

116TH CONGRESS
2D SESSION

S. _____

To require the Occupational Safety and Health Administration to promulgate an emergency temporary standard to protect employees from occupational exposure to SARS-CoV-2, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. BALDWIN (for herself and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require the Occupational Safety and Health Administration to promulgate an emergency temporary standard to protect employees from occupational exposure to SARS-CoV-2, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This division may be cited as the “COVID-19 Every
5 Worker Protection Act of 2020”.

6 **SEC. 2. EMERGENCY TEMPORARY AND PERMANENT STAND-**

7 **ARDS.**

8 (a) EMERGENCY TEMPORARY STANDARD.—

1 (1) IN GENERAL.—In consideration of the grave
2 risk presented by COVID–19 and the need to
3 strengthen protections for health care and other es-
4 sential employees, pursuant to section 6(c)(1) of the
5 Occupational Safety and Health Act of 1970 (29
6 U.S.C. 655(c)(1)) and notwithstanding the provi-
7 sions of law and the Executive order listed in para-
8 graph (7), not later than 7 days after the date of
9 enactment of this Act, the Secretary of Labor shall
10 promulgate an emergency temporary standard to
11 protect from occupational exposure to SARS–CoV–
12 2—

13 (A) employees of health care sector em-
14 ployers;

15 (B) employees of employers in the para-
16 medic and emergency medical services, includ-
17 ing such services provided by firefighters and
18 other emergency responders; and

19 (C) other employees at occupational risk of
20 such exposure.

21 (2) CONSULTATION.—In developing the stand-
22 ard under this subsection, the Secretary of Labor
23 shall consult with the Director of the Centers for
24 Disease Control and Prevention, the Director of the
25 National Institute for Occupational Safety and

1 Health, and professional associations and represent-
2 atives of the employees in the occupations and sec-
3 tors described in subparagraphs (A) through (C) of
4 paragraph (1) and the employers of such employees.

5 (3) ENFORCEMENT DISCRETION.—If the Sec-
6 retary of Labor determines it is not feasible for an
7 employer to comply with a requirement of the stand-
8 ard promulgated under this subsection (such as a
9 shortage of the necessary personal protective equip-
10 ment), the Secretary may exercise discretion in the
11 enforcement of such requirement if the employer
12 demonstrates that the employer—

13 (A) is exercising due diligence to come into
14 compliance with such requirement; and

15 (B) is implementing alternative methods
16 and measures to protect employees.

17 (4) EXTENSION OF STANDARD.—Notwith-
18 standing paragraphs (2) and (3) of section 6(c) of
19 the Occupational Safety and Health Act of 1970 (29
20 U.S.C. 655(c)), the emergency temporary standard
21 promulgated under this subsection shall be in effect
22 until the date on which the final standard promul-
23 gated under subsection (b) is in effect.

24 (5) STATE PLAN ADOPTION.—With respect to a
25 State with a State plan that has been approved by

1 the Secretary of Labor under section 18 of the Oc-
2 cupational Safety and Health Act of 1970 (29
3 U.S.C. 667), not later than 14 days after the date
4 of enactment of this Act, such State shall promul-
5 gate an emergency temporary standard that is at
6 least as effective in protecting from occupational ex-
7 posure to SARS-CoV-2 the employees in the occu-
8 pations and sectors described in subparagraphs (A)
9 through (C) of paragraph (1) as the emergency tem-
10 porary standard promulgated under this subsection.

11 (6) EMPLOYER DEFINED.—For purposes of the
12 standard promulgated under this subsection, the
13 term “employer” (as defined in section 3 of the Oc-
14 cupational Safety and Health Act of 1970 (29
15 U.S.C. 652)) includes any State or political subdivi-
16 sion of a State, except for a State or political sub-
17 division of a State already subject to the jurisdiction
18 of a State plan approved under section 18(b) of the
19 Occupational Safety and Health Act of 1970 (29
20 U.S.C. 667(b)).

21 (7) INAPPLICABLE PROVISIONS OF LAW AND
22 EXECUTIVE ORDER.—The requirements of chapter 6
23 of title 5, United States Code (commonly referred to
24 as the “Regulatory Flexibility Act”), subchapter I of
25 chapter 35 of title 44, United States Code (com-

1 monly referred to as the “Paperwork Reduction
2 Act”), the Unfunded Mandates Reform Act of 1995
3 (2 U.S.C. 1501 et seq.), and Executive Order 12866
4 (58 Fed. Reg. 190; relating to regulatory planning
5 and review), as amended, shall not apply to the
6 standard promulgated under this subsection.

7 (b) PERMANENT STANDARD.—Not later than 24
8 months after the date of enactment of this Act, the Sec-
9 retary of Labor shall promulgate a final standard—

10 (1) to protect employees in the occupations and
11 sectors described in subparagraphs (A) through (C)
12 of subsection (a)(1) from occupational exposure to
13 infectious pathogens, including novel pathogens; and

14 (2) that shall be effective and enforceable in the
15 same manner and to the same extent as a standard
16 promulgated under section 6(b) of the Occupational
17 Safety and Health Act of 1970 (29 U.S.C. 655(b)).

18 (c) REQUIREMENTS.—Each standard promulgated
19 under this section shall include—

20 (1) a requirement that the employers of the em-
21 ployees in the occupations and sectors described in
22 subparagraphs (A) through (C) of subsection (a)(1)
23 develop and implement a comprehensive infectious
24 disease exposure control plan, with the input and in-
25 volvement of employees or, where applicable, the rep-

1 representatives of employees, as appropriate, to address
2 the risk of occupational exposure in such sectors and
3 occupations;

4 (2) no less protection for novel pathogens than
5 precautions mandated by standards adopted by a
6 State plan that has been approved by the Secretary
7 of Labor under section 18 of the Occupational Safe-
8 ty and Health Act of 1970 (296 U.S.C. 667);

9 (3) the incorporation, as appropriate, of—

10 (A) guidelines issued by the Centers for
11 Disease Control and Prevention, the National
12 Institute for Occupational Safety and Health,
13 and the Occupational Safety and Health Ad-
14 ministration which are designed to prevent the
15 transmission of infectious agents in healthcare
16 or other occupational settings; and

17 (B) relevant scientific research on novel
18 pathogens; and

19 (4) a requirement for the recording and report-
20 ing of all work-related COVID–19 infections and
21 deaths as set forth in part 1904 of title 29, Code of
22 Federal Regulations (as in effect on the date of en-
23 actment of this Act).

24 (d) ANTI-RETALIATION.—

1 (1) POLICY.—Each standard promulgated
2 under this section shall require employers to adopt
3 a policy prohibiting the discrimination and retalia-
4 tion described in paragraph (2) by any person (in-
5 cluding an agent of the employer).

6 (2) PROHIBITION.—No employer (including an
7 agent of the employer) shall discriminate or retaliate
8 against an employee for—

9 (A) reporting to the employer, to a local,
10 State, or Federal government agency, or to the
11 media or on a social media platform—

12 (i) a violation of a standard promul-
13 gated pursuant to this Act;

14 (ii) a violation of an infectious disease
15 exposure control plan described in sub-
16 section (c)(1); or

17 (iii) a good faith concern about a
18 workplace infectious disease hazard;

19 (B) seeking assistance or intervention from
20 the employer or a local, State, or Federal gov-
21 ernment agency with respect to such a report;

22 (C) voluntary use of personal protective
23 equipment with a higher level of protection than
24 is provided by the employer; or

1 (D) exercising any other right under the
2 Occupational Safety and Health Act of 1970
3 (29 U.S.C. 651 et seq.).

4 (3) ENFORCEMENT.—This subsection shall be
5 enforced in the same manner and to the same extent
6 as any standard promulgated under section 6(b) of
7 the Occupational Safety and Health Act of 1970 (29
8 U.S.C. 655(b)).

9 **SEC. 3. SURVEILLANCE, TRACKING, AND INVESTIGATION**
10 **OF WORK-RELATED CASES OF COVID-19**
11 **AMONG WORKERS.**

12 The Director of the Centers for Disease Control and
13 Prevention, in conjunction with the Director of the Na-
14 tional Institute for Occupational Safety and Health,
15 shall—

16 (1) collect and analyze case reports, including
17 information on the work status, occupation, and in-
18 dustry classification of an individual, and other data
19 on COVID–19, to identify and evaluate the extent,
20 nature, and source of COVID–19 among employees
21 in the occupations and sectors described in subpara-
22 graphs (A) through (C) of section 2(a)(1);

23 (2) investigate, as appropriate, individual cases
24 of COVID–19 among such employees to evaluate the

1 source of exposure and adequacy of infection and ex-
2 posure control programs and measures;

3 (3) provide regular periodic reports on COVID-
4 19 among such employees to the public; and

5 (4) based on such reports and investigations,
6 make recommendations on needed actions or guid-
7 ance to protect at-risk employees from COVID-19.