

Dear AGC Member:

As you know, the Biden Administration has issued two executive orders designed to charge private employers with the responsibility to force employees to obtain Covid-19 vaccinations. The first order requires the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard (ETS) requiring larger employers to ensure employees are vaccinated or are tested on a weekly basis. The second order requires all federal contractors to vaccinate their workers. Due to the anticipated complexity and costs of these requirements, AGC has already taken steps to determine the appropriate response to each of these standards. Before discussing the actions taken, it needs to be stated that AGC of America has engaged in activities to encourage construction employees to voluntarily get the vaccine. These activities have included public service announcements on our website and on social media, a vaccination tool kit on our website to guide employers on how to encourage vaccinations, and two webinars providing legal and practical advice for employers on this issue.

### **The Executive Order Requiring OSHA to Issue an ETS on Mandatory Testing and Vaccinations**

President Biden has charged OSHA with the task of promulgating an ETS that would require employers with 100 or more workers to either mandate vaccinations for all employees or to test unvaccinated employees for Covid on a weekly basis. The ETS process is exempt from the normal rulemaking procedure that requires a period of public notice and the opportunity for interested parties to provide written comments to the agency. Notwithstanding those limitations, AGC sent a [letter](#) to OSHA noting our concerns that a broadly applied standard will not acknowledge that industries like construction pose a lesser threat to spreading the virus. We have recently learned that OSHA has sent a draft of its ETS to the Office of Management and Budget for review and approval. That event signals that a published ETS from OSHA may be days away.

Anticipating this action, AGC engaged outside legal counsel to provide us with a legal memorandum that identifies the standards that OSHA must meet to justify using the ETS process instead of the normal administrative procedures that are typically employed. When we see a published ETS on vaccinations we will be measuring it against our legal memorandum to determine whether a court challenge is warranted and evaluate our chances for success.

### **The Executive Order Requiring Federal Contractors to Vaccinate All Employees**

The President also directed the Federal Acquisition Regulatory (FAR) Council to mandate that all employees of federal contractors be vaccinated. Unlike the yet-to-be released OSHA ETS, federal contractors will not have the option of testing employees who have not been vaccinated. We have [communicated](#) our many concerns about the breadth of this requirement and its impact on the ability of contractors to deliver projects on a timely basis.

We have also engaged outside counsel to evaluate our legal options to challenge this requirement and have received a legal memorandum that we are using to guide our actions.

### **Conclusion**

We fully recognize that the actions taken by the Administration have created uncertainty and anxiety among our members and their employees. It is also true that the strains that workforce challenges impose on your firms will only be exacerbated by the imposition of testing and vaccination mandates. We will keep you informed of all actions that AGC will take to protect your business.

Sincerely,