

116TH CONGRESS
2D SESSION

S. 3584

To direct the Secretary of Labor to issue an emergency temporary standard that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect employees in the health care sectors and other employees at elevated risk from exposure to SARS-CoV-2, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2020

Ms. BALDWIN (for herself and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To direct the Secretary of Labor to issue an emergency temporary standard that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect employees in the health care sectors and other employees at elevated risk from exposure to SARS-CoV-2, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “COVID-19 Workers
5 First Protection Act of 2020”.

1 **TITLE I—COVID-19 EMERGENCY**
2 **TEMPORARY STANDARD AND**
3 **SURVEILLANCE, TRACKING,**
4 **AND INVESTIGATION OF**
5 **WORK-RELATED CASES**

6 **SEC. 101. EMERGENCY TEMPORARY AND PERMANENT**
7 **STANDARDS.**

8 (a) EMERGENCY TEMPORARY STANDARD.—

9 (1) IN GENERAL.—In consideration of the grave
10 risk presented by COVID-19 and the need to
11 strengthen protections for employees, pursuant to
12 section 6(c)(1) of the Occupational Safety and
13 Health Act of 1970 (29 U.S.C. 655(c)(1)), not later
14 than 1 month after the date of enactment of this
15 Act, the Secretary of Labor shall, in consultation
16 with the Director of the Centers for Disease Control
17 and Prevention, the Director of the National Insti-
18 tute for Occupational Safety and Health, and the
19 persons described in paragraph (2), promulgate an
20 emergency temporary standard to protect from occu-
21 pational exposure to SARS-CoV-2—

22 (A) employees of health care sector em-
23 ployers;

24 (B) employees of employers in the para-
25 medic and emergency medical services, includ-

1 ing such services provided by firefighters and
2 other emergency responders; and

3 (C) employees in other sectors and occupa-
4 tions whom the Centers for Disease Control and
5 Prevention or the Occupational Safety and
6 Health Administration identifies as having ele-
7 vated risk.

8 (2) CONSULTATION.—In developing the stand-
9 ard under this subsection, the Secretary shall con-
10 sult with professional associations and representa-
11 tives of the employees in the occupations and sectors
12 described in subparagraphs (A) through (C) of para-
13 graph (1) and the employers of such employees.

14 (3) ENFORCEMENT DISCRETION.—If the Sec-
15 retary of Labor determines it is not feasible for an
16 employer to comply with a requirement of the stand-
17 ard promulgated under this subsection (such as the
18 provision of the necessary personal protective equip-
19 ment), the Secretary may exercise discretion in the
20 enforcement of such requirement if the employer
21 demonstrates that the employer—

22 (A) is exercising due diligence to come into
23 compliance with such requirement; and

24 (B) is implementing alternative methods
25 and measures to protect employees.

1 (4) EXTENSION OF STANDARD.—Notwith-
2 standing paragraphs (2) and (3) of section 6(c) of
3 the Occupational Safety and Health Act of 1970 (29
4 U.S.C. 655(c)), the emergency temporary standard
5 promulgated under this subsection shall be in effect
6 until the date on which the final standard promul-
7 gated under subsection (b) is in effect.

8 (5) STATE PLAN ADOPTION.—With respect to a
9 State with a State plan that has been approved by
10 the Secretary of Labor under section 18 of the Oc-
11 cupational Safety and Health Act of 1970 (29
12 U.S.C. 667), not later than 14 days after the date
13 of enactment of this Act, such State shall promul-
14 gate an emergency temporary standard that is at
15 least as effective in protecting from occupational ex-
16 posure to SARS-CoV-2 the employees in the occu-
17 pations and sectors described in subparagraphs (A)
18 through (C) of paragraph (1) as the emergency tem-
19 porary standard promulgated under this subsection.

20 (6) EMPLOYER DEFINED.—For purposes of the
21 standard promulgated under this subsection, the
22 term “employer” under section 3 of the Occupa-
23 tional Safety and Health Act of 1970 (29 U.S.C.
24 652) includes any State or political subdivision of a
25 State, except for those already subject to the juris-

1 diction of a State plan approved under section 18(b)
2 of the Occupational Safety and Health Act of 1970.

3 (b) PERMANENT STANDARD.—Not later than 24
4 months after the date of enactment of this Act, the Sec-
5 retary of Labor shall promulgate a final standard—

6 (1) to protect employees from occupational ex-
7 posure to infectious pathogens; and

8 (2) that shall be effective and enforceable in the
9 same manner and to the same extent as a standard
10 promulgated under section 6(b) of the Occupational
11 Safety and Health Act of 1970 (29 U.S.C. 655(b)).

12 (c) REQUIREMENTS.—Each standard promulgated
13 under this section shall—

14 (1) require the employers of the employees in
15 the occupations and sectors described in subpara-
16 graphs (A) through (C) of subsection (a)(1) to de-
17 velop and implement a comprehensive infectious dis-
18 ease exposure control plan;

19 (2) provide no less protection for novel patho-
20 gens than precautions mandated by standards
21 adopted by a State plan that has been approved by
22 the Secretary of Labor under section 18 of the Oc-
23 cupational Safety and Health Act of 1970 (29
24 U.S.C. 667); and

1 (3) incorporate, as appropriate, the precautions
2 for severe acute respiratory syndrome (SARS) in the
3 “2007 Guideline for Isolation Precautions: Pre-
4 venting Transmission of Infectious Agents in
5 Healthcare Settings” of the Centers for Disease
6 Control and Prevention and any subsequent updates.

7 **SEC. 102. SURVEILLANCE, TRACKING, AND INVESTIGATION**
8 **OF WORK-RELATED CASES OF COVID-19**
9 **AMONG HEALTH CARE WORKERS.**

10 The Director of the Centers for Disease Control and
11 Prevention, in conjunction with the Director of the Na-
12 tional Institute for Occupational Safety and Health,
13 shall—

14 (1) collect and analyze case reports and other
15 data on COVID-19, to identify and evaluate the ex-
16 tent, nature, and source of COVID-19 among em-
17 ployees in the occupations and sectors described in
18 subparagraphs (A) through (C) of section 101(a)(1);

19 (2) investigate, as appropriate, individual cases
20 of COVID-19 among such employees to evaluate the
21 source of exposure and adequacy of infection and ex-
22 posure control programs and measures;

23 (3) provide regular periodic reports on COVID-
24 19 disease among such employees to the public; and

1 (4) based on such reports and investigations
 2 make recommendations on needed actions or guid-
 3 ance to protect such employees from COVID–19.

4 **TITLE II—APPLICATION OF THE**
 5 **PERMANENT COVID–19**
 6 **STANDARD TO CERTAIN FA-**
 7 **CILITIES RECEIVING MEDI-**
 8 **CARE FUNDS.**

9 **SEC. 201. IN GENERAL.**

10 (a) IN GENERAL.—Section 1866 of the Social Secu-
 11 rity Act (42 U.S.C. 1395cc) is amended—

12 (1) in subsection (a)(1)—

13 (A) in subparagraph (X), by striking
 14 “and” at the end;

15 (B) in subparagraph (Y), by striking at
 16 the end the period and inserting “; and”; and

17 (C) by inserting after subparagraph (Y)
 18 the following new subparagraph:

19 “(Z) in the case of hospitals that are not
 20 otherwise subject to the Occupational Safety
 21 and Health Act of 1970 (or a State occupa-
 22 tional safety and health plan that is approved
 23 under section 18(b) of such Act) and skilled
 24 nursing facilities that are not otherwise subject
 25 to such Act (or such a State occupational safety

1 and health plan), to comply with the standard
2 promulgated under section 101(b) of the
3 COVID–19 Workers First Protection Act of
4 2020.”; and

5 (2) in subsection (b)(4)—

6 (A) in subparagraph (A), by inserting
7 “and a hospital or skilled nursing facility that
8 fails to comply with the requirement of sub-
9 section (a)(1)(Z) (relating to the standard pro-
10 mulgated under section 101(b) of the COVID–
11 19 Workers First Protection Act of 2020)”
12 after “Bloodborne Pathogens Standard”); and

13 (B) in subparagraph (B)—

14 (i) by striking “(a)(1)(U)” and insert-
15 ing “(a)(1)(V)”); and

16 (ii) by inserting “(or, in the case of a
17 failure to comply with the requirement of
18 subsection (a)(1)(Z), for a violation of the
19 standard promulgated under section
20 101(b) of the COVID–19 Workers First
21 Protection Act of 2020 by a hospital or
22 skilled nursing facility, as applicable, that
23 is subject to the provisions of such Act)”
24 before the period at the end.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) shall apply beginning on the date that is
3 1 month after the date of promulgation of the permanent
4 standard under section 101(b).

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