



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 16th St. NW
Washington, DC 20006
202-637-5000
aflcio.org

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May 7, 2020

The Honorable Eugene Scalia, Secretary of Labor
United States Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

**RE: Urgent Action Still Needed to Protect Workers from COVID-19
Exposures and Infections**

Dear Mr. Secretary:

On behalf of the 12.5 million members of the AFL-CIO and all working women and men, we call upon you and the U.S. Department of Labor to provide leadership and expertise during the unique crisis of the COVID-19 pandemic. Our letter to you on April 28 was informed by direct, on the ground experience in workplaces, which should inform a shift in the focus of the Department's work. In your response on April 30, it was good to hear that you welcome feedback to help the Department of Labor improve its response. In a democracy, we strongly stand by the right to demand action from our government to protect working people. The Occupational Safety and Health Administration and Mine Safety and Health Administration have strong safety voices in workplaces and must be loudly and clearly heard by employers and workers.

In your response, you questioned our respect for the men and women who work for OSHA and MSHA. For decades, the AFL-CIO and labor unions have worked constructively with OSHA and MSHA career staff to prevent workplace exposures and we fully appreciate their dedication, diligence and perseverance to keep workers safe on the job. During other workplace safety and health crises, labor unions and agency staff have worked together to clarify misinterpretations of and to revise OSHA and MSHA policies based on practice and implementation, target enforcement efforts, improve employee participation, and inform technical guidance, directives and standards. Many federal government employees, including OSHA and MSHA career headquarters and field staff, are proudly represented by the American Federation of Government Employees, one of the AFL-CIO's affiliated unions. Our criticism of the department's and agencies' COVID-19 response was not that of the hardworking agency career staff, but of the policy direction and actions of the leadership.

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To date, the Trump administration and Department of Labor have relied on issuing guidelines, advice and general tips to employers and workers as the primary tools to respond to the pandemic. Only beginning in April, OSHA initiated inspections in a number of hospitals and health care facilities, but virtually all of these were in response to a fatality—too late to protect those already exposed and infected. Many workplace COVID-19 fatalities still are not inspected by the agency. Your April 30 letter states that OSHA can and will use the general duty clause and existing standards as its only enforcement tools against COVID-19, but as of today, a search of OSHA’s enforcement database shows that OSHA has not issued a single citation related to COVID-19 for a violation of an existing standard or the general duty clause. By contrast, during the HIV/AIDS epidemic from the late 1980s to early 1990s, OSHA issued more than 400 general duty clause citations to employers for failure to protect workers from bloodborne pathogen exposures.

In your response, it is not sufficient to say that “employers have duties and workers have rights” and that OSHA will enforce the current law. There need to be clear, enforceable, targeted, and protective COVID-19 directives, oversight and standards to ensure that employers are upholding their duties and that workers’ rights to a safe workplace are protected. When we say OSHA is missing in action, we do not mean OSHA has not taken any actions; we mean that many front-line workers have not witnessed meaningful action by their employers and have felt stranded by the federal government.

To stop this pandemic, every employer must have a COVID-19 worker safety and health plan, which is centered on exposure assessment and control. Employers need to assess where there are possible exposures to COVID-19 (where workers work close together or have close contact with members of the public), redesign workplaces so workers are at least six feet apart, increase and improve ventilation, provide adequate levels of certified respiratory protection and training, provide access to handwashing and cleaning and disinfection of work spaces, provide rapid and reliable COVID-19 testing to workers, send workers home who are sick and pay them, and identify other workers who have been exposed and quarantine them until they know they no longer are infected. Only a mandatory standard and enforcement of these measures will slow and stop the spread of this airborne transmissible virus. That is why the AFL-CIO petitioned for an emergency temporary standard for all workers exposed to COVID-19 on the job and we continue to renew that call.

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As the nation struggles to control the spread and destruction of the COVID-19 pandemic, and as people return to work across the country without strong requirements to keep them safe, workplaces are the major source of close person-to-person contact and are at the center of many infection outbreaks, which also place communities at risk as workers return home to their families. Controlling workplace exposures is the only way to stop the spread of infections and OSHA and MSHA have the unique authority to direct this. With tens of thousands of workers in high risk settings infected and dying, it is clear the agency's current voluntary approach and existing directives are not effective at preventing exposures, illnesses and deaths. The Department and the job safety agencies must change course, otherwise infections and deaths will continue to escalate.

In your response, you also questioned and dismissed the AFL-CIO's recommendation that employers be required to record all confirmed coronavirus cases among workers on a COVID-19 exposure log and report these cases to OSHA and health authorities, whether or not they are work-related, claiming this would burden employers and overwhelm OSHA. The only reason this could be a "burden" or be overwhelming is if there are a large number of cases identified in any workplace—and these are the very workplaces that need immediate attention. The way to prevent these large outbreaks and stop the spread in workplaces and communities is to require the identification of workers with confirmed infection, isolate them and notify close contacts with prolonged exposure. This is standard public health practice, and it needs to be standard workplace health practice to prevent the spread of COVID-19.

The Department of Labor must lead the effort to ensure that employers, workers, OSHA, and public health authorities have information about COVID-19 infections and exposures in workplaces; otherwise, exposures and infections continue to occur. The current outbreak at a Walmart facility in Massachusetts is a tragic example of the critical need for early notification of worker infections linked to employment location.¹ For weeks, individual workers at the facility were diagnosed with COVID-19, but there was no reporting to authorities to link these cases to their place of employment. By the time public health authorities identified the Walmart location as a possible source of infection, 23 workers had confirmed infections. As of today, 81 workers have been infected.

¹ Boston Globe. "How a Walmart in Worcester became a coronavirus hot spot."
<https://www.bostonglobe.com/2020/05/05/business/how-walmart-worcester-became-coronavirus-hot-spot/>
Accessed May 6, 2020.

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The Department of Health and Human Services through the Centers for Medicare and Medicaid Services has mandated that all COVID-19 infections in nursing homes be reported to the federal government. The Department of Labor should require the same for all workplace COVID-19 infections. OSHA holds the authority and expertise to require the reporting of infections identified in the workplace and should share it with public health officials so others who have been exposed (including co-workers) can be identified, notified, isolated, and monitored—public health actions that stop the spread of any contagious disease.

Working people in our nation are desperate for clear, enforceable rules from the agencies in charge of protecting them at work. The nation is desperate to control this pandemic so that people can resume work and life. Workplaces are at the center of this crisis, not on the sideline. We will continue to pay close attention to the Department's activities and engage the Department on these matters moving forward. As you stated, "coronavirus is a hazard in the workplace." It is the Department's responsibility to regulate workplace hazards, even if there is exposure to the same hazard outside of work. Workplace COVID-19 exposures need the most urgent attention by workplace safety agencies. Our communities will not be safe until our workplaces are safe.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Trumka". The signature is stylized and written in a cursive-like font.

Richard L. Trumka
President

RLT/RR/jp
OPEIU #2

CC: Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health
David G. Zatezalo, Assistant Secretary of Labor for Mine Safety and Health