



## House Labor & Industry and Health Committees

October 1, 2020

### Impact of Department of Health Actions on Employers

Good morning, Chairman Cox, Chairwoman Rapp, Chairman Harkins, and Chairman Frankel. My name is Rebecca Oyler, and I am the Legislative Director for the National Federation of Independent Business (NFIB) in Pennsylvania. NFIB is the premier small business advocacy organization, with over 13,000 members in Pennsylvania and about 300,000 members nationwide. We appreciate your allowing us to be here today to speak on behalf of Pennsylvania's small businesses on recent Department of Health actions that have impacted our members.

Small businesses always have and always will make up an enormous segment of Pennsylvania's business community. More than 99% of Pennsylvania businesses are small. Generally, they are responsible for almost half of the private sector workforce and create two out of every three *new* jobs. They also have been disproportionately impacted by the COVID-19 emergency declaration and resulting guidelines and policies, so we are thankful for the opportunity to speak today.

From the early days of the pandemic, small business owners have been committed to doing their best to ensure the health and safety of their customers, their employees, and their communities during this challenging time. When a shut-down was ordered to flatten the curve, they complied. "Life-sustaining" businesses worked hard to keep providing essential goods and services, and many reoriented their businesses to provide necessary equipment and supplies. Still others planned ways to serve customers in innovative ways. Entrepreneurs are problem-solvers, and most rose to the challenge.

However, as days turned into weeks and, eventually months, and mandates and guidelines changed suddenly and often, many found it difficult to hold things together. The uncertainty that has become the new "normal" has forced many small businesses to close their doors for good. And we know that more will follow unless something changes.

What can be done to help small businesses survive and recover? Two of the most important elements of small business success are predictability in expectations and flexibility in implementation. Provide them with these two things, and entrepreneurs will find a way to manage almost any problem. But unfortunately, these are two things that have been sorely lacking during this crisis. Until we provide them some certainty about the future and the flexibility they need to manage bumps along the way, our small businesses will never achieve their potential, and as a result, our economy will continue to suffer, our tax revenue will never rebound, and unemployment will remain high.

Though the current pandemic is certainly unprecedented, and we appreciate that orders were well-intended, many of the sudden and sometimes inconsistent state mandates have been the cause of many problems. Guidelines and requirements have changed so frequently that NFIB has at times had a difficult time keeping our members up-to-date with the latest guidance. Last-minute changes left small businesses scrambling.

Setting aside the sudden March business closure order and problematic waiver process, which I won't address in my testimony today, Department of Health policies, including masking orders, quarantine guidelines, cleaning requirements, and occupancy mandates are among those that have caused frustration in the small business community.

Many business owners were caught off guard by the urgency with which many policies took effect, including the mask mandate. Though it was unclear in the beginning whether masks were required or not, employers were perfectly willing to protect their employees by providing masks when the decision was made. But they had very little time to comply. I talked to several "life-sustaining" business owners who were unable to find mask on such short notice, which jeopardized their ability to stay open and provide needed goods and services. Local supplies exhausted, one owner rushed out to buy material and hired a nearby seamstress to quickly make masks for her employees to keep her business open. However, many businesses just couldn't pull it off.

Many business owners had problems finding other necessary supplies after the April 5 Business Safety Measures order, which took effect the very next day. The order forced a near scramble for hand sanitizer, cleaning wipes, paper towels, and soaps. One owner was distraught because an employee allergy prevented her from using certain soaps. The owner did everything she could to find an acceptable alternative on very short notice. Another found it challenging to find portable handwashing stations for her construction employees. Businesses also scrambled to find shields and physical barriers or other necessary items to rearrange their space after the April 15 Worker Safety Measures order. Others quickly needed to procure e-commerce services to comply with the various orders. Finding these items and services was made all the more difficult by broken links in supply chains that were caused by businesses facing the same issues.

Another concern many small business owners related to me is a lack of consistency and clarity on certain policies, especially when they changed unexpectedly. This has been exacerbated by a lack of communication, causing various parties – employers, employees, and even state agency staff – having different information. One restaurant owner was frustrated when new rules were issued, and not understanding how they worked with the old rules, he asked a Liquor Control Board representative to explain it. In response, this LCB official told the owner he just needs to "check the news every day."

In many cases, the uncertainty and lack of specificity have exacerbated preexisting workforce issues unnecessarily, especially for "life-sustaining" businesses that need "all hands on deck" to keep going. Many of these businesses have difficulty finding qualified workers during normal times. When workers can't work due to quarantine orders that may not make sense, it can shut the business down and cause irreparable harm. One small business owner who had an employee test positive, was told by a DOH nurse that the employee should be off for 10 days "from exposure" to the virus. The employee was told by her doctor to wait 10 days "from the positive test." DOH's website says 10 days from "symptom onset." This confusion pitted the employee, who wanted to come back to work sooner, against the employer who wanted to make sure she kept everyone safe.

The employee of another essential business, which supplies medical equipment producers, was advised by a county office to quarantine for two weeks because someone in his apartment building tested positive. This employee wasn't exposed to the infected resident and did not want to take off work, but his employer felt he had little choice, even though that caused a staffing shortage. In other

circumstances, business operations were affected by quarantines of employees who may have had second- or third-hand exposure to possible COVID cases, where there was no clear connection.

Small businesses are willing to do what it takes to keep their employees and customers safe, but confusing and hastily written rules are unhelpful. What they desperately need is clear and consistent guidelines that are well communicated, along with sufficient time to put them into place.

An important consideration is that these guidelines must also provide enough flexibility to allow small businesses to implement them in the safest and most effective way for their individual business. For example, one restaurant owner told me that his rural township does not have occupancy limits. He knows how to space his tables so that he can maintain proper CDC-recommended social distancing, but he doesn't know how to comply with the capacity limitations of the Governor's orders. Other small restaurants very much want (and need) to increase their capacity to 50%, but they can't do it without seating customers at the bar. If it can be done with social distancing and physical barriers, why isn't this an option? Unfortunately, flexibility is not permitted under current mandates.

Many small businesses question why current guidelines and mandates are the same for every business across Pennsylvania when case counts vary so much in different areas of the state. Though imperfect, the Governor's Red/Yellow/Green plan recognized that the virus affected different areas of the state in different ways and made some accommodations for this fact. As it stands, with all counties in Green, it's unclear why a small business in Warren County, with only 44 total cases, is under the same restrictions as a small business in Delaware County, which has had over 11,000 total cases and almost 18 times the number of cases per capita!

With no current plans beyond the green phase, which is unsustainable for too many small businesses, many are hanging on by a thread because they have no idea what the future holds. And they worry constantly that things could change on a dime again. They need some assurance that there is a path forward and a recognition that a reasonable balance can be achieved between pandemic policies and economic sustainability.

We all know that small businesses are the pillars of their local communities. They sponsor the local sports teams and provide food for community events and hunger drives. They loan out their parking lots for car washes. Many have been community institutions for decades, with teenagers working at the same restaurant their parents did years ago. These businesses are neighborhood gathering spots, but they are also taxpayers and employers. We need them. They will play a big part in our recovery from this crisis, and we should do everything in our power to help them recover and thrive.

Recovery will require us to encourage entrepreneurs to bet on their businesses again, to open safely, reorient if necessary, bring their employees back, and invest in the future. We will never be able to achieve this with so much uncertainty surrounding the current crisis and future events. Please prioritize policies that will provide consistency, certainty, and flexibility, with adequate notice, to our business community to lay the foundation for a strong recovery ahead.

Thank you again for the opportunity to speak today on behalf of Pennsylvania's small businesses. I would be happy to answer any questions.