

116TH CONGRESS  
2D SESSION

# S. 3677

To require the Occupational Safety and Health Administration to promulgate an emergency temporary standard to protect employees from occupational exposure to SARS-CoV-2, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 11, 2020

Ms. BALDWIN (for herself, Ms. DUCKWORTH, Mrs. MURRAY, Mr. BROWN, Mr. VAN HOLLEN, Mr. BLUMENTHAL, Mr. MARKEY, Ms. HARRIS, Ms. WARREN, Mrs. GILLIBRAND, Mr. KING, Mr. DURBIN, Mr. WYDEN, Ms. SMITH, Mr. SANDERS, Mr. MENENDEZ, Ms. KLOBUCHAR, Mr. CASEY, Mr. BOOKER, Mr. KAINE, Mrs. SHAHEEN, Mr. REED, Ms. STABENOW, Mr. SCHATZ, Ms. HIRONO, Mr. PETERS, Mrs. FEINSTEIN, Mr. COONS, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. UDALL, Mr. CARDIN, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require the Occupational Safety and Health Administration to promulgate an emergency temporary standard to protect employees from occupational 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 division may be cited as the “COVID-19 Every  
5 Worker Protection Act of 2020”.

1 **SEC. 2. EMERGENCY TEMPORARY AND PERMANENT STAND-**  
2 **ARDS.**

3 (a) EMERGENCY TEMPORARY STANDARD.—

4 (1) IN GENERAL.—In consideration of the grave  
5 risk presented by COVID–19 and the need to  
6 strengthen protections for employees, pursuant to  
7 section 6(c)(1) of the Occupational Safety and  
8 Health Act of 1970 (29 U.S.C. 655(c)(1)) and not-  
9 withstanding the provisions of law and the Executive  
10 order listed in paragraph (7), not later than 7 days  
11 after the date of enactment of this Act, the Sec-  
12 retary of Labor shall promulgate an emergency tem-  
13 porary standard to protect from occupational expo-  
14 sure to SARS–CoV–2—

15 (A) employees of health care sector em-  
16 ployers;

17 (B) employees of employers in the para-  
18 medic and emergency medical services, includ-  
19 ing such services provided by firefighters and  
20 other emergency responders; and

21 (C) other employees at occupational risk of  
22 such exposure.

23 (2) CONSULTATION.—In developing the stand-  
24 ard under this subsection, the Secretary of Labor  
25 shall consult with the Director of the Centers for  
26 Disease Control and Prevention, the Director of the

1 National Institute for Occupational Safety and  
2 Health, and professional associations and represent-  
3 atives of the employees in the occupations and sec-  
4 tors described in subparagraphs (A) through (C) of  
5 paragraph (1) and the employers of such employees.

6 (3) ENFORCEMENT DISCRETION.—If the Sec-  
7 retary of Labor determines it is not feasible for an  
8 employer to comply with a requirement of the stand-  
9 ard promulgated under this subsection (such as a  
10 shortage of the necessary personal protective equip-  
11 ment), the Secretary may exercise discretion in the  
12 enforcement of such requirement if the employer  
13 demonstrates that the employer—

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

16 (B) is implementing alternative methods  
17 and measures to protect employees.

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

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

13           (6) EMPLOYER DEFINED.—For purposes of the  
14 standard promulgated under this subsection, the  
15 term “employer” (as defined in section 3 of the Oc-  
16 cupational Safety and Health Act of 1970 (29  
17 U.S.C. 652)) includes any State or political subdivi-  
18 sion of a State, except for a State or political sub-  
19 division of a State already subject to the jurisdiction  
20 of a State plan approved under section 18(b) of the  
21 Occupational Safety and Health Act of 1970 (29  
22 U.S.C. 667(b)).

23           (7) INAPPLICABLE PROVISIONS OF LAW AND  
24 EXECUTIVE ORDER.—The requirements of chapter 6  
25 of title 5, United States Code (commonly referred to

1 as the “Regulatory Flexibility Act”), subchapter I of  
2 chapter 35 of title 44, United States Code (com-  
3 monly referred to as the “Paperwork Reduction  
4 Act”), the Unfunded Mandates Reform Act of 1995  
5 (2 U.S.C. 1501 et seq.), and Executive Order 12866  
6 (58 Fed. Reg. 190; relating to regulatory planning  
7 and review), as amended, shall not apply to the  
8 standard promulgated under this subsection.

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

12 (1) to protect employees in the occupations and  
13 sectors described in subparagraphs (A) through (C)  
14 of subsection (a)(1) from occupational exposure to  
15 infectious pathogens, including novel pathogens; and

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

20 (c) REQUIREMENTS.—Each standard promulgated  
21 under this section shall include—

22 (1) a requirement that the employers of the em-  
23 ployees in the occupations and sectors described in  
24 subparagraphs (A) through (C) of subsection (a)(1)  
25 develop and implement a comprehensive infectious

1 disease exposure control plan, with the input and in-  
2 volvement of employees or, where applicable, the rep-  
3 resentatives of employees, as appropriate, to address  
4 the risk of occupational exposure in such sectors and  
5 occupations;

6 (2) no less protection for novel pathogens than  
7 precautions mandated by standards adopted by a  
8 State plan that has been approved by the Secretary  
9 of Labor under section 18 of the Occupational Safe-  
10 ty and Health Act of 1970 (296 U.S.C. 667);

11 (3) the incorporation, as appropriate, of—

12 (A) guidelines issued by the Centers for  
13 Disease Control and Prevention, the National  
14 Institute for Occupational Safety and Health,  
15 and the Occupational Safety and Health Ad-  
16 ministration which are designed to prevent the  
17 transmission of infectious agents in healthcare  
18 or other occupational settings; and

19 (B) relevant scientific research on novel  
20 pathogens; and

21 (4) a requirement for the recording and report-  
22 ing of all work-related COVID–19 infections and  
23 deaths as set forth in part 1904 of title 29, Code of  
24 Federal Regulations (as in effect on the date of en-  
25 actment of this Act).

1 (d) ANTI-RETALIATION.—

2 (1) POLICY.—Each standard promulgated  
3 under this section shall require employers to adopt  
4 a policy prohibiting the discrimination and retalia-  
5 tion described in paragraph (2) by any person (in-  
6 cluding an agent of the employer).

7 (2) PROHIBITION.—No employer (including an  
8 agent of the employer) shall discriminate or retaliate  
9 against an employee for—

10 (A) reporting to the employer, to a local,  
11 State, or Federal Government agency, or to the  
12 media or on a social media platform—

13 (i) a violation of a standard promul-  
14 gated pursuant to this Act;

15 (ii) a violation of an infectious disease  
16 exposure control plan described in sub-  
17 section (c)(1); or

18 (iii) a good faith concern about a  
19 workplace infectious disease hazard;

20 (B) seeking assistance or intervention from  
21 the employer or a local, State, or Federal Gov-  
22 ernment agency with respect to such a report;

23 (C) voluntary use of personal protective  
24 equipment with a higher level of protection than  
25 is provided by the employer; or

1 (D) exercising any other right under the  
2 Occupational Safety and Health Act of 1970  
3 (29 U.S.C. 651 et seq.).

4 (3) ENFORCEMENT.—This subsection shall be  
5 enforced in the same manner and to the same extent  
6 as any standard promulgated under section 6(b) of  
7 the Occupational Safety and Health Act of 1970 (29  
8 U.S.C. 655(b)).

9 **SEC. 3. SURVEILLANCE, TRACKING, AND INVESTIGATION**  
10 **OF WORK-RELATED CASES OF COVID-19.**

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

15 (1) collect and analyze case reports, including  
16 information on the work status, occupation, and in-  
17 dustry classification of an individual, and other data  
18 on COVID-19, to identify and evaluate the extent,  
19 nature, and source of COVID-19 among employees  
20 in the occupations and sectors described in subpara-  
21 graphs (A) through (C) of section 2(a)(1);

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



1           (3) provide regular periodic reports on COVID–  
2           19 among such employees to the public; and

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

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