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September 25, 2020

Mr. Jay Withrow
Director
Division of Legal Support, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219

RE: VA Department of Labor and Industry, Safety and Health Codes Board; Permanent
Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes
COVID-19

Dear Mr. Withrow:

I was very pleased that the Commonwealth of Virginia approved an Emergency Temporary OSHA Standard (ETS) to protect workers against COVID-19 last July, and I applaud the Governor for his leadership on this issue. In the absence of any attempt from the federal Occupational Safety and Health Administration (OSHA) to issue strong protections for the millions of workers exposed to COVID-19, Virginia's actions are critical to preventing workplace infections.

Virginia now needs to issue a permanent standard to protect the Commonwealth's workers from exposure to COVID-19. This country is a long way from the end of this pandemic. Even if a safe and effective vaccine is developed in the next several months, it may not be until late 2021 that enough supply is available to ensure the protection of all Virginians. There are now over 7 million confirmed COVID-19 cases in the U.S., and over 200,000 deaths. Virginia has experienced over 140,000 Covid-19 cases and over 3,000 deaths. While the overall infection numbers are currently leveling off in Virginia, continued vigilance is necessary if we are to prevent another wave of infection as schools open and people move inside as winter approaches. Recent outbreaks have been identified at the Deerfield Correctional Center,¹ the Pamunkey

¹ <https://www.wdbj7.com/2020/09/23/va-department-of-corrections-working-with-vdh-cdc-to-manage-covid-19-outbreak-at-deerfield-correctional-center/>.

Regional Jail in Hanover,² and the Heritage Hall and Lynn Care Center nursing homes in Warren County.³

Nationally, workers continue to be at risk. The CDC reports that 710 health care workers have died from COVID-19 and those numbers are based on only 24% of states responding.⁴ The Centers for Medicare and Medicaid Services reports 868 fatalities among nursing home staff alone, including 16 Virginians.⁵ Furthermore, more than 250 food processing workers have died from COVID-19, most in meat processing facilities. Over 1200 meat processing workers have been infected in Virginia and ten have died.⁶

Virginia has issued a strong, protective ETS based on scientific information and long-standing, proven occupational workplace safety and health practices, and the permanent standard should closely track the ETS. The Virginia Department of Labor and Industry remains ready to provide any technical assistance that employers need to comply with the provisions of the standard.

The following measures are particularly important and should be maintained in the final standard:

- Exposure assessment and determination: The Exposure Assessment will ensure that each employer develops worker protection measures that are tailored to the specific workplace and that there are no “one-size-fits-all” requirements. The exposure assessment will also ensure that businesses are able to relax requirements when the crisis eventually abates.
- Anti-retaliation protections: We continue to hear about workers being retaliated against for reporting unsafe work conditions or using their own personal protective equipment. For workers to feel secure to report unsafe conditions and to participate in the process of improving workplace safety, it is essential that workers continue to have strong protections against retaliation.

Personal protective equipment, particularly N-95 respirators, continue to be in short supply,⁷ making it important that workers are allowed to provide their own, more effective personal protective equipment without being retaliated against.

² <https://abcnews.go.com/US/covid-19-outbreak-virginia-jail-infects-124-inmates/story?id=72925115>.

³ https://www.nvdaily.com/nvdaily/two-new-local-outbreaks-havent-lead-to-any-deaths/article_9992845e-1317-5020-adc5-d36e4c906720.html.

⁴ https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#health-care-personnel.

⁵ https://urldefense.proofpoint.com/v2/url?u=https-3A_data.cms.gov_Special-2DPrograms-2DInitiatives-2DCOVID-2D19-2DNursing-2DHome_COVID-2D19-2DNursing-2DHome-2DDataset_s2uc-2D8wxp&d=DwMFaQ&c=L93KkjKsAC98uTvC4KvQDdTDRzAeWDDRmG6S3YXIIH0&r=7fKcacT2MhxelN8y4LqEWU8scMISXDYIicsHK8PN738&m=E4SzQSvxfGBsVj3k8mfBgyCSNLydY0WS_VRerDY8yEQ&s=Nwsm_sH9dt67t3_kqC4ITE0s-8EgmX7TiDLTYBYUtk&e=.

⁶ <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>.

⁷ <https://www.washingtonpost.com/graphics/2020/local/news/n-95-shortage-covid/>.

- Reporting requirements: Reporting requirements are necessary in order to monitor work-related outbreaks and ensure that employees and other building occupants are aware of outbreaks that may present a hazard to employees in the workplace or building.
- Training: It is vitally important that all workers, at every level of risk, receive basic training on the hazards they are facing and how to protect themselves. Like other requirements of the standard, the training would be tailored to the specific level of risk in each individual workplace.

A permanent standard is particularly important considering that federal OSHA continues to refuse to issue an enforceable COVID-19 standard or any kind of broad infectious disease standard that covers airborne diseases. This leaves workers in nursing homes, meat packing plants, prisons, warehouses and many other workplaces at high risk of infection. As the numbers of COVID-19 infections continue to rise across the country, protecting our workers is essential to stopping the spread of this virus and reviving the economy.

In conclusion, I commend the respective agencies responsible for developing the ETS and your important work on a permanent COVID-19 standard. Virginia's ETS was a thoughtful response to the COVID-19 pandemic. The Commonwealth's leadership has set the example for the rest of the country as evidenced by other state OSHA plans that are now moving to adopt a COVID-19 ETS.

Please contact me or Jordan Barab, Senior Labor Policy Advisor for the Committee on Education and Labor, at jordan.barab@mail.house.gov if you have any questions.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

cc: Honorable Justin Fairfax, Lieutenant Governor
Honorable Ray Davenport, Commissioner, Department of Labor and Industry
Honorable Bettina Ring, Secretary of Agriculture and Forestry
Honorable Brian Ball, Secretary of Commerce and Trade
Dr. Megan Healy, Chief Workforce Advisor to the Governor