

VIEWPOINT

Occupational Safety and Health Administration (OSHA) and Worker Safety During the COVID-19 Pandemic

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With the coronavirus disease 2019 (COVID-19) pandemic, the US is facing an unprecedented, massive worker safety crisis. Thousands of workers are at risk for workplace exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection as they provide care for patients with COVID-19 or perform other "essential" services and daily functions and interact with other workers or the public. By law, employers in the US are required to provide workplaces free of recognized serious hazards. Enforcement of this law is the responsibility of the Occupational Safety and Health Administration (OSHA). While OSHA could be making an important contribution to reversing the spread of the SARS-CoV-2 virus and mitigate risk to workers, their families, and communities, the federal government has not fully utilized OSHA's public safety authority in its efforts to reduce the risk of COVID-19.

Estimates based on data from the Centers for Disease Control and Prevention indicate that more than 150 000 hospital and nursing home staff have been infected by the SARS-CoV-2 virus at work, and more than 700 have died, although the actual numbers are unknown because of inadequate data collection systems.¹

However, in the face of the greatest worker health crisis in recent history, OSHA, the lead government agency responsible for worker health and safety, has not fulfilled its responsibilities.

As the epidemic has spread, many other workers, including emergency responders, corrections officers, transit workers, and workers in meat and poultry factories, farms, grocery stores, and warehouses, also have been infected with SARS-CoV-2.

COVID-19 has had a devastating effect on communities of color: working-age African American and Latinx individuals are at greatly increased risk of COVID-19 disease and death.² While illnesses and deaths in these communities are often attributed to comorbidities and crowded housing, the risk is also closely associated with employment patterns. Workers originally deemed essential are disproportionately racial or ethnic minorities, are paid low wages, and do not have the option of working from home.³ The primary source of SARS-CoV-2 exposure for many of these workers is their workplace, where workspace design precludes social distancing, personal protective equipment (PPE) is absent or limited, and sanitation and ventilation are inadequate.

These workers often travel to their jobs in crowded public or semiprivate transportation. As businesses reopen, not only "essential" workers but all workers need to be protected. Unprotected workers will inevitably bring the virus from work to their homes and communities, setting back efforts to decrease the spread of infection, reduce morbidity and mortality, and rebuild the economy.

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OSHA cannot make workplaces safe: that is the responsibility of employers. By law, every worker has the right to a safe workplace, and OSHA's mission is to protect this right by ensuring that employers eliminate hazards that could injure workers or increase their risk of illness. Until businesses can be confident that employees, contractors, service personnel, and customers entering workplaces are not shedding virus, they must apply a series of preventive measures, none of which is adequate alone. Every workplace needs a clear COVID-19 prevention plan that includes the following: scheduling and workspace design to avoiding crowding and allow physical distancing; PPE such as masks and respirators when needed; enhanced ventilation; hand sanitation and adequate facilities for washing; and disinfection of potentially contaminated surfaces. Screening should be conducted to identify workers with symptoms consistent with COVID-19 or who have had close contact with others who are infected. Screening programs

will be more effective if workers who are kept out of workplaces because of COVID concerns have access to adequate paid sick leave or unemployment compensation.

Employers are more likely to implement these controls if they are mandated by a government agency that has adequate enforcement tools to ensure compliance. This was demonstrated by the success of OSHA's bloodborne pathogens standard, issued in 1991 in response to the HIV/AIDS crisis. The standard requires health care employers to develop an infection control plan, properly dispose of needles and other sharp instruments, and provide free hepatitis B vaccinations. The bloodborne pathogens standard has contributed to a substantial decline in health care worker risk for bloodborne diseases like HIV and hepatitis B and C.⁴

Worker protection has not been a focus of the president or the White House Coronavirus Task Force. As more businesses across the nation reopen, the lack of

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effective control of workplace exposures has been associated with outbreaks of the disease in newly opened workplaces.

OSHA and the Centers for Disease Control and Prevention have issued unenforceable recommendations for worker protection. For example, the more than 40 000 infected meat factory workers demonstrate that voluntary recommendations alone do not always motivate employers to implement adequate protections.⁵ Nonetheless, the secretary of labor has suggested that it is sufficient for OSHA to use existing standards and a general requirement that employers maintain safe workplaces.⁶

However, OSHA does not currently have the tools needed to address workplace-related risks of exposure to and infection with SARS-CoV-2. Enforceable standards are the government's most effective tool for protecting workers. The most important action the federal government could take is for OSHA to issue an Emergency Temporary Standard (ETS) that would require every employer to develop and implement an infection control plan. After the influenza A virus subtype H1N1 influenza epidemic in 2009, OSHA began developing a workplace airborne disease standard, but the process was halted by the new administration in 2017.⁷ That effort, and the agency's current recommendations, could now serve as the basis for an economy-wide ETS. Unquestionably, meeting the requirements of an ETS, as well as the testing recommended for safe reopening of businesses, will increase employer costs. Employers who invest in these efforts should not be disadvantaged competing with those that do not, so federal subsidies of these efforts should be considered.

Several states have taken actions for help ensure protection of workers during the COVID-19 pandemic. Virginia has issued an ETS, and Oregon is developing one. Both of these states have state OSHA programs, providing a mechanism to enforce new regulations. At least 12 other states (California, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, and Washington) have taken steps to protect workers, although enforcement will be more challenging in states without their own plan.⁸ The House of Representatives, but not the Senate, has passed legislation requiring OSHA to issue an ETS, but progress has been stalled by partisan disagreement.

The administration also needs to increase PPE production. More than 6 months into the epidemic, many health care facilities still lack an adequate supply of certified N95 masks and other PPE.⁹ It is no longer reasonable to delay invoking the Defense Production Act to ensure that every worker who needs PPE will have ready access to the necessary equipment.

The unprecedented nature of the COVID-19 pandemic requires strong and immediate action, including by government agencies, unions, employers, and workers. Worker protection needs to become a high priority for the federal government, and the White House should create a comprehensive roadmap that focuses on worker protection. Failure to exert leadership and develop effective policy in this area, including involving and engaging all affected groups and constituencies in stopping workplace spread of the virus, has had and will likely continue to have serious repercussions, not just for workers, but for the health and economy of the nation.

ARTICLE INFORMATION

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REFERENCES

1. US Centers for Disease Control and Prevention. Coronavirus disease 2019 (COVID-19): cases in the US. Accessed September 11, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>
2. The COVID Racial Data Tracker website. Accessed August 11, 2020. <http://covidtracking.com/race/>
3. Economic Policy Institute. Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality. Accessed August 11, 2020. <https://www.epi.org/publication/black-workers-covid/>
4. Phillips EK, Conaway MR, Jagger JC. Percutaneous injuries before and after the Needlestick Safety and Prevention Act. *N Engl J Med*. 2012;366(7):670-671. doi:10.1056/NEJMc110979
5. Douglas L. Mapping Covid-19 outbreaks in the food system. Accessed August 11, 2020. <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>
6. US Department of Labor. U.S. Department of Labor acts to help American workers and employers

during the coronavirus pandemic. Published April 26, 2020. Accessed August 11, 2020. <https://www.dol.gov/newsroom/releases/osha/osha20200426-0>

7. Michaels D. What Trump could do right now to keep workers safe from the coronavirus. *The Atlantic*. Published March 2, 2020. Accessed August 11, 2020. <https://www.theatlantic.com/ideas/archive/2020/03/use-oseha-help-stem-covid-19-pandemic/607312/>

8. Berkowitz D. Which states and cities have adopted comprehensive COVID-19 worker protections? National Employment Law Project. Accessed August 4, 2020. <https://www.nelp.org/blog/which-states-cities-have-adopted-comprehensive-covid-19-worker-protections/>

9. Glenza J. America's PPE shortage could last years without strategic plan, experts warn. *The Guardian*. Published August 10, 2020. Accessed August 10, 2020. <https://www.theguardian.com/world/2020/aug/10/us-ppe-coronavirus-shortage-america>