

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Texas Trucking Association et al.,

Petitioners

v.

United States Occupational Safety and
Health Administration et al.,

Respondents.

Declaration of Lori Buss Stillman

I, Lori Buss Stillman, declare as follows under penalty of perjury:

1. I am the Vice President of Research for the National Association of Convenience Stores (“NACS”).

2. NACS is a non-profit trade association and is the preeminent representative of the interests of convenience store operators across the nation.

3. NACS has 1,500 retail and 1,600 supplier company members nationwide.

4. In 2020, the fuel wholesaling and convenience industry that NACS represents employed approximately 2.34 million workers and generated \$548.2 billion in total sales.

5. In all, the industry sells approximately 80 percent of the motor fuels purchased in the United States each year.

6. NACS conducted a survey of its members regarding OSHA's "COVID-19 Vaccination and Testing; Emergency Temporary Standard" (the "ETS") during the week of November 15-19, 2021 (the "Survey").

7. NACS regularly surveys its members regarding their businesses and the current business climate. The industry relies on the resulting survey data as accurate depictions of the state of the industry.

8. NACS compiles certain industry survey data into an annual State of the Industry report which is considered the leading source of data on the convenience industry in the United States.

9. The Survey generated more than eighty responses from companies in the convenience industry in the United States with more than one hundred employees. We consider this rate of response to provide a reliable cross-section of the convenience industry.

10. The Survey asked respondents for their data based upon the ETS going into effect.

11. The Survey found that 46% of the industry plans to provide employees with the option to get vaccinated or get tested weekly, while 6% plan to require all employees to be vaccinated and 48% remain undecided on which course to choose.

12. The Survey found that 99% of the industry expects that employees would quit their jobs rather than undergo vaccination, and that 92% of the industry expects that employees would quit their jobs rather than undergo weekly testing for COVID-19.

13. According to the Survey, employers indicating that they would lose employees expect that imposing a vaccination requirement would cause them to lose 32% of their employees.

14. According to the Survey, employers indicating that they would lose employees expect that imposing a weekly testing requirement would cause them to lose 22% of their employees.

15. The Survey revealed the following anticipated effects if the ETS were implemented:

- a. 89% of employers in the industry would be forced to reduce store hours;
- b. 58% would need to close one or more stores;
- c. 57% would expect increased difficulty getting products to their stores;
- d. 72% would need to reduce cleaning at one or more stores;
- e. 93% would face increased difficulty hiring staff; and
- f. 47% would expect reduced customer traffic.

16. According to the Survey, 65% of respondents have already researched the ability to secure testing resources on a weekly basis for their employees. Of those employers that have research testing resources, the average per-employee cost of testing per week was \$61.

17. The Survey found that among those employers who have attempted to do so, only 28% are able to find adequate providers to ensure that weekly testing is available for their employees.

18. According to the Survey, less than one-third (32%) of respondents report that they will be able to comply with the ETS if it goes into effect.

19. The Survey gave respondents the option to provide any comments on the ETS that they chose. Those comments include:

a. "In ways we have not yet imagined, recruiting, training, lost sales, increased wages, Discouraged Essential work force, negative impact to consumers just to name a few."

b. "OSHA should not mandate vaccines."

c. "This is crazy to ask companies or employees to mandate vaccines."

d. "We are already struggling to get and keep employees. This mandate will create an even larger challenge to keep our business open and operating."

e. "[D]isaster."

f. "Short term could be devastating - loss of employees and increased demand of those remaining. Will impact overall customer service and cripple out ability to staff the stores. Will probably drive wage rates up as a result."

g. "We are already very short of staff in our stores. This mandate will cause many non vaccinated employees to quit and further limit our ability to get more staff. Most of our competition in small rural markets are not subject to this mandate as they are small employers."

- h. “Our workforce will not get vaccinated & they are not going to put forth effort to test. They also will not wear masks (we already fought that battle). We will not be able to operate to provide fuel & food as we do today. Huge cost that is unnecessary and most importantly will not make a difference. . . . We operated through the pandemic: did not lose 1 team member and had very few actually contract covid. Our current protective measures are working.”
- i. “We have grave reservations about being held responsible for verifying medical testing records and vaccination records due to the effect it will have on labor, liability associated, and increased record keeping associated with HR.”
- j. “The OSHA mandate is a major inconvenience that is unhelpful and most probably destructive. We run a geographically diverse business making frequent testing highly infeasible.”
- k. “At a time where hiring is our number one issue, this will have us lose good employees that currently are employed.”
- l. “This mandate makes little to no sense.”
- m. “Could put us out of business.”
- n. “[T]his could be catastrophic to our organization.”
- o. “This will be very difficult to track and will cause a lot of confusion and extra work for our frontline team members.”

p. “This ETS is government over-reach on a scale I never thought I’d see in my lifetime. Not a single employee and/or business leader that I have spoken with wants to worry with this nonsense. It is not small-business’s role to play ‘enforcer’ for hare-brained government ideas where the science is shaky at best. Case-in-point - the state of Vermont has the highest vaccination rate in the country, yet the 7-day average of COVID cases in Vermont today is double what it was in April. This vaccine mandate is NOT the way out of this thing, and it distracts business in a very real way at a time we are all working to get the economy back on track.”

q. “We already are 100 people short and these rules will close the stores due to lack of workers.”

r. “This is an undue hardship on already struggling companies and a ridiculous burden on HR and safety personnel.”

s. “[R]educed staff, inability to continue to operate in rural areas, reduced gas availability, store closures.”

t. “It will have a negative impact all around, financially, strategically, and operationally. This is why business [would] rather leave the US and rather take jobs to other countries. This is too intrusive, not only on people, but on business as a whole.”

u. “We have 145 employees over 18 locations and an HR Dept. of 1. Each location runs []with a maximum of 5 employees

at any one time making the risk extremely low given all protocols we have put in place over the last 20 months. The administrative tracking and requirements are overly burdensome to a small company who has done everything to keep employees safe during this pandemic.”

v. “If the OSHA Mandate becomes effective it would be the most devastating event our company has ever experienced.”

w. “Unfairly applies to Large dispersed organizations. Independent operators with less than 100 employees are exempt.”

x. “[I]t would bankrupt our company because of the closure of so many stores. We have already reduced hours in some stores due to staffing issues.”

y. “In an environment where team members are difficult to find and keep. This is a well intentioned but short sighted power grab by a government reliant on the tax revenues small businesses supply. As Covid-19 becomes endemic as opposed to pandemic, this is a scary precedent for increasing government oversight.”

z. “We have a large number of employees that have not gotten vaccinated (over 50%). They will not get vaccinated if it is required.”

aa. “It would be a total disaster to our company, our industry, and to the U.S. economy.”

bb. “This mandate will be a serious detriment to our ability to operate our business.”

cc. “We will be able to comply with the mandate, but the loss in staff and resulting decrease in revenue could be catastrophic.”

dd. “[I]mpossible to comply with and will have very negative impacts on us as we will have to cut hours and /or close stores due to staffing issues.”

ee. “In order to stay in business, we would have to allow weekly testing as there are just too many other businesses with less than 100 employees that our employees could leave us for. We have already been unable to hire several people who did not want to work for company that would be under this mandate. They went to work for someone smaller. The idea that we can test weekly and track it is ludicrous. We operate large stores (30 - 50 employees) in very rural communities with little access to testing. This would require our store managers to manage this, on top of what they already do. This mandate puts even more strain on good, hard-working people that have been very loyal to us and their communities throughout this pandemic.”

ff. “With multiple retail sites spread over 2 states I'm not sure how practical the weekly testing will be. It will also be difficult with a small HR department.”

gg. “This will the[] straw that breaks the camel[‘s] back for a lot of our locations. Especially more rural locations where there is over 50% of the people unvaccinated (or higher). They will simply just not work anymore.”

* * *

I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 22nd day of November, 2021, at Bristol, Virginia.

A handwritten signature in cursive script, appearing to read "Lori Stillman", is written over a horizontal line.

Lori Stillman