

In OSHA We Trust?

[Roger Severino](#) October 28, 2021 6:30 AM



A person receives a COVID vaccine at the Acres Home Multi-Service Center in Houston, Texas, October 13, 2021. (Callaghan O'Hare/Reuters)

The administration is exploiting a little-used OSHA 'emergency' standard to do its dirty work of coercing millions of Americans to get vaxxed.

According to *The Princess Bride*, one should "never get involved in a land war in Asia" and "never go in against a Sicilian when death is on the line." We suggest a modern addendum to the classic blunders list: Never trust a bureaucrat claiming emergency powers. Last week, we met with federal government officials to [object](#) to President Biden's impending so-called emergency COVID-19 vaccine mandate for the American workplace. We

were one of more than 80 groups to meet with officials from the White House's Office of Information and Regulatory Affairs (OIRA) and the Occupational Safety and Health Administration (OSHA), after the president [ordered OSHA to impose the vaccine mandate](#) without doing cost-benefit analysis, as would be needed to justify such an unprecedented intervention in the American economy and personal health decisions.

Why did Biden pick an obscure agency like OSHA, instead of, say, the Department of Health and Human Services, to impose national vaccination on the millions of (mostly young and healthy) Americans still unwilling to get the shot? Put simply, because OSHA is the best Biden could do to give his unlawful plans the veneer of legality. But it won't work. As we pointed out to OSHA in our meeting, instead of addressing dangers in American jobsites, they are declaring American *workers* themselves to be a threat, and in their natural state no less. That move flips on its head the law granting OSHA authority to regulate "workplace" safety.

OSHA has failed to point to anything that distinguishes the American workplace, in all its diversity, as any kind of COVID-19 emergency danger zone. Normally, OSHA deals with dangerous substances and hazards in workplaces, such as railings on high-rise construction sites or chemical exposure in manufacturing plants. OSHA must provide sufficient support for its claim that there is a sufficiently grave and imminent danger in the workplace necessitating a vaccine mandate for covered employers.

But there is nothing remotely unique about the dangers of all workplaces (or specifically workplaces of employers with 100 or more employees) when it comes to infectious diseases, because workplaces come in all shapes and sizes, including work done in well-ventilated areas, outdoors, masked, remotely, seasonally, or in places that can be modified to adopt any of the above. While employees may get COVID-19 at work, they can also get

COVID-19 outside the workplace, and all employees have had the opportunity to get a COVID-19 vaccination to protect themselves. Most important of all, the people most at risk of hospitalization or death from COVID-19 are beyond retirement age and largely out of the workforce.

But the real goal was never workplace safety. It is, as the White House has [admitted](#), "to render being unvaccinated so burdensome that those who haven't received shots will have little choice other than to get them." The administration is bent on forcing vaccination on all sectors of American society, and it has latched onto employers to do the dirty work of punishing, shaming, and coercing "vaccine undocumented" workers.

New daily COVID-19 cases [have fallen](#) 57 percent from their September 1 peak. With close to 67 percent of Americans (and counting) having received at least one shot, and with treatments for COVID improving rapidly as we learn more about the disease, the manufactured frenzy to impose an OSHA mandate is reckless, especially when [OSHA rulemaking usually takes from four to nearly twelve years!](#) The Biden administration also seems to be ignoring the millions of people who have already recovered from COVID-19 and have natural immunity, even though [studies](#) show that natural immunity is at least as good as vaccinated immunity — and probably better — when it comes to serious illness.

But Joe Biden has already ordered OSHA to issue the mandate, and it looks as though the normal public input, cost-benefit analysis, rulemaking norms, and science are going to be dispensed with in order to reach the desired political end, which is near universal vaccination and pariah status for any holdouts. OSHA is calling upon a seldom-used [exception](#) to the rulemaking process that allows it to issue an "emergency temporary standard" (ETS) that goes into immediate effect. (This exception also helps explain the Biden administration's sudden elevation of OSHA as its new favorite agency.)

OSHA may issue an ETS only when it is “necessary” to protect employees against a “grave danger” from exposure to “substances or agents determined to be toxic or physically harmful or from new hazards.” Historically, OSHA has issued ETSs only rarely. Of the nine issued before COVID-19, six were challenged in court, and five were ruled unlawful, including [a 1983 ETS on asbestos in the workplace](#).

But there is a danger for Biden and OSHA. The quicker the mandate drops, without weighing all the costs and benefits, the more transparently unscientific, political, and subject to legal challenge it becomes. But the longer OSHA waits, the more it undercuts its argument that there is (or ever was) enough “grave danger” in the workplace to justify emergency OSHA intervention.

Although we made our case against the mandate to the bureaucrats at OIRA and OSHA, we have little hope that the Biden administration will reverse course, obey the law, and leave American workers alone. Given Biden’s obvious personal disdain for unvaccinated Americans, a return to norms at this point seems quite inconceivable.

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Editor’s note: This article has been emended since its original publication.