

United States Senate

WASHINGTON, DC 20510

April 29, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, DC 20210

Dear Secretary Scalia:

We write to request you fulfill your duty as Secretary of Labor and ensure our nation's workers are meaningfully protected from COVID-19 in advance of the Trump Administration and a growing number of governors easing social distancing guidelines in an effort to reopen the economy. To this end, we request you to direct the Occupational Safety and Health Administration (OSHA) to put in place the standards, guidance, outreach, and enforcement necessary to ensure employers are providing workers with essential protections. Such protections are a matter of life-and-death for the workers themselves but are also vital to ensuring workplaces are not hotbeds of infection endangering workers, customers, and their families and communities.

Decisions about reopening our economy and returning to some semblance of normal life must be driven by science and guided by our top priority of protecting public health. The data clearly indicate the worst thing we could do at this critical moment is to call off the fight early, lose the progress our workers, families, businesses, and communities have fought and sacrificed for, and worsen and extend this crisis across our country. It is more important than ever that we listen to the public health experts about the steps we must take to keep families safe as this crisis continues to develop. The experts have said time and again that we need to dramatically ramp up testing and fortify our public health infrastructure to meet this unprecedented moment and assure people they can return to public life without risking their health. As President Trump encourages states to reopen businesses¹, despite warnings from public health experts that the country is not prepared to do so safely, we call on you to be a voice for workers and for opening the economy only when it is safe to do so and in keeping with the best available public health guidance.

Additionally, in advance of states reopening, you have a responsibility to direct OSHA to take steps to ensure workers are protected, which will further protect public health. Employers need clear guidance on what they should do to ensure safe workplaces—and workers across the country have been waiting for your leadership. As far back as March 6, the AFL-CIO petitioned OSHA to use its existing authority to issue an Emergency Temporary Standard (ETS) for infectious disease, which has yet to be responded to.² The former head lawyer for occupational safety and health at the Department of Labor, who served both Democratic and Republican Administrations, recently made clear that OSHA could do even more with its existing authority, such as issuing interpretations of current standards that would effectively increase protections.³ The former head of OSHA during the

¹ Trump is frustrated and 'chomping at the bit' to reopen America and the economy, *CNN*;
<https://www.cnn.com/2020/04/18/politics/trump-economy-coronavirus/index.html>.

² A Petition to Secretary Scalia for an OSHA Emergency Temporary Standard for Infectious Disease, *AFL-CIO*;
<https://aflcio.org/statements/petition-secretary-scalia-osha-emergency-temporary-standard-infectious-disease>.

³ Protecting Workers From Coronavirus: OSHA Leaves it to Employers, *The New York Times*;
<https://www.nytimes.com/2020/04/22/business/economy/coronavirus-osha-workers.html>.

George W. Bush Administration has said he wished OSHA was more involved and called for additional guidance from the agency,⁴ while the former head of OSHA during the Obama Administration has said OSHA “is missing in action.”⁵ The head of the United Food and Commercial Workers union (UFCW) has said some employers have been trying to take proactive steps, but “they don’t have a central notice about what they should do from OSHA.”⁶ The Administration has not only failed to protect workers across the country—but it has also shown a blatant disregard for protecting its own workers, preparing federal employees to return to their offices before this crisis is contained.⁷ This is not good for workers, and it is not good for public health.

Therefore, we call on you to direct OSHA to (1) immediately issue an ETS for infectious disease; (2) issue additional interpretations regarding existing standards to increase enforceable protections; (3) develop comprehensive guidance regarding what all employers must do to protect their workers and notify employers of your intent to enforce key portions of existing CDC and OSHA guidance under the “general duty clause” of the Occupational Safety and Health Act; and (4) withdraw harmful guidance recently issued, including the guidance allowing most employers not to record COVID-19 cases amongst workers⁸ and OSHA’s recent enforcement policy not to perform on-site workplace inspections of most worker complaints regarding COVID-19.⁹

This crisis has revealed the full extent to which this country, our economy, and every business depends on workers—from health care workers and first-responders to agricultural and grocery store workers to warehouse and transportation workers, and so many others. Protecting our country’s workers is essential to their safety and health, to the lives and wellbeing of customers and patrons, to our collective public health, and to the health of our economy. Not only do you have an obligation to protect our workers, you have the statutory authority to do it; we respectfully request you do so with urgency.

Respectfully,

/S/ Patty Murray

/S/ Tammy Baldwin

PATTY MURRAY
United States Senator

TAMMY BALDWIN
United States Senator

⁴ Protecting Workers From Coronavirus: OSHA Leaves it to Employers, *The New York Times*; <https://www.nytimes.com/2020/04/22/business/economy/coronavirus-osh-workers.html>.

⁵ Companies are making their own safety rules as the federal government stands aside, *WTOP News*; <https://wtop.com/business-finance/2020/04/companies-are-making-their-own-safety-rules-as-the-federal-government-stands-aside/>.

⁶ *Id.*

⁷ White House Tells Federal Workers to Prepare to Return to Office, *Bloomberg Government*; <https://www.bgov.com/core/news/#!/articles/Q93NQ4T0G1KY>.

⁸ Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19), *Occupational Safety & Health Administration*; <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>.

⁹ Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19), *Occupational Safety & Health Administration*; <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>.

/S/ Martin Heinrich

MARTIN HEINRICH
United States Senator

/S/ Sherrod Brown

SHERROD BROWN
United States Senator

/S/ Richard Blumenthal

RICHARD BLUMENTHAL
United States Senator

/S/ Edward J. Markey

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/S/ Tina Smith

TINA SMITH
United States Senator

/S/ Sheldon Whitehouse

SHELDON WHITEHOUSE
United States Senator

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United States Senator

/S/ Angus S. King, Jr.

ANGUS S. KING, JR.
United States Senator

/S/ Tim Kaine

TIM KAINE
United States Senator

/S/ Jack Reed

JACK REED
United States Senator

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ROBERT MENENDEZ
United States Senator

/S/ Kirsten Gillibrand

KIRSTEN GILLIBRAND
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/S/ Tammy Duckworth

TAMMY DUCKWORTH
United States Senator

/S/ Elizabeth Warren

ELIZABETH WARREN
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