

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAUL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILILI CAMACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY MCBATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID J. TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member

DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
RON WRIGHT, TEXAS
DANIEL MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
JEFFERSON VAN DREW, NEW JERSEY

October 14, 2020

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Loren Sweatt
Principal Deputy Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, D.C. 20210

Dear Secretary Scalia and Principal Deputy Assistant Secretary Sweatt:

We are writing regarding the Occupational Safety and Health Administration's (OSHA) departure from its reporting requirements for severe work-related injuries, illnesses and death, released in the form of guidance on September 30, 2020. This guidance will eliminate, for all practical purposes, reporting of a work-related COVID-19 (COVID) illness because it establishes a pre-condition that hospitalization for such illness must occur within 24 hours of exposure to the virus that causes the disease—not 24 hours from the hospitalization. This guidance does not follow the science regarding what is known about COVID-19. The incubation period leading to symptoms is two to 14 days after exposure, and subsequent hospitalization and death can follow even later.

Current OSHA rules require workplace fatalities to be reported to OSHA within eight hours and any hospitalization, amputation, or loss of an eye must be reported within 24 hours, pursuant to 29 C.F.R. §1904.39.¹ Any death that occurs within 30 days of a workplace incident must also be reported to the agency within eight hours after the employer becomes aware of the work-related fatality.² Prior to this recent change, OSHA had consistently maintained that the clock for reporting COVID-related hospitalizations or deaths starts when a workplace-related COVID death

¹ 29 C.F.R. § 1904.39.

² *Id.*

or hospitalization occurs, *or* when the employer is made aware that the COVID-related death or hospitalization is work-related.³

On September 30, 2020, however, OSHA issued guidance changing the reporting threshold so that the clock starts at the time of a COVID-related exposure incident, regardless of whether the employer can identify a discrete exposure incident, or when the hospitalization or death occurs, or when the employer realizes that the death or hospitalization is work-related.⁴ In addition, OSHA now requires deaths to be reported only if the employee dies within one month of being exposed to the novel coronavirus at work.⁵

These changes to OSHA guidance will result in almost no workplace COVID-related hospitalizations being reported, because individuals are never hospitalized within 24 hours of being initially exposed to the novel coronavirus. In addition, COVID-related fatalities often occur more than 30 days after exposure, meaning that as a result of this interpretation, very few COVID-related deaths will be reported to OSHA. In fact, based on this action, OSHA has already withdrawn at least one citation.⁶

As the pandemic continues unabated in this country, this change by OSHA undermines its mission to assure safe and healthful working conditions for workers. By cutting off the employer's duty to notify OSHA regarding workplace outbreaks, the agency will lose the ability to follow up on workplace outbreaks with enforcement or compliance assistance activity. This change will also cause significant damage to our nation's capacity to control the spread of the novel coronavirus.

In order to better understand OSHA's rationale for this new guidance, please provide the following information and documents:

1. A detailed description of OSHA's justification for making this change to the reporting requirements. This should include any written legal analysis and any references in the preamble to the 2014 regulation that would support such changes limiting OSHA's ability to require reporting of hospitalizations or deaths resulting from exposure to agents causing occupational illnesses.
2. A detailed timeline of this change to the reporting requirements, starting from when it was first proposed, and including the names and titles of individuals involved in each step to make this change.
3. Copies of any communications between OSHA and the Department of Labor, including the Office of the Solicitor and the Assistant Secretary for Policy, regarding this change in reporting requirements. Please include a list of any meetings and the date and participants

³ See Appendix for previous OSHA Guidance.

⁴ COVID-19 Frequently Asked Questions, OSHA, <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#collapse52> (last visited Oct. 9, 2020).

⁵ *Id.*

⁶ *OSHA Clarifies Reporting Requirements for Work-Related Cases of COVID-19*, Waste 360 (Oct. 2, 2020), <https://www.waste360.com/safety/osha-clarifies-reporting-requirements-work-related-cases-covid-19>.

The Hon. Eugene Scalia
Loren Sweatt
October 14, 2020
Page 3

- of each meeting, whether in person, over the phone, via remote platform or any other format, and any meeting minutes or a summary of the meeting if minutes are not available.
4. Copies of any communications between any person within the Department of Labor (including OSHA) and any non-governmental entities or persons regarding this change in reporting requirements. Please include a list of any meetings and the date and participants of each meeting, whether in person, over the phone, via remote platform or any other format, and any meeting minutes or a summary of the meeting if minutes are not available.

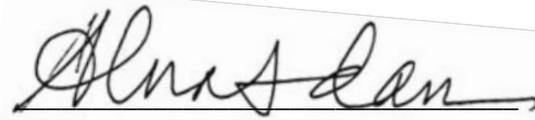
Please provide your responses to the above requests no later than October 28, 2020.

If you have any questions, please contact Jordan Barab at jordan.barab@mail.house.gov. Please direct all official correspondence to the Committee's Clerk at Mariah.Mowbray@mail.house.gov. Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman



ALMA S. ADAMS, PH.D.
Chair
Subcommittee on Workforce Protections

cc: Hon. Virginia Foxx, Ranking Member

Appendix

Previous OSHA guidance downloaded July 23, 2020 and no longer available on OSHA's web site. Archived language below:

An employee has been hospitalized with a work-related, confirmed case of COVID-19. Do I need to report this in-patient hospitalization to OSHA?

If an employee is hospitalized with a work-related, confirmed case of COVID-19 and the hospitalization occurred within 24 hours of confirmation of the COVID-19 case, then you must report the in-patient hospitalization. Specifically, you must report the hospitalization to OSHA within 24 hours of the time you learn of the hospitalization or 24 hours of the time you learn that the case of COVID-19 has been confirmed, whichever is later. Said another way, you must report the hospitalization within 24 hours of knowing both that the employee has been hospitalized and that the reason for hospitalization was COVID-19. In addition, if you are required to keep records under [29 CFR Part 1904](#), all such in-patient hospitalizations must be recorded on your OSHA injury and illness records regardless of the number of days between case confirmation and hospitalization.

An employee has been hospitalized with a work-related, confirmed case of COVID-19. The case was not confirmed until after the employee was hospitalized. Do I need to report this in-patient hospitalization to OSHA?

If an employee is hospitalized with work-related COVID-19, but the case is not confirmed until after the hospitalization, then you must report the hospitalization to OSHA within 24 hours of the time you learn that the case of COVID-19 has been confirmed. In addition, if you are required to keep records under [29 CFR Part 1904](#), all such in-patient hospitalizations must be recorded on your OSHA injury and illness records regardless of the number of days between confirmation of the case and hospitalization.

An employee has died of a work-related, confirmed case of COVID-19. The case was not confirmed until after the employee died. Do I need to report this fatality to OSHA?

If an employee dies of a work-related, confirmed case of COVID-19 and the case is not confirmed until after the death of the employee, then you must report the fatality to OSHA within eight hours of the time you learn that the case of COVID-19 has been confirmed. In addition, if you are required to keep records under [29 CFR Part 1904](#), all such fatalities must be recorded on your OSHA injury and illness records regardless of the number of days between exposure and death.

Internet Archive, WayBack Machine, Available at
<http://web.archive.org/web/20200723021617/https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#collapse47> (last visited on Oct. 9, 2020)