment, contract renewal, lease agreement, grant agreement, or memorandum of understanding—a provision imposing any duty or obligation on a private party to the agreement with respect to the COVID-19 vaccination status of the party or any of its officers, employees, or agents. To the extent any such entity is required or compelled to include such a contract provision as a result of federal law, the entity shall take all practical steps to notify the affected business or individual that the State of Alabama does not approve, condone, or otherwise endorse the inclusion of the provision.
5. **Implementation.** This order shall be implemented to the maximum extent possible consistent with applicable law and subject to the availability of appropriations. Nothing in this order shall be construed as impairing or otherwise affecting the authority granted by law to an executive department or agency, or the head thereof, including the Governor of the State of Alabama.
6. **No private right of action.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any private party against the State of Alabama, its

departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONE AND ORDERED this 25th day of October 2021.



Kay Ivey

KAY IVEY
Governor

ATTESTED:

J. H. Merrill

JOHN H. MERRILL
Secretary of State