

19 August 2021

HON. GOVERNOR TIM WALZ
130 State Capitol
75 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

HON. JIM SHOWALTER
Commissioner Minnesota Management & Budget
658 Cedar St
Saint Paul, MN 55155

Re: **Construction Jobsite Safety and COVID-19 Responses**

Dear Governor Walz and Commissioner Showalter:

We represent Minnesota developers and constructors, and are writing to raise significant concerns mandating the COVID-19 vaccine or testing to construction work.

A year and five months ago, the federal office of Cyber-Infrastructure Security Agency (CISA) identified the construction industry as “essential to continued critical infrastructure viability,” and, when Minnesota issued its Stay at Home Executive Order, the State exempted construction workers as critical to the State’s functions. The construction industry responded by continuing to build and maintaining safe environments.

The construction industry operates differently: jobsites coordinate many different employers, workers are trained to high safety consciousness, and much work is outdoors or distanced. Creating a mandate across all strata will be costly, cause delays, and simply may not work, jeopardizing our essential function.

Cost and Delays. A testing/vaccine mandate changes the terms of construction contracts, meaning that the State will have to pay for consequent costs or delays, which will be significant. For instance,

- Delays caused by workers who refuse to comply with the mandate and leave the jobsite. Workers already are scarce and losing more will delay work or prevent work from being performed. Losing a single worker in a sensitive role, such as the site’s crane operator, can shut down the entire jobsite.
- Delays because of worker shortages jeopardizes supplies delivered and stored onsite, which may become damaged due to weather or theft, prompting further delays to replace and cost.
- Compensation for the time that workers wait to be checked and cleared to work on the jobsite. A worker may be on a jobsite for a few hours or days, so the workforce will need consistent compliance checks.
- Creating and administering the system to check and clear workers, including extra staff and technology.
- Workers may require compensation for their time receiving the vaccines and/or tests.

Practicality. A vaccine/testing mandate has no criteria how or who manages the health data, causing compounded difficulties on a multiemployer jobsite, concerns among workers who view this data as private, concerns about unclear rules how the information is protected or shared, and objections to potential liabilities. There further is no indication how to accommodate workers with legitimate medical or religious objections as required by federal law, what that accommodation looks like, and why that accommodation, if effective, is not an option to vaccines and testing. We also are aware of legal concerns applying a mandate to construction that unfortunately could undermine the State’s efforts.

Short Timeline. These concerns cannot be addressed by September 8. The State should engage with the construction industry to consider the unique role construction plays as an essential component of critical infrastructure viability and the unique ways that construction operates, both within a culture of safety and a partner to public good.

When COVID-19 first rose last year, we rose to the Administration's challenges, provided the Administration with support and insights, implemented processes, and continued our work safely. We now ask for quick clarification that a vaccine/testing does not apply to construction job sites and hope to sit with the State to address how we best can support the State efforts.

Signed,

Tim Worke, Associated General Contractors of Minnesota

Nick McNeely, Minnesota Subcontractors Association

Barb Lau, Association of Women Contractors

John Quarnstrom, Sheet Metal, Air Conditioning & Roofing Contractors Association