

OSHA, REGULATIONS, RULES, AND MANDATE MADNESS

By Kristen Meghan, Sr. Industrial Hygienist
Tammy Clark, OSHA Environmental Health & Safety Professional
With Special Acknowledgement to Stephen Petty, C.I.H, C.S.P.

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Many workplaces around the nation are scrambling to figure out the requirements of the proposed OSHA Emergency Temporary Standard (ETS) on Covid-19 Vaccination and Testing, and whether or not they must follow the mandates they are hearing about. This article is an attempt to clarify the illegality of the current ETS promulgation, the statutory authority of the Executive Branch, the regulatory rulemaking process, the legal and scientifically-accepted hazard control process, the aspects over which OSHA has authority and jurisdiction, and those in which they do not, the liability placed on employers for enforcing workplace mandates as a condition of employment, and the constitutionality of the mandates within the ETS.

On November 6, 2021, the United States Court of Appeals for the Fifth Circuit, with a three-judge panel, issued a Temporary Restraining Order staying the approval and enforcement of OSHA's ETS filed on November 5. The ETS was found to have “grave statutory and constitutional concerns” with the Mandate. The ETS covered vaccinations, testing, and face coverings. On November 12, the Fifth Circuit Court reaffirmed the stay on the Biden Administration’s push for this mandate, therefore, *no employer in the United States is legally able to cite OSHA's recent ETS as justification for forced vaccination, testing, or mandating face coverings in the workplace, neither is any individual state OSHA agency.* This stay applies nationwide, not just to the states covered by the Fifth Circuit Court. Legally, no individual state may create a standard where no federal standard exists, so no state within the United States may legally create a Covid-19 standard with any mandates regarding vaccines, facial coverings, social distancing, testing, etc. *Until there is an **approved** ETS, there is no standard. Where there is no standard, there can be **no enforcement**.* Don’t allow your employer to coerce you into doing something you are not comfortable doing, or that violates your rights and civil liberties based on their self-enforcement of what they claim “OSHA says”.

On November 12, the Fifth Circuit Court granted a motion to stay the ETS and ordered that “OSHA take no steps to implement or enforce” it “until further court order”, prompting OSHA to announce it had suspended implementation pending litigation.

The Biden administration then filed a motion on Nov. 23 to lift the Fifth Circuit’s stay on the mandate and get the case moved to a potentially more favorable court. November 29, a federal judge blocked President Biden’s mandate that all healthcare workers be vaccinated through CMS. As we have been saying all along, the Executive Branch, even the President himself, does not have the statutory authority to implement such overreaching mandates. The judge also stated that the agency does not have the authority to impose such a broad mandate. CMS, like OSHA, gets their authority from Congress, and according to U.S. District Judge Matthew Schelp,

“Congress did not authorize CMS to enact this politically and economically vast, federalism-altering, and boundary-pushing mandate, which Supreme Court precedent requires.” The Sixth Circuit Court of Appeals was chosen to hear all cases regarding the Biden mandates collectively. The Court denied both of the Administration’s requests on December, 3.

The Biden Administration then requested a special motion-turned-merits panel of the Sixth Circuit Court to hear arguments from the Department of Justice and to consider lifting the stay on the OSHA-imposed vaccine mandates. On December 17, the Court ruled to vacate the stay in a 2-1 decision, with Judge Larsen issuing a compelling dissenting analysis. The two judges who voted to lift the stay blatantly lied and countered with false information, every point the Fifth Circuit’s analysis stated, based on disregard for regulatory and statutory law, OSHA’s jurisdiction with vaccines, and claims of vaccines as a “necessity” to prevent the entire American workforce from being in “grave danger”, agreeing with the DOJ’s arguments that a stay would have immediate, negative impacts on community health.

Judge Larson’s dissent pointed out many of the majority opinion’s egregious errors, but failed to recognize OSHA’s blatant violation of the FTC Act. Section 15 defines a drug as any article used in the diagnosis, cure, mitigation, treatment, or prevention of disease. Accepted scientific and medical practice is based on two, double-blind, peer-reviewed clinical trials before a drug manufacturer can claim a new drug to be defined as such. To-date, there is not ONE recognized clinical trial that demonstrates what OSHA is claiming regarding the necessity of a vaccine to protect the entire American workforce from “grave danger”, therefore, OSHA is guilty of deceptive practice as defined by Section 5(a) of the FTC Act.

In response to the December 17 ruling, 30 Attorneys General, corporations, and business groups filed an emergency injunction hearing with the United States Supreme Court, which Justice Brett Kavanaugh is now considering. Justice Kavanaugh gave the Biden Administration until December 30 to provide explanations in defense of the filings. The high court agreed to hear the arguments against these mandates on January 3, 2022.

We are aware that most business managers are receiving legal advice to act as though the OSHA ETS is still viable and enforceable. It is not! In fact, following the mandates within the ETS puts employers at a greater risk of liability! We are highly credentialed and in-demand court-approved Subject Matter Experts on OSHA standards and compliance, pandemic planning, preparedness and response, workplace health and safety, exposure control, risk reduction, hazard elimination, employer liability, and the authority given to OSHA through the OSH Act of Congress of 1970. Combined, we have nearly 40 years of experience in the fields of preventive health, exposure science, pandemic preparedness, planning, and response, public health, safety, and regulatory compliance.

We have helped attorneys and legislative bodies around the United States fight this illegal ETS and many other compliance-related cases. Our career fields of Industrial Hygiene and Occupational and Environmental Health and Safety overlap with compliance requirements issued through the regulatory agencies of OSHA, EPA, and DOT. In short, we know the world of regulatory compliance and the rulemaking process very well, but we recognize that most individuals, including many legislators and corporate attorneys, do not. Therefore, many business owners are getting inappropriate advice from their legal counsel, leaving them unsure

about what to do; listen to the court, or listen to their attorney and President Biden who are advising businesses to “ignore the federal court’s ruling”.

OSHA AUTHORITY AND THE RULEMAKING PROCESS

There is no statutory authority to implement this type of ETS as OSHA does not get their guidance or orders from the Executive Branch. The OSH Act of 1970 places OSHA under the guidance of the Legislative Branch, which is the reason this ETS is not legal, and will not be enforceable. OSHA gets its authority exclusively from Congress. For a regulatory agency to promulgate a new health or safety standard, the regulatory rulemaking process must be followed. This is a very lengthy process requiring congressional and internal OSHA Board hearings, testimony from industry professionals and organizations, a public commentary period, and a review period to allow for revisions based on testimony, industry, and public input. The standard promulgation process typically takes many years. An Emergency Temporary Standard may skip the normal rulemaking process only when there is a grave danger to society and time is of the essence to reduce or eliminate a known workplace hazard. Even then, the ETS must meet certain requirements for approval. The promulgation of the Covid-19 ETS was done illegally, so none of the mandates contained within the ETS are legally defensible or enforceable. Even if it was legally promulgated, OSHA must show the ETS is in place to control and mitigate a grave danger to the working public, and the requirements outlined in the ETS are a necessity to control a hazard that will likely result in death or serious injury.

The Fifth Circuit Court found the following:

- The petitioners’ challenges to the ETS are likely to succeed on the merits, specifically:
 - OSHA exceeded its authority in promulgating the ETS.
 - OSHA has no authority to issue an ETS to address an airborne virus that is both present in society (not exclusive to any workplace) and that exposure to such a virus is non-life-threatening to most employees.
 - OSHA failed to show that all employees are in fact, exposed to Covid-19 in every workplace.
 - OSHA failed to prove the “necessity” argument of a vaccine as a control.
 - It remains unclear that Covid-19 poses the kind of “grave danger” response of such mandates.
 - OSHA failed to show that the benefits of the ETS would outweigh the costs of implementing sweeping mandates to the extent that it will cause economic harm to businesses.
 - The court took issue with the “constitutionality concerns” with the federal government’s authority overreach regarding the Commerce Clause and the issue of separation of powers principles.
 - The court took issue with the loss of liberties of individuals hesitant to take the vaccines with job losses, and the undue burden and economic loss put on business owners are forced to lose employees.
 - Finally, the court found a stay is “in the public’s best interest” regarding protection of “personal liberties, economic interests, and constitutional

integrity”.

We will cover all these aspects and more to provide clarity and documentation for all employees, students, and patients to provide to their employers’ HR departments, corporate attorneys, school superintendents, and school board members, and hospital systems trying to force all employees and patients to follow non-traditional and illegal mandates.

We hope that this document serves to put anyone in a position of authority who is attempting to usurp the settled and historic rulemaking process, legal precedent, and current regulatory standing, *on notice that they are in violation of the law and will face serious liability repercussions if they choose to act in a rogue manner, implementing self-proclaimed, unsupported “mandates” on their authority.*

It is also our hope that the people of the United States use this information to collectively and offensively join together in their workplaces, schools, churches, and public spaces to refuse to be controlled by illegal, unconstitutional mandates by a rogue President, a rogue Administration, and employers, school boards, county health commissions, clergy, and businesses who are simply following marching orders. Only an educated workforce and the public can stop this, which is why we are providing this level of detailed information.

OSHA’S SCOPE

OSHA is a regulatory agency solely responsible for the health and safety of America’s workforce. Their mission is to save lives and protect America’s workforce. They get their authority directly and solely from Congress. OSHA does not, and has never had authority over broad public health policy. Neither does OSHA have authority or jurisdiction over vaccines or any other medical procedures, devices, applications, or medical interventions for disease prevention. This falls under the agencies of the FDA and HHS. OSHA has never mandated vaccines for any pandemic or illness season. On the contrary, in multiple letters of interpretation regarding flu and Hepatitis B vaccinations, OSHA clarified that they do not mandate vaccines, rather, they require the workplace to develop an Occupational Health and Safety Program pertinent to the hazards associated with each workplace. For employees who may be exposed to blood and other potentially infectious materials, the employer must offer an HPB vaccine, but the employee is not required to take it. It is totally up to the employees whether or not to protect themselves. Further, OSHA does not cite the employer if employees decline the voluntary vaccine (more on this under OSHA citation types).

GRAVE DANGER AND NECESSITY REQUIREMENTS

The first requirement for an ETS to be approved by Congress is the grave danger aspect. The CDC data does not support Covid-19 as an illness being classified as putting an employee in grave danger of serious injury or death. The numbers simply do not support this.

The second requirement for ETS approval is a necessity. There is a total lack of evidence that this vaccine is necessary to prevent serious illness and death that would likely occur if the vaccine was not administered as a control measure. To date, the survivability of Covid-19 among

most age groups is over 99%. This is by no means a grave danger to the public. Neither is it legally defensible to claim that a vaccine that does not prevent anyone from contracting or spreading the virus is a “necessity”. It cannot be argued that a vaccine should be administered to an entire populous when the populous is not in grave danger of serious illness or death without it. The control simply does not meet the legal requirements of grave danger or necessity for an ETS. Perhaps the strongest argument against the grave danger and necessity requirements, however, is the fact that infectious diseases are not recognized as “workplace hazards”, so OSHA does not have jurisdiction or authority over infectious disease control measures.

OSHA CITATION TYPES

The ETS states that an employer who does not enforce these mandates on their workforce can be cited by OSHA for a “Serious” violation. This is also a legal challenge for OSHA as their definition of a serious violation is one in which a workplace hazard can result in serious injury or death (https://www.osha.gov/sites/default/files/2018-12/fv10_sh-20854-10_hazard_id_facilitatorguide.pdf). “A hazard is the potential for harm (physical or mental). In practical terms, a hazard often is associated with a [workplace] condition or activity that, *if left uncontrolled*, can result in an injury or illness. Identifying hazards and eliminating or controlling them as early as possible will help prevent injuries and illnesses.” OSHA’s role is workplace health and safety, not infectious disease mitigation strategies or public health policy. Infectious diseases are not considered workplace hazards and OSHA has no jurisdiction or authority to control the spread of infectious diseases. This is within the scope of Health and Human Services and public health officials, not OSHA.

OSHA provided clarification on their role with infectious diseases and their role in the workplace vaccine debate. In 2009, OSHA issued a Letter of Interpretation regarding mandated flu vaccines in the workplace. They made it very clear that they do not require employees to take vaccines, and that the employer will not be punished or cited for not requiring employees to do so. It is always up to the employee to decide whether or not they choose to receive a vaccine for their wellbeing; not OSHA and not the employer. The employer can require a vaccine as a condition of employment, however, if an employee opts out for personal reasons, they are protected against retaliation. Read their letter here <https://www.osha.gov/laws-regs/standardinterpretations/2009-11-09>), where they say in part: “OSHA does expect facilities providing *healthcare services* to perform a risk assessment of their workplace and encourages healthcare employers to offer both the seasonal and H1N1 vaccines. It is important to note that employees need to be properly informed of the benefits of vaccinations. *However, although OSHA does not specifically require employees to take the vaccines, an employer may do so.* In that case, an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that creates a real danger of serious illness or death (such as serious reaction to the vaccine) may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 about whistleblower rights”, and then refers folks to CDC. Given the number of documented adverse reactions, serious injuries, and deaths associated with these vaccines, it is beyond reasonable for an employee to feel they are in danger of a serious injury or death as a result of receiving a Covid vaccine, and they should never be mandated to receive these vaccines that are still only under Emergency Use Authorization and not fully tested for safety or efficacy.

According to the CDC, there are an estimated 146.6 million Americans who now have natural immunity. Importantly, OSHA is not recognizing natural immunity, which most scientists and health experts agree imparts better immunity than vaccines. Moreover, being fully vaccinated is poorly defined and a moving target; CDC considers someone with only one Pfizer or Moderna injection to not be vaccinated and will likely change the definition as more and more boosters are mandated, to be declared “fully vaccinated”. Punishing a business for not enforcing the overreaching mandates included in this ETS puts a burden on all businesses and the economy, with absolutely no science, data, or evidence to back up these benefits of the mandates.

This is a very concerning issue for employers because many companies and industries are not allowed to bid on projects if they have even one serious citation on their record. This is an egregious overreach that puts an unfair and *unnecessary* burden on employers.

THE HIERARCHY OF SAFETY AND CONTROLS

To further prove this ETS is not legal, OSHA must always follow the Hierarchy of Safety and Controls. Vaccines cannot legally be viewed as a control method. Industrial Hygienists are trained and credentialed to conduct Health Risk Assessments (HRAs) to determine which control methods are most effective in reducing a hazard to a safe level that allows the employees to work in a safe and healthful work environment. Under OSHA's Program Management, controls that are selected MUST be revisited to document and ensure confidence in any controls implemented. An example would be implementing engineering, administrative, and personal protective equipment (PPE) as controls.

An example of the Hierarchy decision-making process to control hazards would be a situation involving Kristen’s work in the Air Force. She conducted an HRA on an aircraft sanding process that involved the removal of carcinogenic metals. The first requirement according to the HRA was to conduct air sampling in the workers' breathing zone, to determine the Occupational Exposure Limit (OEL). In following the Hierarchy of Safety and Controls, engineering controls were the first control that could feasibly be utilized. Capture ventilation was established by having the workers use a pneumatic sander with an attached HEPA filter and a system that collected the dust. An administration control was also implemented: a wet method to clean up residual metals dusts, decontamination stages, and training. Once again, sampling was done (verifying the confidence in the control method), only to find this control method did reduce exposures but required further controls to be fully compliant with the safe permissible exposure limits (PELs). Following the Hierarchy of Controls, PPE was then utilized, including 3M 7800S full-face respiratory protection with P100 filters. This specific PPE had the adequate protection factors to control the exposure to these known carcinogens. Three months after training the employees and implementing these controls, further testing to verify the confidence in all controls was performed. This involved rigorous testing, investigation, and documentation. *An Industrial Hygienist cannot verify the confidence in vaccines as a control method.* It is widely known, these Covid-19 vaccines do not eliminate the hazards associated with being diagnosed with SARS-COV2, and IH's absolutely cannot verify the confidence in a control method that is injected into an employee. Control measures are not designed to follow employees home! In addition, every individual has unique biogenetic factors and health histories that make a one-size-fits-all approach to health completely irresponsible and dangerous. It is a dangerous

precedent to set for unelected, unqualified bureaucrats to dictate public policy by ignoring existing science and acting as licensed healthcare providers.

As described, this is a major legal aspect as to why the ETS is currently unable to be enforced. We have played important roles in working with countless attorneys to draft these arguments, as our career field is not widely understood. We are mostly behind-the-scenes working to keep people safe, healthy, and compliant with government regulatory agencies, but when the government decided to step into our lane and ignore the scientific and medical experts, we felt a sense of civic responsibility and moral duty to expose their irresponsible and illegal actions, and why the response to this pandemic has been so wrong, starting with the Hierarchy and the controls listed within.

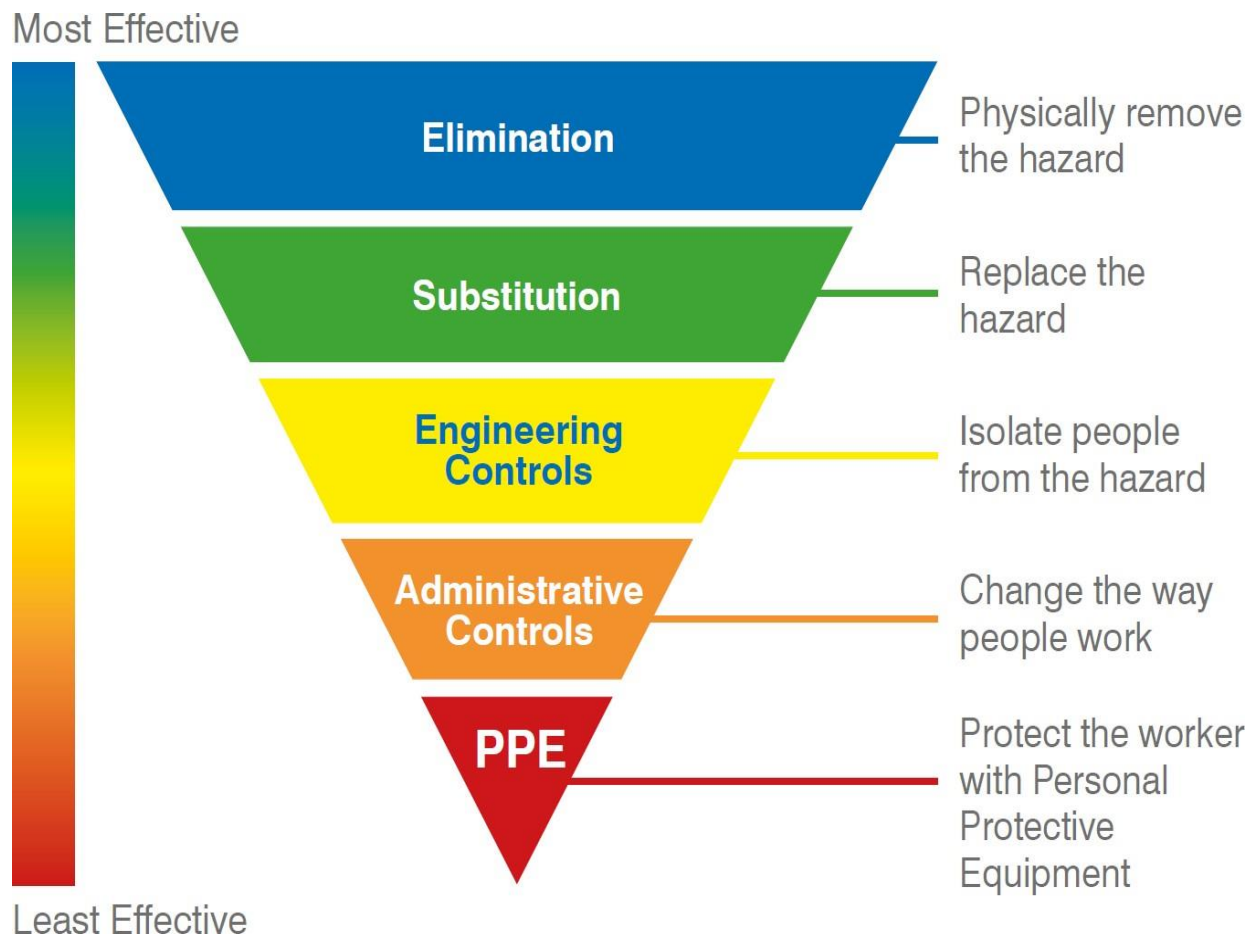
The federal courts have ruled twice now that the OSHA ETS is an overreach. To implement controls in the workplace, HRA's have to be conducted and are not meant to be a blanket approach. An electrician who works autonomously does not have the same risk of occupational exposure to this virus as a health care worker working in isolation units, inside healthcare facilities. Administrative professionals, like those in the education sector, can have their exposures reduced if the school systems would implement engineering controls through dilution and destruction technologies. An example would be the installation of a product called the iWave Air, an air ionizer that is installed on a facilities' HVAC system. This engineering control can kill up to 96% of pathogens, allergens, mold, and viruses like Covid-19. It is being installed in numerous businesses, schools, and prisons around the country. It should have been a recommendation far above mask use, from day one of the pandemic.

See the Hierarchy of Controls below. This guide was first developed by the National Safety Council (NSC) in 1950 and has been used to control exposures for over 70 years. For the first time since public health and safety professionals have relied on the Hierarchy of Controls to control exposures, our government abandoned the reliance on scientifically-proven methodologies, which contributed to the creation of several greater hazards within society. We were told to do things in direct opposition to what the exposure scientists have known for many years is the only proven manner in which to control a pandemic and an infectious airborne virus. The government's response, which was contrary to the known science, actually *increased* rates of infection and transmission!

To understand the approach to exposure control, we always start at the top, which is the most effective hazard control measure, and work our way down to the least effective control. If you notice, PPE is always the last form of control. This is because putting someone in personal protective equipment means we were not successful in eliminating the hazard through the other protocols, so the exposure remains. The PPE is the person's only protection against the hazard, which means they could still potentially be exposed if there is a PPE failure, misuse, lack of training, etc. It is important to note that facial coverings or masks are not PPE. They fall below PPE because they are not rated or tested for material makeup, protective factors, fit factors, etc. Facial coverings are not even on the Hierarchy of Safety and Controls, yet our governments skipped over every single known mitigation and control method, ignoring decades worth of proven science and existing OSHA standards (OSHA has requirements anytime you put someone in PPE), and irresponsibly mandated face masks on an entire society, like a blanket,

one-size-fits-all approach with no medical questionnaire, no personal health history, no risk factors reviewed, no training on donning, doffing, changing out, cleaning, disinfecting, storing, work-rest cycles, etc. This was all handled so wrong, so dangerously, that we felt a responsibility to expose the illegal and egregious activity, and educate the public, parents, business owners, school officials, attorneys, legislators, and government officials.

HIERARCHY OF SAFETY AND CONTROLS



FACIAL COVERINGS AND AEROSOLIZED VIRUSES

Face coverings are also not a control method for an aerosolized virus. Masks are not rated or capable of having a proper seal; literature states that masks cannot be sealed and do not meet any of the basic provisions of the Respiratory Protection Standard (29 CFR 1910.134). In addition, they create a greater hazard and increase rates of infection. This is something that OSHA is guilty of ignoring, but many professionals in our field are fighting these mandates all over the country. We have personally helped end mandates in three states, because we are considered experts on Respiratory Protection, source control, and PPE, and we know the science that has existed since the 1970s. It is highly negligent to view vaccines and/or face coverings as control methods, as neither falls on the Hierarchy of Safety and Controls. Masks come in all types of materials and sizes and not one single real-world randomized control trial with metadata analysis supports the data that a "mask" can stop the spread of Covid.

It is important to note that all mask studies to date that claim masks work to slow or stop the spread of Covid-19, have been conducted in a laboratory under various conditions, but all place the mask on a mannequin or fixture that is perfectly sealed. In the real world, gaps always exist between the mask and the skin; masks that seal are called respirators. Literature shows that real masks with gap areas of 2% of the mask area, with low effectiveness to start with, have reduced effectiveness to 75%, and at 3% gap area, that value drops to essentially no effectiveness.

Given the fact that most masks are worn improperly, there is a variety of porous cloth fabrics that do nothing to stop the tiny SARS COV-2 virion, and people are not trained on how to properly don and doff, use, and wear them, creating an increased risk of infection through fomite and cross-contamination, it is no wonder that masks have done nothing to slow or stop the spread of this virus, rather, they have increased infection rates and prolonged achieving herd immunity.

Professionals within our fields conducted extensive calculations and have determined, via Stoke's Law, that aerosols can stay suspended in the air for several hours and days. This is why engineering controls with increased air exchanges, under ASHRAE guidance, are recommended by IHs and Engineers. The first thing an IH must consider when implementing controls is whether or not the controls are safe, and will it work to control the hazard at hand. Masks are not safe for prolonged use and improper use and handling can cause the small particulates and aerosols to be suspended in the ambient air. This science is presented on the Rumble Channel of Stephen Petty, PE, CIH, CSP. [How Much Protection Can a Mask Provide? Mask vs. PPE - Ep. 05 \(Removed from YT\) \(rumble.com\); real solutions, industrial hygiene solutions are noted in Episode 06.](#) Both OSHA and the CDC know this information. The CDC cites a study to prove masks as source control with flawed studies that involved asking a female to close her mouth, not move her head and breathe through her nose. This does not represent real-world use and no seal can exist with a mask, which is why respirators are rated through NIOSH. Not only were these parameters removed from the study, but their equipment was also out of calibration. This is information the general public should be made aware of. OSHA also knows this, which is why they created their PPE and Respiratory Protection Standards in the 1970s!

In reviewing over 50 studies supporting mask-wearing by CDC, those with actual data suffer from one of two flaws: i.) no controls – i.e., a similar group not wearing a mask or ii.)

confounding factors that do not allow one to determine the effectiveness of wearing a mask – i.e., the study has several factors evaluated at the same time (distancing, HVAC improvements, quarantines, and masks). The only double-blind study listed was the Denmark study where ~ 3,000 people wearing masks and ~3,000 people not wearing masks were monitored for contracting COVID-19; data showed no differences in disease rates statistically. CDC panned this study by suggesting it was based on only 0.1% of the total country population and that a different study should have been completed. Epidemiology studies do not require the study to include a fixed percentage of a country's population (e.g., in the U.S. this would require >35,000 people in the study for it to be valid – this is absurd).

OSHA appears to be an agency guilty of revisionism, as they are ignoring their standards, they are creating overburdensome requirements on employers, and putting the American workforce at great risk of increased hazard by forcing them to do what their standards say cannot legally be done because of these known health hazards! Moreover, they are doing great damage to the agency and their scientists in the public's eye as it is increasingly viewed as an institution driven by a political agenda.

Facial coverings are of particular concern for children for a variety of reasons, much of which is already known through OSHA's PPE and Respiratory Protection standards. Covering anyone's mouth and nose, restricting proper gaseous exchanges, without following the strict protocols of the current standards, is illegal and dangerous. This is why the standards exist in the first place. When it comes to applying a blanket, one-size-fits-all face-covering mandate on children, this should be considered criminal. It is nothing less than child abuse to restrict a child's normal breath, causing many well-known medical issues such as hypoxia, hypercapnia, headache, fatigue, irritability, difficulty focusing, increased infection rates due to perioral dermatitis (bacterial infection in the mouth and on the skin), increased infection rates due to trapped and rebreathing of waste gasses and increased viral load, increased infection rates due to fomite and cross-contamination (children are dirty and germy, and they constantly touch their masks, creating serious contamination issues), and many, many more known, documented health hazards of prolonged mask-wearing.

The existing, settled science demonstrates that masks do not stop the spread of aerosolized infectious respiratory diseases, and in fact, they create a greater hazard, increasing infection rates. If school Superintendents and Boards will not relent to parents' demands to unmask their children, they should be recalled immediately and replaced. Parents, your children's health is in your hands and nobody is going to do this for you. It is up to you to stop this and protect your children. No child should be forced to restrict their normal breath. If they are being forced to, get them out of those schools and daycare centers immediately!

HIPPA AND PROTECTED HEALTH INFORMATION

Another concern is the overreach of asking employees to disclose their vaccination status. One of the most misunderstood aspects of HIPAA and protected health information (PHI) is that it only applies to healthcare settings, which is false. *Any employee* who handles another employee's protected health and private health information or that of any customer or client is subject to annual HIPAA training and has a "right" to know said historical medical information.

In managing OSHA's Respiratory Protection Program for over 76K employees, we had to be fully trained under HIPAA due to the fact we reviewed and maintained the files associated with medical questionnaires, under 29 CFR 1910.134 Appendix C. Asking an employee their vaccination status is considered PHI. To do so without being fully HIPPA trained and certified puts the employer at risk of violating privacy laws and opens the employer up to lawsuits.

INCREASED LIABILITY

One major area of misunderstanding is in the area of liability. We hear all the time that OSHA won't punish an employer if an employee is injured due to the vaccine. This is not at all true. Employers, you need to understand your risk of liability for requiring employees to utilize any medical device (masks are considered medical devices) without proper oversight and training or to take an experimental vaccine that is still under emergency use authorization (EUA) and has not been tested for safety or efficacy (the Covid-19 vaccines are still in stage 4 testing phases and still under EUA), or any vaccine as a condition of employment for that matter. The injuries and deaths associated with these vaccines are too great to be ignored, yet employers are 100% liable for the injuries and deaths sustained if they are received because of a condition of employment. To date, the CDC VAERS website reports over 18,000 deaths directly associated with the Covid-19 vaccines, and this is only a small percentage, based on self-reporting by medical personnel.

There is a lot of confusion about liability, workers' compensation, and mandates because of OSHA's intentional wordplay in an attempt to get all businesses to self-regulate and comply with their stated "mandates". Only those who truly understand OSHA's scope of authority, inspection criteria, recordkeeping requirements, and employer's liabilities will be able to correctly decipher the semantics.

RECORDKEEPING AND OSHA 300 LOGS

On July 7, 2021, OSHA issued an update to its National Emphasis Program which changed the recordkeeping requirements for employers. While employers are normally required to report all workplace-related injuries above and beyond a first-aid injury; illness, serious injury, death, loss of consciousness, loss of limb or eye, for all Covid-19 mandate-related injuries or illnesses, the agency declared that employers would no longer be required to record these normal recordables on their OSHA 300 Injury and Illness Log. This simply means that the agency removed this as inspection criteria. However, it does not remove the liability component from the employer in the event of an adverse reaction that causes an injury, illness, or death. Most employers are under the impression that this means they are not liable for any Covid-related injury, illness, or death, but this is not the case.

While this country is greatly divided, one thing is not debatable. Industrial Hygienists are the experts in protecting workers and have been left out of a multidisciplinary approach and review

in ensuring workers are protected in their respective workplaces. For the first time in decades, while dealing with a pandemic, the multidisciplinary approach was abandoned and those in our career fields who normally guide hospital systems, government agencies, and communities on protective factors, PPE, and environmental control strategies, were left completely off all Covid-19 task forces and our expertise was ignored. It begs the question, “why?”

We will leave that for you to consider, but we also want to leave you with the knowledge and understanding about how and why none of these Covid mandates have been handled properly or legally. It is simply not legal, safe, or healthy to mandate facial coverings or respirators (PPE) with no regards to medical history, fit factors, protective factors, and training, nor is it safe or healthy to enforce a vaccination mandate with no regard for personal health situations, biological factors, health history, etc. the way it has been attempted under OSHA's recently drafted ETS.

CONSTITUTIONALITY AND CIVIL LIBERTIES

We have addressed the medical, scientific, and legal aspects of the Covid-19 pandemic response, but we must also address the aspect of constitutionality and civil liberties. This is the first time in American history that personal medical freedom and choice and civil liberties are secondary to government mandates. When an individual no longer has autonomy over their own body, rather, the government has absolute control over individuals and can force them to cover their faces, restrict their breathing, inject unknown, experimental ingredients into their bodies, stay away from others, not go to work, fine people for not doing as they're told even when there is no science, data, or evidence to support these mandates, where does it end? It doesn't.

Safety and health is never a one-size-fits-all approach. In addition, *the main rule of public health policy-making is to consider the best control measure for the problem that does not violate the public's civil liberties.* It is never a blanket approach, nor will the solutions ever remove the individual's ability to choose for themselves their health and medical choices, regardless of what public policies are implemented for the control of a public health crisis. All factors must be considered for a free, safe, and healthy society.

CMS, FEDERAL CONTRACTORS, AND OTHERS

We get asked about the Centers for Medicaid and Medicare Services, federal contractors' mandates, hospital systems, and others quite frequently. While we have been fighting the OSHA battle for over a year now, these agencies and groups are now being targeted and weaponized by a rogue presidential administration in an attempt to force their self-proclaimed “mandates” on the entire American public.

Make no mistake, this is a power grab. They are weaponizing every agency they can to try and implement their agenda. For us, this is not political. It is purely scientific and legal in approach, as this is our career field. However, we are dealing with a sitting President who told the American public to “ignore the federal court's orders” and just do what he is telling you to do! This is egregiously illegal and shows a blatant disdain for the rule of law. So we would be remiss in not addressing all of the associated factors involved with these sweeping mandates that have

caused great damage to the public, from the health and safety of individuals to economic devastation, to mental health issues; suicides, depression, and substance abuse, and much, more. To make matters worse, none of these mandates have done a thing to slow or stop the spread of Covid-19. They increased rates of infection! The states with the tightest Covid restrictions have had the highest rates of infection, while those with few to no mandates have fared quite well.

And where are the known treatments? We are being denied the known treatments that are cheap, safe, tested, and have been around for many decades. This is downright criminal and a violation of doctors' and healthcare providers' Hippocratic Oath. Those areas that are using known treatments have eradicated Covid-19 (research India and Uttar Pradesh).

To summarize, it doesn't matter which agency is being threatened, targeted, and weaponized. It is all the same. The Executive branch of our government does not have the authority to simply tell a regulatory agency, hospital system, doctors, or healthcare workers, schools, etc. to do what they order them to do in an attempt to implement their edicts. It is especially egregious when CMS and hospital systems are involved because uncredentialed, unqualified government officials are now attempting to set public health policy, ignoring licensed healthcare and public health professionals, and creating great harm to the public and the economy. This is nothing short of medical tyranny.

While it is important to note that this ruling today applies to 10 states, it does in fact, apply to them all indirectly as a state regulatory agency cannot create a regulation or standard in their state where one does not exist federally. For the judge to halt this federal mandate sends a clear message to the Biden Administration and the rest of the nation.

We hope this information has been helpful. Please take it, study and review it, and share with your HR Departments, your corporate attorneys (who should be leading the way in fighting these illegal mandates!), your employers, your school superintendents, and school board members, hospital systems, doctors, community businesses, clergy, families, friends, and anyone else you can think of to share it with and educate them on all of this. We all must understand the laws, the rulemaking processes, the regulatory environment, the science, data, and evidence, behind the existing OSHA standards.

Businesses owners and schools must be informed on the extent of all of this so they are not complicit in the illegal promulgation and enforcement of self-proclaimed mandates that only create greater harm to their employees and customers, and students and staff, but they also need to understand the increased risk of liability they have to their employees, staff, and students if they DO enforce any mandate that creates an injury or illness above first aid.

Individuals must be informed on the truth of the initiation of standards and regulations, the science behind the existing standards that are being completely ignored today, and why we cannot ever just make sweeping blanket mandates with no regard for personal health risks, histories, assessments, training, education, ratings, and other factors, and always protect personal choice and liberties.