



May 28, 2020

The Honorable Alma Adams  
Chairwoman  
U.S. House Subcommittee on Workforce Protections  
Washington, D.C.

The Honorable Bradley Byrne  
Ranking Member  
U.S. House Subcommittee on Workforce Protections  
Washington, D.C.

Dear Chairwoman Adams and Ranking Member Byrne:

On behalf of Coalition for Workplace Safety (“CWS”) and the 58 undersigned organizations, thank you for holding today’s Workforce Protections Subcommittee hearing, “Examining the Federal Government’s Actions to Protect Workers from COVID-19.” We write to advise against requiring the Occupational Safety and Health Administration (“OSHA”) to issue an Emergency Temporary Standard (“ETS”) at this time in response to the coronavirus pandemic. Such a requirement is included in the COVID-19 Every Worker Protection Act of 2020 (H.R. 6559, included as Division L, Title III in H.R. 6800). OSHA should instead continue with its current approach of issuing industry-specific guidance based on the latest information from the Centers for Disease Control and Prevention (“CDC”). This approach provides a more nimble and effective solution than issuing a rigid, one-size-fits-all standard.

The Coalition for Workplace Safety (“CWS”) is composed of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. Workplace safety is a top priority for CWS members, and we strongly believe that employers should take steps to ensure that employees are protected. Improving safety can only happen when all parties—employers, employees, and OSHA—have a strong working relationship. CWS members are dedicated to ensuring employers and employees have the latest and best information about workplace safety in the face of the COVID-19 crisis.

CWS and the undersigned organizations believe an ETS would be far less agile at adapting to the nation’s evolving understanding of COVID-19 and the societal response to the crisis. The argument for rushing to issue such a standard is based on two false premises: 1) employers have no current, enforceable obligation to protect their employees from exposure to COVID-19; and 2) a new OSHA standard will help employers protect their employees from potential exposure. The Occupational Safety and Health Act’s General Duty Clause (“GDC”) already requires employers provide employees with a safe and healthful workplace and to eliminate, to the extent possible, known hazards using known methods of mitigation or avoidance. The GDC is enforceable by OSHA, and Secretary Scalia has said explicitly that the agency will not hesitate to bring enforcement actions where appropriate.

Furthermore, the GDC functions in conjunction with guidance to provide industry with situation-specific steps employers should take to protect their employees. An employer can be cited for violating the GDC if OSHA determines it has not implemented the appropriate guidance on protecting workers.

OSHA's current GDC-plus-guidance approach provides the agility needed in this crisis, where employers and employees are seeking the most accurate, up to date information regarding safe practices in the face of:

- a rapidly evolving understanding of COVID-19;
- changes in how industry delivers goods and services in response to the crisis; and
- differing restrictions imposed by state and local authorities.

The GDC-plus-guidance process allows new information to be disseminated to employers and workers and incorporated into OSHA's enforcement policies quickly and effectively. OSHA has been diligently issuing industry- and situation-specific guidance in order to provide timely and tailored information to employers, employees, and OSHA enforcement officers. A rigid ETS would make it far more difficult for OSHA, employers, and employees to quickly make these adjustments.

We are also concerned that H.R. 6559 would require OSHA to issue a new standard *prior* to the National Institute for Occupational Safety and Health ("NIOSH") and CDC collecting data and conducting research on workplace COVID-19 cases. This is exactly the reverse of how good workplace safety policy should be made. Data is a critical component in the consideration and development of any workplace safety regulation.

CWS members are determined to protect their employees from exposure to COVID-19 to the maximum extent possible. Employers and employees alike are far better served by an approach that focuses on disseminating the latest information available and tailoring safety guidance to reflect the rapidly evolving understanding of this public health emergency than a rigid standard that would limit our collective ability to quickly adjust to changing circumstances.

Again, thank you for holding this important hearing.

Sincerely,

Agricultural Retailers Association  
Air Conditioning Contractors of America  
American Bakers Association  
American Coke and Coal Chemicals Institute  
American Composites Manufacturers Association  
American Council of Engineering Companies  
American Feed Industry Association  
American Foundry Society  
American Hotel and Lodging Association

American Mold Builders Association  
American Pipeline Contractors Association  
American Road & Transportation Builders Association  
American Trucking Associations  
Asian American Hotel Owners Association  
Associated Builders and Contractors  
Associated General Contractors  
Associated Wire Rope Fabricators  
Distribution Contractors Association  
Equipment Dealers Association  
Flexible Packaging Association  
Global Cold Chain Alliance  
Heating, Air-conditioning, & Refrigeration Distributors International  
HR Policy Association  
Independent Electrical Contractors  
Industrial Fasteners Institute  
International Association of Amusement Parks and Attractions  
International Foodservice Distributors Association  
International Franchise Association  
International Warehouse Logistics Association  
Leading Builders of America  
Mason Contractors Association of America  
Motor & Equipment Manufacturers Association  
National Association of Manufacturers  
National Association for Surface Finishing  
National Association of Electrical Distributors  
National Association of Home Builders  
National Association of Landscape Professionals  
National Association of Wholesaler-Distributors  
National Community Pharmacists Association  
National Demolition Association  
National Federation of Independent Business  
National Grain and Feed Association  
National Lumber & Building Material Dealers Association  
National Ready Mixed Concrete Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Tooling and Machining Association  
National Utility Contractors Association  
North American Die Casting Association  
Plastics Industry Association  
Power and Communication Contractors Association  
Precision Machined Products Association  
Precision Metalforming Association  
PRINTING United Alliance

Tree Care Industry Association  
Truck Renting and Leasing Association  
U.S. Chamber of Commerce