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March 5, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC 20210

Dear Secretary Scalia:

In light of the COVID-19 epidemic and its rapid spread worldwide, we wrote you on January 30, 2020, asking the Occupational Safety and Health Administration (OSHA) to put its Infectious Disease Standard back on the active regulatory agenda and to dedicate all available resources to move to final promulgation. That letter also requested that OSHA prepare an Emergency Temporary Standard (ETS) to protect workers against COVID-19 in the event that conditions further deteriorated in the United States.

We requested a response to our letter by February 15, 2020, but as of the date of this letter, we have received no reply. In addition, Committee staff has reached out to the Department on several occasions seeking a response to the letter and OSHA's plan of action, but as of this date, no response has been received.

As we stated in our January 30 letter, Section 6(c)(1) of the Occupational Safety and Health Act provides only two conditions for issuing an ETS:

- (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and
- (B) that such emergency standard is necessary to protect employees from such danger.

We noted that at that time, over a month ago, it was still too early to issue an ETS, but that a widespread epidemic of a virulent novel airborne virus would clearly satisfy those conditions and "OSHA should be prepared to issue an ETS."

The Honorable Eugene Scalia

March 5, 2020

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Based on current and anticipated conditions, it is clear that the time for OSHA to issue an ETS to protect workers from COVID-19 has arrived. Since the end of January, this country has seen widespread community transmission of COVID-19. Hundreds of health care workers have been exposed and some have been infected¹. The number exposed and infected is undoubtedly higher than has been detected at this time because of the non-symptomatic nature of some infections, the limited availability of test kits, and restrictive criteria initially set by the Centers for Disease Control and Prevention (CDC) for testing.

Legally, the conditions to justify an ETS in the Occupational Safety and Health Act have been met. Health care workers are clearly exposed to “grave danger” from exposure to the SARS-CoV-2 virus.

If health care workers are quarantined in large numbers, or get ill or die, or fear coming to work due to the risks, it’s not just a personal or workplace problem, it’s a national public health disaster.

OSHA is the only agency in the federal government authorized to enforce safe working conditions for the nation’s workers—including those in health care facilities. As we enter into what is likely to be the greatest infectious disease crisis this country has faced in over a century, it is in the national interest that OSHA be on the forefront of protecting workers essential to the country’s health care system. For that reason, I reiterate my call for OSHA to put the infectious disease standard back on the active regulatory agenda and to issue an Emergency Temporary Standard to protect health care workers from COVID-19.

Please provide the Committee with OSHA’s written response and its plan to address this crisis no later by March 15, 2020. We also request an immediate briefing on your plans.

Thank you for your attention to this matter. Contact Jordan Barab with the House Committee on Education and Labor at jordan.barab@mail.house.gov with any questions. Please send all official correspondence relating to this request to tylease.alli@mail.house.gov.

Sincerely,



ROBERT C. “BOBBY” SCOTT
Chairman



ALMA S. ADAMS PH.D.
Chair
Subcommittee on Workforce Protections

cc: Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor

¹ “First responders and medical staff test positive for coronavirus. UW doctors not getting masks”
<https://www.kuow.org/stories/first-responders-and-medical-staff-test-positive-for-coronavirus?fbclid=IwAR0VzfbrWfu5Qloo0C0YzskRfLooyMAGIBzsYjsD7rJN5y7-4N5EKJ8cUsQ>