



April 7, 2020

Loren Sweatt
Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety & Health Administration
200 Constitution Avenue NW
Room Number N3626
Washington, DC 20210

Via email: Sweatt.Loren.E@dol.gov

Dear Principal Deputy Assistant Secretary Sweatt:

I write on behalf of the Project On Government Oversight (POGO) to urge you to swiftly issue guidance about the whistleblower protections afforded to those working across the country to mitigate the health and economic effects of COVID-19. POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

There have been troubling reports of health care workers across the country being retaliated against and even fired for raising concerns about the continued lack of personal protective equipment.¹ POGO is concerned that this behavior is happening broadly across the health care and disaster response industries as the crisis evolves, and that a dangerous standard is being set that ignores worker health and safety whistleblowing protections.² Additionally, there are reports that hospitals are implementing sweeping gag orders to silence employees who wish to speak out about unsafe working conditions.³ Given these realities, it is imperative that this damaging rhetoric be swiftly countered by an authoritative voice.

As you know, OSHA enforces the Occupational Safety and Health Act of 1970 (OSH Act) and over 20 other laws with anti-retaliation provisions through its Whistleblower Protection Program. Under Section 11(c) of the OSH Act, private sector workers—including in the health care

¹ Christian Davenport, Abha Bhattarai, and Jena McGregor, “As coronavirus spreads, so do reports of companies mistreating workers,” *Washington Post*, March 31, 2020.

<https://www.washingtonpost.com/business/2020/03/31/worker-retaliation-mistreatment-coronavirus/>

² Nick Schwellenbach, “Can OSHA Protect Medical Whistleblowers Amid the COVID-19 Pandemic?” Project On Government Oversight, April 2, 2020. <https://www.pogo.org/analysis/2020/04/can-osh-a-protect-medical-whistleblowers-amid-the-covid-19-pandemic/>

³ John Kruzel, “Hospitals threatening to fire workers for speaking out about coronavirus shortages: report,” *The Hill*, March 31, 2020. <https://thehill.com/regulation/court-battles/490361-hospitals-threatening-to-fire-workers-for-speaking-out-about>

sector—are protected from retaliation if they raise health- and safety-related concerns about their workplace. Additional anti-retaliation protections for reporting workplace-related illnesses also likely apply to anyone raising concerns about the possible transmission of COVID-19.⁴ Unfortunately, information about these whistleblower protections and how to enforce them was noticeably absent from the recently released OSHA *Guidance on Preparing Workplaces for COVID-19*.⁵

While OSHA mentions the OSH Act's anti-retaliation protection on the bottom of its webpage on COVID-19,⁶ it can and should more actively put hospitals and other health care employers on notice that workers are protected from retaliation when speaking out. Doing so could help head off employer retaliation and empower workers to continue raising legitimate safety and health threats in the workplace. This is all the more important considering that the OSH Act's statute of limitations for reporting violations is an astonishingly short 30 days. Worker knowledge of their rights is critical.

Workers are on the front lines of our fight against this pandemic. Their ability to speak up when things aren't right is absolutely paramount to winning that fight. We therefore urge you to issue clear, accessible guidance to workers about their right to blow the whistle, and to remind employers that they are breaking the law when they sideline their employees' rights.

Thank you for your ongoing work in ensuring the safety of American workplaces and workers.

Sincerely,



Danielle Brian
Executive Director

cc: Mr. Eugene Scalia, Secretary, U.S. Department of Labor

⁴ 29 C.F.R. §1904.35.

⁵ United States Department of Labor, Occupational Safety and Health Administration, *Guidance on Preparing Workplaces for COVID-19*, OSHA 3990-03 2020 (March 2020). <https://www.osha.gov/Publications/OSHA3990.pdf>

⁶ United States Department of Labor, Occupational Safety and Health Administration, "COVID-19 Standards." <https://www.osha.gov/SLTC/covid-19/standards.html#workers>