



COMMITTEE ON  
EDUCATION & LABOR  
REPUBLICANS

**COMMITTEE  
STATEMENT**

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**Opening Statement of Rep. Bradley Byrne (R-AL), Republican Leader  
Subcommittee on Workforce Protections Hearing:  
“Examining the Federal Government’s Actions to Protect Workers from COVID-  
19”  
May 28, 2020**

(As prepared for delivery)

"Let me state for the record that I, Ranking Member Foxx, and other Members are here in the Committee room in Washington, socially distanced. It is a relatively simple and safe environment here.

In fact, not much has changed since the Democrats decided at the eleventh hour to unilaterally call off last week’s hearing. OSHA and NIOSH officials, my Republican colleagues, and I were ready then to talk about the important work these agencies are doing to combat COVID-19 and we are here again today to do so. It’s unfortunate the Democrats decided to play politics on an issue they assert is a top priority.

The COVID-19 pandemic has been an extraordinary time for all Americans. Many of us are coming out of mandatory stay- at- home orders after two months. People are returning to work in a new environment with a disease that is still relatively new and about which we still have much to learn.

We know the disease affects different people in different ways. Many people who test positive have no or mild symptoms, but a small percentage get very ill, and some of them, unfortunately, pass away. The two groups most likely to become very ill are those over 65, who make up 80% of all deaths, and those with underlying health conditions as listed by the CDC.

The disease also presents varying levels of risk for workers in different types of jobs. For example, an office worker who doesn't interact with the public faces much lower risk than a nurse in an ICU ward.

I say all of this to make a point about the inherent difficulty in coming up with a reliable single standard for workplace safety, whether it's for infectious diseases in general or COVID-19 specifically.

How did OSHA handle complex safety and health issues in the recent past? From SARS in the 2000s during the Bush Administration to MERS, H1N1 influenza, and Ebola during the Obama Administration, OSHA didn't issue a new standard but, instead, enforced existing standards and issued guidance, which in turn could be the basis for action against an employer under the General Duty Clause of the OSHA statute.

When the Acting Assistant Secretary for OSHA during the H1N1 flu pandemic, Jordan Barab, testified before this Committee in May of 2009, he said OSHA had created guidance 'to help employers determine the most appropriate work practices and precautions to limit the impact' of the pandemic. And 'because safety risks are greater in certain workplaces, OSHA is focusing its direct efforts on educating employers and employees in the higher-risk exposure categories.' OSHA issued an 'Occupational Risk Pyramid' to categorize workers' risk which demonstrated that only a small portion of employees were at the highest exposure-risk level. Mr. Barab specifically referenced standards already in place for personal protective equipment and respirators. He said that OSHA would use the General Duty Clause to 'ensure that employers follow the practices that public health experts agree are necessary to protect workers' health.' Finally, he quoted President Obama's assessment of the situation as being one of 'Cause for deep concern, but not panic.'

What has OSHA done with COVID-19? Just like the Obama Administration, it has issued detailed guidelines; placed an enforcement emphasis on higher risk workplaces; used an 'Occupational Risk Pyramid' categorizing workers' risk; and reminded employers of OSHA's existing standards on PPE, respirators, sanitation, and others, as well as their obligations under the OSH Act's General Duty Clause to provide employers with a safe and healthful workplace. In addition, OSHA and the CDC have issued industry-specific guidance for health care, nursing home and

long-term care, retail pharmacy, car service, package delivery, retail, construction, manufacturing, restaurant, and dental workplaces.

There are two problems with requiring a standard.

First, we are still learning about this disease and we just don't know enough information to meet the level necessary and appropriate to construct an adequate emergency temporary standard and a permanent federal regulation. That's why the various guidance documents already issued are so useful. They can be issued relatively quickly and modified as we learn more from the CDC and other public health officials, and from the workplaces themselves. A standard at this point would be an unproductive burden for businesses already struggling to reopen, potentially exposing them to unnecessary liability risks during an already challenging time, and would do little to advance workplace safety

Second, setting a standard just takes too long. On average, it takes OSHA on average seven years to compile all the data necessary and meet all the regulatory requirements for issuing a standard. I know Democrats want an Emergency Temporary Standard, or ETS, which, according to their bill, must be done in seven days. The last time OSHA issued an ETS was in 1983 and that one was overturned because OSHA couldn't meet the statutory threshold requirements for issuance. Indeed, OSHA has lost more ETS cases in federal courts than its won for this same reason.

I know the Speaker included a provision requiring a standard in the bill passed by the House two weeks ago, a bill she created in her office, without any consultation with the White House or the Senate and on which we never had a hearing or markup in this committee, the committee of jurisdiction. No regular order and no effort to obtain bi-partisan consensus. That's no way to operate the House with a challenge of this magnitude posed by the pandemic and our response to the pandemic. No wonder that bill is DOA in the Senate.

I also know the AFL-CIO filed a lawsuit last week to force OSHA to issue a standard. Expensive and time-consuming litigation against the federal agency responsible for protecting our nation's workers in the midst of a pandemic is unhelpful and very unlikely to succeed.

I must say that when I started preparing for this hearing with my staff two weeks or so ago, I was impressed with the diligence and speed with which OSHA has fashioned its response. Their experience with past pandemics surely helped, and I'm glad they both followed and built upon this past experience.

I've talked with hundreds of businesses trying to decide whether and how to reopen. Those conversations always include a real concern for the health of their employees. They've consulted CDC, local and state public health officials, and their industry organizations. And, yes, they are closely following this OSHA guidance, which they are truly grateful for. They want to provide their employees a safe workplace, and OSHA is helping them achieve that. Isn't that what the OSHA's statute's purpose is, helping employers and employees keep their workplaces safe and healthy?

I'm looking forward to the testimony today and I thank the witnesses for appearing in the midst of what I know is a very busy time for them. Let's all work together to protect the most important part of the American economy, the working men and women who make this country so very prosperous, including the health care workers, like my sister-in-law, Cynthia Dukes, who is an ICU nurse. I want her to be safe and healthy as she goes about her extremely important work, even as we sit here, taking care of the sickest of us. She and her colleagues deserve nothing less. And they are best served by us when we work together, for them and not for special interests, and when we stop the wasteful litigation and the partisan legislative games.

America will get through this. We can protect our people who are most vulnerable to this disease and reopen the American economy safely as we start on another road to recovery and prosperity for all. President Obama was right: there is cause for great concern but not panic. And if OSHA's response was the best way to go for SARS, MERS, H1N1, and Ebola, why is it not best for COVID-19?"

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