HEALTH FREEDOM DEFENSE FUND

NOTICE TO EMPLOYERS

March 11, 2021

This serves as notice that any compulsory COVID-19 testing requirement imposed upon an employee violates federal law.[1] Title 21, Section 360bbb-3 of the Federal Food, Drug, and Cosmetic Act (the "FD&C Act") vests the Secretary of Health and Human Services with the permissive authority to grant Emergency Use Authorizations ("EUAs"). However, the statute requires that:

> **individuals to whom the product is administered are informed—**
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> > **(I)** that the Secretary has authorized the emergency use of the product;
> > **(II)** of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and
> > **(III) of the option to accept or refuse administration of the product**, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

On February 4, 2020, the Food and Drug Administration ("FDA") issued an EUA authorizing the Centers for Disease Control and Prevention ("CDC") emergency use for the first Real-Time Reverse Transcriptase (RT) -PCR Diagnostic Panel. The EUA was issued under and is subject to the statute noted above. Accordingly, any individual to whom the RT-PCR test is administered has the right under federal law to refuse administration of the test.

Since the EUA for the CDC's RT-PCR test, an additional 345 testing kits manufactured by various companies or organizations have received emergency use authorization. Each and every one of these tests has been authorized for emergency use under the statute quoted above. Accordingly, in each instance, no one can be forced to take the test. To do so would violate both the federal statute noted above, and the emergency authorization allowing the use of the test. This information can be verified at the following link: Emergency Use Authorization | FDA .

Each of the 346 EUA letters references its reliance on 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III), stating:

> This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of SARS-CoV-2 under Section 564(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

The FDA has also recognized in each of the 346 EUAs issued to date that no alternative to the tests issued under 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III) exists. Accordingly, no COVID-19 tests exist that may be used in a mandatory fashion.

We at the Health Freedom Defense Fund urge U.S. employers to comply with the FD&C Act and the terms of the 364 EUAs listed at the above referenced link, and advise all employees that they have the right to refuse to take any COVID-19 tests. Any other course of action is contrary to federal law.

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[1] Title 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III).