



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