

United States Senate
Washington, D.C. 20510

April 15, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Schumer
Democratic Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Leader McConnell and Leader Schumer:

We write to request that any future COVID-19 pandemic legislation include language that ensures proper training and protection for workers on the front lines fighting this virus, and those working to provide the essential supplies and services for all of us during these unprecedented times. The single best way to do this is to require the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard (ETS) requiring employers to develop and implement a comprehensive plan to protect their workers. We feel strongly that employees need enforceable standards in place to be safe at work and for those they serve to be safe as well. Without explicit standards from OSHA directing employers on necessary steps, businesses are left with little direction or incentive to create a safe workplace and instill confidence in their workforce.

Millions of Americans are bravely going to work every day, helping in the direct response to COVID-19 and providing essential services to keep our country running. These frontline workers are doctors, nurses, and health care staff in our hospitals, emergency responders, grocery store workers, farmworkers, meat and poultry processing plant workers, construction workers, transit workers, and many more.

Many of these workers are working shoulder to shoulder yet lack necessary personal protective equipment (PPE), access to hand sanitizer, or the facilities to wash their hands with warm water and soap as recommended by the Centers for Disease Control and Prevention (CDC). We feel strongly that the federal government has an obligation to protect employees during this public health emergency. There is a current lack of consistency surrounding the monitoring of symptoms, sanitation practices, social distancing, personal protective equipment standards, and communication requirements that must be addressed.

Food producers, processors, and grocery retail workers exposure to the virus endangers our nation's food supply and the families that depend on it. The United Food and Commercial Workers union—which represents 1.3 million retail, food package/processing, and grocery workers—is reporting that at least 30 grocery store workers have died, and at least 3,000 have symptoms or have been exposed to COVID-19. Major meat processing companies such as JBS USA in Colorado, Smithfield Foods in South Dakota, and Tysons Food Inc. in Iowa have temporarily shut down certain operations due to COVID-19 cases among employees and

concerns that it may spread. Closure of these operations could lead to shortages of beef, pork, and poultry in our nation’s supermarkets and, therefore, in working families’ kitchens.

No one can feel safe and secure if the workers providing them essential supplies and services are scared for their own health and safety on the job, or are unable to work. A recent survey conducted by Forrester Research Inc. reported that 41 percent of workers surveyed in a random sampling of 504 US adults who work part- or full-time “are afraid to go to work because of the risk of exposure.”¹ Further, if we do not mitigate the spread of COVID-19 in the workplace, it will continue to spread in the community and endanger the public at large.

The Occupational Safety and Health Act of 1970 grants OSHA the authority to issue an ETS if workers are at grave risk of danger from a new hazard. An ETS in these circumstances should require certain employers to develop and implement comprehensive infectious disease exposure control plans, to provide PPE and protect essential workers at elevated risk from exposure to viruses such as SARS-CoV-2. The ETS and feedback from stakeholders would then provide the framework to develop a comprehensive permanent infectious disease standard that will better prepare us for any future emergencies. A permanent standard will also help prevent shortages of PPE which our frontline healthcare workers are experiencing now. By creating an enforceable standard requiring proper training and use of PPE, industry will have a more certain market to manufacture and sell this equipment to.

The COVID-19 pandemic underscores the immediate need for OSHA to issue an ETS to protect all those who are required to work during this public health emergency from exposure to the coronavirus. In developing such a standard, OSHA should consult with the CDC, the National Institute for Occupational Safety and Health (NIOSH), unions, and worker advocacy organizations. Additionally, OSHA should work with the CDC and NIOSH to track work-related COVID-19 infections and make recommendations on needed actions or guidance to protect such employees. Finally, any ETS must be followed by a finalized, long-term, permanent standard afterwards as the ETS is by nature only temporary.

As OSHA prepares the ETS, the agency should amend the recently released enforcement memo, which is primarily focused on healthcare workers, to include all essential workers. The memo also seems to lack meaningful OSHA inspection and enforcement authority for lack of compliance to suggested guidelines. An enforcement memo should establish policies and help ensure uniform procedures to minimize occupational exposure risk to the virus for all essential work. A memo – released in November 2009 in reaction to the H1N1 influenza – provides precedent and a framework for immediate action the Administration should have taken.² OSHA must be required to conduct inspections, cite enforcement and set a baseline of safety standards for all workplaces. For non-health care workplaces, OSHA should at the very least, enforce the sanitation, social distancing, provision of masks, and communication recommendations outlined in the current Centers for Disease Control and Prevention (CDC) guidance plus any additional standards necessary to keep essential workers safe. The public is told to mitigate the pandemic

¹ <https://go.forrester.com/blogs/how-employees-feel-about-coronavirus-now-a-pandemicex-survey-update/>

² U.S. Department of Labor, Occupational Safety and Health Administration, “Enforcement Procedures for High to Very High Occupational Exposure Risk to 2009 H1N1 Influenza,” https://www.osha.gov/OshDoc/Directive_pdf/CPL_02_02-075.pdf (accessed April 8, 2020).

by practicing social distancing, to wear masks, and to wash their hands with soap many times during the day -- but in essential workplaces such as meatpacking, grocery stores, pharmacies and others, employers are not taking these same precautions because they are voluntary, while they should be required by OSHA. We cannot fight this virus if workers and the general public they interact with are following different safety procedures.

We urge you to take immediate action – proactively providing workers and their employers with these important protections.

Sincerely,

Senator Tammy Baldwin
Senator Tammy Duckworth
Senator Patty Murray
Senator Richard J. Durbin
Senator Richard Blumenthal
Senator Edward J. Markey
Senator Sherrod Brown
Senator Jack Reed
Senator Cory A. Booker
Senator Robert Menendez
Senator Chris Van Hollen
Senator Tim Kaine
Senator Amy Klobuchar
Senator Robert P. Casey, Jr.
Senator Benjamin L. Cardin
Senator Elizabeth Warren
Senator Thomas R. Carper
Senator Dianne Feinstein
Senator Sheldon Whitehouse
Senator Ron Wyden
Senator Catherine Cortez Masto
Senator Kamala D. Harris
Senator Angus S. King, Jr.
Senator Jeffrey A. Merkley
Senator Tina Smith
Senator Bernard Sanders
Senator Kirsten Gillibrand
Senator Mark R. Warner
Senator Jacky Rosen
Senator Michael F. Bennet
Senator Jeanne Shaheen
Senator Mazie Hirono
Senator Margaret Wood Hassan
Senator Christopher S. Murphy
Senator Gary C. Peters

