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January 19, 2022

Mr. Edmund C. Baird
Associate Solicitor of Labor for Occupational Safety and Health
Office of the Solicitor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Docket No. OSHA-2021-0007, COVID-19 Vaccination and Testing; Emergency Temporary Standard

Dear Mr. Baird:

The Association for Professionals in Infection Control and Epidemiology (APIC) wishes to thank the Occupational Safety and Health Administration (OSHA) for the opportunity to provide input on the OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS). APIC is a nonprofit, multidisciplinary organization representing more than 15,000 infection preventionists whose mission is to advance the science and practice of infection prevention and control.

APIC supports efforts to improve employee safety, especially during the public health emergency (PHE) that has had a severe impact on employees. According to the Centers for Disease Control and Prevention (CDC), COVID-19 vaccination is the most effective way to protect employees and prevent transmission.[1] As we noted in APIC's comments to OSHA on the Occupational Exposure to COVID-19 ETS, "APIC recommends that OSHA's most crucial employee protection act would be to mandate COVID-19 vaccination for all employees."[2] We applaud OSHA for taking this important step to enforce safe and evidence-based practices by requiring employers to implement a policy that requires workers to either be vaccinated against COVID-19 or to undergo weekly COVID-19 testing and wear a face covering at work. Despite the recent ruling by the U.S. Supreme Court, APIC continues to support OSHA's authority to protect employees from hazardous conditions in the workplace.

<u>The COVID-19 Pandemic</u>

COVID-19 continues to be a worldwide pandemic**,** and experts still have few insights into how and when it will end based on the behavior of the virus and its ability to continue to mutate. COVID-19 continues to have direct and indirect impacts around the world, including but not limited to:

- Increase in morbidity and mortality directly related to it, including COVID-19 "long hauler" symptoms.
- Indirect and collateral damage from other health conditions, such as diabetes, stroke and cancer as delays in care are being reported on.
- Direct, indirect and collateral damage to the nation's health systems as they continue to try to provide healthcare services with a limited workforce, lack of essential supplies, and significant financial constraints.

- Indirect and direct impacts to the entire workforce, both in healthcare and outside of healthcare. This expands beyond direct health ramifications to the workers in America, but also loss of work due to caring for others with COVID-19, closed daycare centers and schools necessitating missed workdays, etc.
- Significant and long-term financial consequences to businesses[3] with numerous companies having to downsize or close all together.
- Significant impact to the food service, sports, and entertainment industries out of public fear of large-scale gatherings and/or these entities having to close due to no staffing or COVID-19 outbreaks.
- Significant impact on shipment and delivery of basic household goods as the transportation industry has experienced shortage of their workforce due to illness and consequences of COVID-19.

As the CDC has stated, the pandemic has overall societal impact. Recognition of the impact on society provides support for a standard that should be applied beyond healthcare settings.

COVID-19 Represents a Hazard Inside and Outside the Workplace

APIC supported the Centers for Medicare and Medicaid Services (CMS) COVID-19 Vaccination rule to protect employees in healthcare facilities from COVID-19 transmission, and we were pleased that the U.S. Supreme Court recently upheld the rule in *Biden v. Missouri*.[4] However, employees in other work settings also deserve the same protection. Although healthcare personnel face additional risks because of the higher concentration of sick patients entering their workplace, COVID-19 makes no distinction based on the type of work an employee does and is not just a disease of the severely ill. It can present itself and be contagious to others in its pre-symptomatic, symptomatic, and asymptomatic state. Although COVID-19 is not a hazard that is specific to the workplace, since all workers – in healthcare and non-healthcare settings alike – risk exposure both inside and outside the workplace, all workers are continuously and consistently at risk. Numerous outbreaks have been reported in workplaces where workers were in close contact with infected coworkers, such as outbreaks that caused shut-downs of meat-packing plants.[5] Many of these outbreaks are in working conditions where large numbers of people work in close proximity to each other, such as factories, supply chain warehouses, and airplanes.

If any person is exposed to or infected with the virus, once that person enters their workplace, they become a hazard to everyone else in the workplace, making that workplace an unsafe work environment. A majority of workers may not even know they are infected with COVID-19, as asymptomatic transmission is a real-world scenario in all workplaces. Unlike other decisions individuals make that could impact their health outcomes (e.g. those with hypertension electing not to take prescribed anti-hypertensive medication), decisions about COVID-19 vaccination impacts others. This is especially true of those who are in regular and repeated contact with someone, such as occurs in a work environment, who is not vaccinated. Employees who might become exposed at work then leave the workplace to go out into public areas, spreading the risk to their families and communities.

COVID-19 Vaccines are Safe and Effective

The CDC reports that between December 14, 2020 and January 10, 2022, more than 520 million doses of COVID-19 vaccine have been administered in the United States, with nearly 250 million people age 5+ having received at least one dose. Although mild side effects are common following vaccination, serious side effects are rare.[6] Vaccination provides a more consistent and high reliability intervention, as long as the employee receives their primary vaccination series and stays up to date with booster recommendations. And although the vaccines may not prevent mild to moderate infection, they have proven to bolster the immune system to protect against severe and fatal infections.[7] Although masking, hand hygiene, cleaning and disinfection, and other interventions are important tools to break the chain of infection,[8] vaccination is the only long-term and effective strategy to impart immunity, as we know that natural immunity (from prior infection) can be short-lived and is not easily measured.

Public Health Precedent

Although we ~~can~~ understand the hesitancy some people might have about such new vaccines, they have proven to be highly safe and effective against COVID-19 severity of illness and hospitalization. Vaccine mandates are not a new concept; they have been part of American public health efforts since the 18th century when General George Washington required American troops to be immunized against smallpox during the Revolutionary War. Of the 16 immunizations the CDC recommends for children and teens, all 50 states and the District of Columbia mandate vaccination against diphtheria, tetanus, pertussis (whooping cough), polio, measles, rubella and chickenpox.[9] In fact, all public health measures, by definition, require individuals to balance their own fears and preferences with the best interests of the public good. This balance of public good over private choice can be seen in such now-common measures as regulating personal and industry disposal of wastewater to prevent epidemics of cholera and other waterborne illnesses and banning smoking on airlines to prevent tobacco-related illnesses due to secondhand smoke.

In 1905, the U.S. Supreme Court upheld a Massachusetts law requiring smallpox vaccination in *Jacobson v. Massachusetts*. In its decision, the Court held that "in every well ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand" and that "[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [liberty], whether in respect of his person or his property, regardless of the injury that may be done to others."[10] The Court also noted, "The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members."

Although APIC was disappointed by the U.S Supreme Court's January 13, 2022 decision in *National Federation of Independent Business v. OSHA*,[11] we look forward to working with OSHA as it continues to develop a broader Infectious Disease Standard. However, we also recognize the acute need to control the COVID-19 pandemic. There are many tools available to fight this deadly virus, and all of them must be deployed in all settings, including homes, hospitals, schools, and workplaces. Since vaccination is the

single most effective tool across all settings, APIC continues to support the need for workplaces to insist on employee vaccination against COVID-19.

Sincerely,

Ann Marie Pettis, RN, BSN, CIC, FAPIC
2021 APIC President

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[1] Morbidity and Mortality Weekly Report /April 2, 2021/70(13);495-500.
[2] APIC Comments to OSHA on Occupational Exposure to COVID-19 ETS, August 20, 2021. Available at https://apic.org/wp-content/uploads/2021/09/OSHA-COVID-19-ETS-Comments-Final_8-20-21.pdf. Accessed 1/17/22.
[3] NBC News Jan. 13, 2022, 7:52 AM EST / Updated Jan. 13, 2022, 8:42 AM EST / Source: Associated Press. Available at https://www.nbcnews.com/news/us-news/delta-loses-408-million-8000-employees-contract-covid-last-four-weeks-rcna12059. Accessed 1/18/22.
[4] U.S. Supreme Court, *Biden v. Missouri*, 595 U.S. __ (2022).
[5] Donahue M, Sreenivasan N, Stover D, et al. *Notes from the Field*: Characteristics of Meat Processing Facility Workers with Confirmed SARS-CoV-2 Infection — Nebraska, April–May 2020. MMWR Morb Mortal Wkly Rep 2020;69:1020–1022. DOI: http://dx.doi.org/10.15585/mmwr.mm6931a3.
[6] CDC COVID-19 website, Safety of COVID-19 Vaccines https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html. Accessed 1/17/22.
[7] Griffin JB, Haddix M, Danza P, et al. SARS-CoV-2 Infections and Hospitalizations Among Persons Aged ≥16 Years, by Vaccination Status — Los Angeles County, California, May 1–July 25, 2021. MMWR Morb Mortal Wkly Rep 2021;70:1170–1176. DOI: http://dx.doi.org/10.15585/mmwr.mm7034e5.
[8] APIC "Break the Chain of Infection" http://infectionpreventionandyou.org/wp-content/uploads/2016/09/Break-the-Chain-of-Infection.pdf.
[9] DeSilver, D. "States Have Mandated Vaccinations Since Long Before COVID-19", Pew Research Center October 8, 2021. Accessed 1/2/22 at https://www.pewresearch.org/fact-tank/2021/10/08/states-have-mandated-vaccinations-since-long-before-covid-19/.
[10] U.S. Supreme Court, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).
[11] U.S. Supreme Court, *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, 595 U.S. __ (2022).