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20-04 (27)

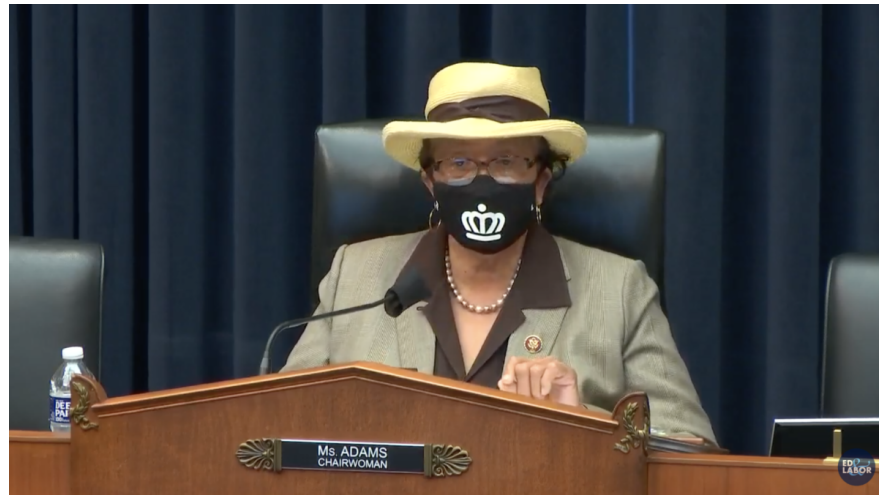
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Adams Chairs Shocking Committee Hearing on OSHA's COVID-19 Failures

Alma Adams Press [sam.spencer@mail.house.gov]

Sent: Thursday, May 28, 2020 3:14 PM

To: [Steve Johnston](#)

Adams Chairs Shocking Committee Hearing on OSHA's COVID-19 Failures

"They just don't seem to care," says Adams

Washington – Today, **Congresswoman Alma S. Adams, Ph.D. (NC-12)** chaired a meeting of the House Education & Labor Committee's Subcommittee on Workforce Protections on "Examining the Federal Government's Actions to Protect Workers from COVID-19." **Today's meeting was historic as the first virtual meeting of the Committee.** In perhaps the most shocking moments of the hearing, Principal Deputy Assistant Secretary Loren Sweatt revealed **OSHA is not tracking workplace cases of coronavirus or enforcing laws meant to keep workers safe.**

[You can watch the entire hearing on YouTube here.](#)

"Today, we found out that the dereliction of duty at OSHA goes beyond not issuing an emergency standard. It even goes beyond not proactively preventing infections. Our subcommittee found out OSHA is not even tracking workplace cases of coronavirus, nor is this enforcement agency enforcing the law," **said Congresswoman Adams after the hearing.** "OSHA's representative was evasive and had plenty of excuses, but had no answers for the millions of Americans who have no idea whether or not their workplace is safe. **They just don't seem to care.**"

[Adams' closing statement is available here.](#)

The Witnesses at today's hearing were:

Ms. Loren Sweatt

Principal Deputy Assistant Secretary
Occupational Safety and Health Administration (OSHA)

Mr. John Howard, MD, MPH, JD, LLM, MBA
Director
National Institute for Occupational Safety and Health

Congresswoman Adams' full closing statement as prepared for delivery is below:

I want to, again, thank Deputy Assistant Secretary Sweatt and Director Howard for joining us for this important discussion.

First, I just want to emphasize that the ETS in the HEROES Act is not a rigid or inflexible one-size-fits-all standard that fails to accommodate changing scientific knowledge.

The text of the HEROES Act calls for an ETS to require an “infection control plan” based on the hazards in that specific workplace. It requires assessment of risks in that workplace and a plan tailored to the particular workplace. And development of the plan should involve employees. This does not require a rigid standard.

Second, California OSHA has an Airborne Transmissible Standard. It applies to COVID in health care and has not been one-size-fits-all.

What we heard today is that, in the middle of this global health emergency that is causing more deaths in less time than any other workplace crisis that OSHA has faced in its 50-year existence, OSHA stubbornly refuses to use its authority to protect this nation’s workers. This failure to act is a stunning act of abdication by the senior leaders in the Department of Labor.

When workers are demanding strong standards and enforcement of those standards, instead we get voluntary guidance that employers can choose to comply with if it’s convenient. And the best OSHA can offer is threats to use a largely toothless General Duty Clause.

When OSHA inspections do occur, they happen too often after the bodies are in the morgue, rather than when prevention can make a difference.

When employers need clear standards so that they know when they’ve met their obligation to make their workplaces safe, instead they get vague, generic suggestions.

*This is not how the architects of the Occupational Safety and Health Act envisioned OSHA’s response during a workplace crisis. The Act tells OSHA that it **shall** issue an Emergency Temporary Standard if it determines workers are exposed to a grave danger or from new hazards, and that a standard is necessary to protect workers from that hazard.*

Not only do the large numbers of sick and dying tell us that there is a grave danger, but it is clear that the limited actions taken by OSHA are not sufficient.

Not only is OSHA refusing to act on that emergency authority, but the agency won’t even resume work on a long-awaited permanent standard that would address the hazard this nation is facing.

As the economy re-opens, the key to preventing an even more devastating second wave will be protecting workers in the millions of workplaces that present exposure hazards. Yet we have no mandatory standard, and no cop on the beat to enforce safe working conditions that will be the key to preventing that second wave.

It is deeply disappointing that OSHA – the only federal agency with the authority to enforce safe working conditions – is missing in

action.

I am not only disappointed, I am saddened for the workers of this country who continue to lack adequate protections on the job, and when they go home will infect their families. I am upset about the future of this country that OSHA's inaction foreshadows.

I can only hope that you and Secretary Scalia will wake up before it's too late and choose to fulfill OSHA's mission to assure safe working conditions for every man and woman in this country.

Congresswoman Adams' full opening statement as prepared for delivery is below:

Today's Subcommittee hearing will explore the performance of the federal government in protecting worker safety during the COVID-19 pandemic. I want to thank OSHA Deputy Assistant Secretary Sweatt and NIOSH Director Howard for joining us today.

The COVID-19 pandemic has resulted in the worst worker safety crisis in OSHA's 50-year history. Nothing compares.

In the past 4 months, more than 62,000 health care workers, who we have asked to risk their lives without protective equipment, have been diagnosed with COVID-19 and at least 291 have died. And this is an underestimate. According to CDC, these shocking numbers are a mere fraction of the true toll due to the absence of reporting by as many as 27 states, New York City and the District of Columbia.

As we know, infection outbreaks have not been limited to health care facilities.

- *More than 17,000 meat processing workers have been infected and an estimated 66 have died. One Iowa Tyson plant saw 60% of its employees test positive. A Greely Colorado meatpacking plant closed after hundreds fell ill. Although the plant promised to test every worker before reopening, the plant identified so many positive cases that it stopped testing and reopened anyway.*

- *Prisons, long-term care facilities, grocery stores, transportation systems and warehouses have all experienced deadly outbreaks.*

- *Earlier this month, the CDC reported 2,778 infections and 15 deaths among staff employed in correctional and detention facilities. From late January to late April, fully 36% of all reported infections at correctional facilities were suffered by staff.*

- *At least 6 employees of one warehouse in New York have died from COVID-19. One-hundred and twenty-nine New York City transit workers have died of the virus.*

- *As of last week, 1,424 Veterans Administration employees have been diagnosed with COVID-19 and 31 have died.*

- *Some 2,400 postal workers have tested positive and 60 have died from COVID-related illnesses. United Parcel Service is facing an outbreak of 36 cases at its facility in Tucson.*

But as we will discuss today, we don't really know the toll to workers because this nation has no system for collecting data on COVID-19 infections in the workplace. And employers are not obligated to publicly report these infections. Some government agencies refuse to make this information public due to employer concerns about adverse publicity, leaving workers and the public unaware of what risks they are facing.

We cannot lose sight of the fact that this is largely a tragedy inflicted on our nation's essential workers. People who don't have a choice on whether they have to go to work. Many of those on the frontlines are low income workers and disproportionately people of color who don't have the luxury of teleworking from home.

COVID-19 is largely a workplace disease and a community tragedy. In Iowa, Nebraska and South Dakota, coronavirus cases linked to meat workers represent 18, 20 and 29 percent of the states' total cases, respectively, according to the Environmental Working Group. My home state of North Carolina leads the nation with the number of meatpacking plants facing an outbreak—with the state Department of Health and Human Services reporting that at least 23 plants have outbreaks with more than 1,300 worker infections.

Yet OSHA, the agency that this nation has tasked to protect workers, has been largely invisible. It has failed to develop the necessary tools it needs to combat this pandemic and it has failed to fully use the tools it has; instead focusing principally on issuing press releases and voluntary guidance.

This hearing will focus on why that is and the price that this nation's workers are paying for OSHA's inaction.

Deep into this pandemic, OSHA has still not developed any enforceable standards for employers to follow that can protect workers from the airborne transmission of the novel coronavirus.

And OSHA's existing enforcement tools to combat this pandemic, which include standards covering respirators and personal protective equipment, are inadequate and unused.

While guidance issued by the Centers for Disease Control and Prevention can be useful, it is not binding. Only OSHA can enforce safe working conditions.

And although OSHA says it uses its enforcement authority to protect workers, OSHA's own data shows that the majority of its inspections are conducted only after workers have died. And OSHA has conducted complaint inspections for less than one percent of the complaints filed.

And while the Secretary of Labor says it does not need an Emergency Temporary Standard, because OSHA already has the tools it needs to enforce its guidelines through the General Duty Clause, the embarrassing truth is that OSHA has not issued a single citation under the General Duty Clause to enforce that Guidance. Not one!

This worker safety crisis was clearly foreseeable. And OSHA was warned. It was clear after the H1N1 Swine Flu pandemic in 2009 that an infectious disease standard was needed that requires employers to assess the infectious disease risks in their workplaces and mitigate the hazards. Such a standard was well along the way at the beginning of the Trump Administration, but in February 2017, that draft standard was mothballed and relegated to the "long term" regulatory agenda where it languishes today.

In January, I joined Chairman Bobby Scott in calling on OSHA to put the infectious disease standard back on the active agenda. In that letter, we also urged OSHA to issue a compliance directive for the health care sector, and to issue an Emergency Temporary Standard if the situation deteriorated. At the time of our request, there were just 5 confirmed COVID-19 infections in the United States. Hearing nothing back, on March 5th we wrote OSHA again describing how hundreds of health care workers had been exposed and stated the obvious: that OSHA urgently needed to issue an

Emergency Temporary Standard (ETS). In mid- March, OSHA rejected an ETS on the grounds that “the health care industry fully understands the gravity of the situation and is taking the appropriate steps to protect its workers.” In April, with more than 720,000 infections nationwide, OSHA finally issued enforcement guidance, but only covering the health care sector.

In mid-May, as workers continue to face risk of infection, illness, and death, the agency is still refusing to issue an Emergency Temporary Standard to protect workers from exposure to the coronavirus.

Here is what the OSHA Act states: OSHA “shall provide for an Emergency Temporary Standard” if it determines “that employees are exposed to a grave danger....” from “new hazards”, and “that such emergency standard is necessary to protect employees from such danger.”

Circumstances like this pandemic are the exact reason this authority exists, yet OSHA continues to sit on the sidelines.

My question to the Secretary of Labor is how, after tens of thousands of workplace infections and hundreds of worker deaths, why is OSHA missing in action?

OSHA’s failure to take meaningful action has sent a clear message to workers across the country that they are on their own.

On Friday, May 15, the House of Representatives passed the Heroes Act (H.R. 6800) which included the “COVID-19 Every Worker Protection Act” introduced by Chairman Scott, Representative Shalala and myself. That bill directs OSHA to issue an emergency temporary standard with seven days to protect workers in hospitals, meatpacking plants, retail stores, restaurants, offices, shipyards, and any other workplace where a person may face risk from exposure to the novel coronavirus from the public or from other workers. The Heroes Act would also prohibit employers from retaliating against workers for sounding the alarm about unsafe conditions.

As the states across the country begin to reopen, more workers will be at risk of infection unless OSHA starts doing its job. And if the reopening of workplaces drives up infections rates, states will be forced to reinstate stay-at-home orders, which will do further damage to our economy.

We simply cannot safely and effectively reopen our economy until we secure the safety of our workers.

The only logical conclusion I can draw is that OSHA’s inadequate response to this pandemic has been informed more by stale politics rather than modern science. The necessity to protect workers should not be cramped by stale ideological notions about regulation, nor campaign slogans about repealing two regulations for every new one that is created. The house is on fire, and we cannot waste time arguing about how to rewrite our building codes.

Today, we will explore and hopefully answer why there has been the lack of political will in the face of this public health disaster. And we will learn why no one seems to care enough to even track the number of workers who are getting sick and dying.

Finally, before I end, I feel the need to respond to two items in Ms Sweatt’s written testimony.

First, we note that because of a lawsuit, Ms. Sweatt will refuse to

answer any questions about an Emergency Temporary Standard. I want to note for the record that there is no legal basis for this refusal; it is purely a political statement.

Second, I want to respond to Ms. Sweatt's testimony which implies that criticism of OSHA's failure to issue a emergency standard or enforce existing standards "does a disservice ... to the hardworking men and women of OSHA." No one has more respect for the dedicated staff of OSHA and the hard work they do every day than this Committee, as evidenced by our advocacy for the agency's budget and opposition to the torrent of rollbacks to worker safety protections. The failure to competently address the life-threatening hazards that working Americans are facing from COVID-19 is not the fault of OSHA professional staff, but rather due to the unfortunate decisions of OSHA's political leadership.

Congresswoman Alma Adams represents North Carolina's 12th Congressional District (Charlotte) and serves as Vice Chair of the House Committee on Agriculture. Additionally, she serves on the House Financial Services Committee and the House Education & Labor Committee, where she serves as Chair of the Workforce Protections Subcommittee.

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