

**TESTIMONY OF LOREN E. SWEATT  
PRINCIPAL DEPUTY ASSISTANT SECRETARY  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
U.S. DEPARTMENT OF LABOR**

**BEFORE THE**

**SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
COMMITTEE ON EDUCATION AND LABOR**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**MAY 28, 2020**

Chairwoman Adams, Ranking Member Byrne, Chairman Scott, Ranking Member Foxx, and Members of the Subcommittee, thank you for the opportunity to highlight the Occupational Safety and Health Administration's (OSHA) important work of protecting our nation's workers. OSHA operates every hour of every day, as it has for nearly half-a-century following the enactment of the Occupational Safety and Health Act (OSH Act). I am proud of the work this agency has done during the Trump Administration, but I am particularly proud of the work it is performing right now as it responds to the worldwide health crisis. I welcome this opportunity to update you on all of the agency's efforts.

During Fiscal Year (FY) 2019, OSHA conducted 33,401 inspections—more inspections than in each of the previous three fiscal years. A little more than half of those inspections—more than 17,000—were in the construction industry. Until March 2020, the agency was well on pace to meet or exceed that number of inspections in FY 2020. In FY 2019, the agency also provided a record amount of compliance assistance to help employers provide workplaces free of hazards. In FY 2019 alone, OSHA's On-Site Consultation Program identified 137,885 workplace hazards, and protected 3.2 million workers from potential harm.

OSHA also provided a record 1,392,611 workers with training on safety and health requirements in FY 2019. This training, which is critical in helping employers and workers understand workplace hazards and ways to address them, including how to comply with OSHA standards, was provided through the agency's various education programs, including the OSHA Training

Institute Education Centers, Outreach Training Program, and Susan Harwood Training Grant Program. In fact, current Harwood training supported by the FY 2019 awards for healthcare industry hazards and personal protective equipment can include worker protection as it pertains to COVID-19 for the target audiences approved in the grants. And the Harwood FY 2020 funding opportunity announcement was published last week – over a month ahead of the congressional deadline – and includes COVID-19 as a training topic. Grantees can address worker protection as it pertains to COVID-19, including training on personal protective equipment.

The work of the agency continues uninterrupted even as we respond to this pandemic. Since February 1, 2020, and through May 21, 2020, OSHA has received 5,978 non-COVID-19 complaints and conducted 5,009 investigations based on these complaints and 969 inspections. During this time, OSHA has received 2,380 non-COVID-19 whistleblower complaints, which are being evaluated along with the COVID-19 whistleblower complaints.

OSHA's efforts to address COVID-19 have been its top priority since February. Our world changed with the arrival and spread of the coronavirus. Although the pandemic has changed the way OSHA completes its mission, it has never faltered in its commitment to ensure employers provide a workplace free of hazards. OSHA quickly pivoted to focus intensely on giving employers and workers the guidance they need to work safely in this rapidly changing situation; where appropriate, OSHA has also enforced safety and health requirements. Never before has OSHA staff been so focused on a single health risk. Throughout this crisis, the incredible men and women of OSHA have remained committed to carrying out their mission to keep America's workers safe and healthy. Let me address that in more detail now.

OSHA has been in frequent conversation with Members of Congress and congressional staff over the past several months. OSHA is actively engaged to accomplish our mission to help ensure federal, state, local, and private stakeholders take the necessary steps to protect the safety and health of employees. As the head of OSHA, I speak daily with OSHA regional staff to ensure workers and employers have the knowledge and support they need. I am so proud of the dedication to OSHA's mission of our hard-working compliance safety and health officers

(CSHOs) and all of the agency's personnel. Unfortunately, I believe their efforts have not been properly characterized by some, and that is wrong. Our CSHOs are initiating thousands of investigations of complaints. Our compliance assistance staff are working with employers across the country to help ensure safe and healthful working conditions for the nation's workers. Our training and education staff have moved quickly to provide training to CSHOs through an electronic platform so CSHOs are ready to inspect and cite workplaces exposing workers to COVID-19 hazards. The Department's goal each day is to ensure OSHA protects the safety and health of America's workforce. Before, during, and after the pandemic, my goal is for OSHA's efforts to prevent workers from ever becoming ill or injured because they are doing their job.

Well before the World Health Organization declared a public health emergency and then a worldwide pandemic, OSHA staff had begun to track this new virus. In late December of 2019, OSHA learned of a pneumonia case in China believed to have been caused by a previously unidentified virus, and by mid-January of 2020, had developed a Safety and Health Topics Page on the 2019 novel coronavirus. Since January, OSHA has been coordinating with public health officials, including the Centers for Disease Control and Prevention (CDC), and providing information regarding COVID-19 through this dedicated safety and health topics page. OSHA has prioritized sharing up-to-date safety information with the public as soon as possible. This website is an important means of distributing information, and that is reflected in the increasing numbers of visits to OSHA's website, as well as the increasing numbers of outreach subscribers. As of May 21, 2020, OSHA has 288,267 subscribers to Quick Takes (bi-weekly online health and safety newsletter), 34,595 subscribers to its recently initiated COVID-19 Tip of the Day, and 22,050 Twitter followers.

OSHA's initial response to the pandemic was to provide extensive guidance, often in conjunction with the CDC. Guidance has allowed the agency a more nimble response to the ever-changing understanding of the virus. As our medical professionals and scientists learn more about the virus, guidance can be easily updated, while regulations are very cumbersome to revise. Guidance also allows us to speak more specifically to particular types of workplaces and controls than would be practicable in a generally applicable rule. From the beginning of this health crisis, OSHA was concerned about access to respirators, as the flu season had been more severe than

anticipated. On March 11, the President signed a Presidential Memorandum directing the Department of Labor to take “all appropriate and necessary steps to increase the availability of respirators.” To date, OSHA has issued five different enforcement guidance documents that seek to preserve the respirator supply for health care workers while ensuring protection of those workers. OSHA continues to issue industry specific alerts that provide targeted guidance on practices and procedures that will help protect workers’ health and safety. OSHA’s regularly issued guidance has been tailored to address the intricacies of multiple industries in detail. To date, OSHA has issued general-industry guidance and also has issued guidance documents to protect workers in numerous specific industries, including meatpacking and processing, healthcare, nursing homes, restaurants, dentistry, and manufacturing. These documents provide guidance to employers on the hierarchy of controls to protect workers. The guidance explains the use of engineering controls such as instituting physical barriers or distance between employees, reinforcing PPE usage where required and when engineering controls cannot be implemented. Some guidance also provides information on the use of facemasks by employees.

OSHA has also distilled its guidance into a wide variety of usable worker education segments available on the OSHA website. Among these items, OSHA has a daily COVID-19 tip of the day and a top ten list of actions employers and workers can take to prevent COVID-19 infection. The latter document alone is translated into 12 languages. OSHA has also developed a poster demonstrating the seven steps for wearing a respirator, and a video on applying social distancing in the workplace. These are just some of the steps that OSHA has taken to get health and safety information directly into the hands of employers and workers.

While extensive guidance is important as the rapidly changing dynamic of this pandemic continues, it is important to recognize OSHA also has existing standards that serve as the basis for its COVID-19 enforcement. Those standards include rules regarding respiratory protection, personal protective equipment (PPE), eye and face protection, sanitation, and hazard communication. In addition to those existing authorities, OSHA also has the ability to take appropriate action against employers under the OSH Act’s “general duty clause.” Some have tried to argue that because OSHA is only issuing COVID-19 guidance, employers have no compliance obligations. This is not accurate, and repeating this erroneous claim does a

disservice not only to the hardworking men and women of OSHA, but to the hardworking men and women OSHA aims to protect. It also misleads employers about the legal obligations they have. While the guidance documents clarify they do not create *new* legal obligations, this does not mean employers do not have extant legal obligations.

Since the start of the pandemic, OSHA has responded to almost double the number of complaints, compliance assistance requests, and questions than the previous time last year. As of May 21, 2020, OSHA has received 4,268 COVID-19 safety and health complaints, of which 2,995 have been closed. In addition, OSHA has received 1,328 COVID-19 whistleblower complaints, of which there are 243 complaints currently being screened. OSHA screens every complaint it receives, and investigates every timely complaint it receives that is within its jurisdiction.

As in other situations, such as natural disasters, OSHA has accepted mission assignments from the Federal Emergency Management Agency to provide safety and health information to our federal workers on the front line of the federal response. OSHA is also an active participant in ten federal task forces focused on the COVID-19 response and as always, continues its collaborations with its federal partners to share information and develop tools to meet the challenges of fighting this disease and protecting workers.

OSHA was recently sued by the AFL-CIO for an emergency temporary standard, and for that reason I cannot comment on issues surrounding an ETS or the litigation. I would note, however, that OSHA has standards in place to protect employees and employers who fail to take appropriate steps to protect their employees may be violating them. Such standards include conducting hazard assessments, ensuring sanitation and cleanliness, providing PPE, and requiring training and education, as well as the general duty clause itself.

I believe that our current approach allows the agency needed flexibility to be responsive to a virus that we learn more about each day. One example of OSHA's nimble approach is meatpacking. OSHA worked with the Centers for Disease Control and Prevention and U.S.

Department of Agriculture to provide meatpacking plants comprehensive guidance to continue operations.

Similarly, the flexibility and responsiveness allowed through guidance is apparent in the two revised enforcement policies issued last week by OSHA. As states are beginning to reopen their economies, OSHA is acting to ensure employers are protecting their employees.

First, OSHA is increasing in-person inspections at all types of workplaces. The new enforcement guidance reflects changing circumstances in which many non-critical businesses have begun to reopen in areas of lower community spread. The risk of transmission is lower in specific categories of workplaces, and personal protective equipment potentially needed for inspections is more widely available. OSHA staff will continue to prioritize COVID-19 inspections, and will utilize all enforcement tools as OSHA has historically done.

Second, OSHA is clarifying its previous enforcement policy for recording cases of coronavirus. Under OSHA's recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

Under the new policy, OSHA will enforce the recordkeeping requirements of 29 CFR 1904 for employee coronavirus illnesses for all employers. Given the nature of the disease and community spread, however, in many instances it remains difficult to determine whether a coronavirus illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace. OSHA's guidance emphasizes that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related. Recording a coronavirus illness does not mean that the employer has violated any OSHA standard.

In addition to providing guidance and ensuring enforcement, OSHA has conducted compliance assistance efforts. As part of OSHA's compliance assistance efforts, the agency has answered

employers' and workers' real-world questions through industry-specific webinars, OSHA's online portal, and phone conversations. OSHA has a standing meeting with State Plans states every two weeks to share best practices and discuss emerging data. OSHA has also participated in calls with industry stakeholders and union representatives. Since the start of the pandemic and as of May 21, 2020, OSHA's consultation programs have conducted a total of 4,134 outreach activities and OSHA's Regional and Area Offices have conducted a total of 945 outreach activities related to COVID-19.

But, to repeat, OSHA will not use guidance as a substitute for enforcement—rather, the agency has the tools and intent to pursue both avenues. Where there are safety issues, OSHA remains, as always, shoulder to shoulder with America's workers.

OSHA is charged with protecting the rights of whistleblowers under 23 statutes. As the Secretary made clear from the White House podium, multiple national interviews, and additional conversations with stakeholders: retaliation against workers is unacceptable. OSHA has already received more than a thousand COVID-19 related whistleblower complaints. These complaints are in addition to the several thousand complaints the agency already receives every year for other reasons. OSHA is actively reviewing and working to resolve the complaints. While privacy prevents me from speaking in specifics, OSHA is obtaining positive resolutions from its review of whistleblower complaints. These resolutions have reinstated workers and made significant policy changes to businesses.

COVID-19 is an unprecedented worldwide health crisis. In response, OSHA issued interim enforcement guidance preliminarily focused on the protection of our frontline health care workers. The enforcement guidance outlined OSHA's priorities to responding to the pandemic. Contrary to the way some have characterized this document, it applies to all areas of the agency's enforcement.

In this pandemic, OSHA inspectors are initiating thousands of investigations. This is resulting in employers receiving up-to-date information about how to better protect their workers. During the same time, OSHA inspectors continue to respond to non-COVID-19 worker fatalities and

complaints. Through the tireless efforts of the entire agency, OSHA's continuous outreach and communications to workers and employers, and its issuance of important guidance, OSHA is on the job protecting America's workers. I am happy to answer any questions you may have.