

Virus Prompts Calls For Workplace Protections: BGOV OnPoint

By Naoreen Chowdhury | May 22, 2020 1:15PM ET

The Covid-19 pandemic has escalated calls for new Labor Department standards for employers to safeguard front-line workers from exposure to the virus.

House Democrats want the Occupational Safety and Health Administration (OSHA) to issue an emergency standard that would establish coronavirus protections for at-risk workers. The requirement was included in their sweeping relief bill ([H.R. 6800](#); see [BGOV Bill Summary](#)) that the House passed largely along party lines on May 15.

Labor Secretary Eugene Scalia has said OSHA can use existing rules to protect workers without issuing a new standard. The agency has issued interim [enforcement](#) and [industry-specific](#) guidance during the pandemic, which Scalia [said](#) was more effective at protecting workers than broad regulations.

President Donald Trump [signed](#) an executive order May 19 that encourages agencies not to take action against employers that are making good-faith efforts to comply with federal regulations.

Labor rights and business groups are also at odds over workplace safety proposals. The AFL-CIO [filed](#) a lawsuit against OSHA to issue a coronavirus emergency standard. The U.S. Chamber of Commerce has [opposed](#) calls for new rules and is pushing for liability protections for businesses.

Covid-19 Workplace Safety

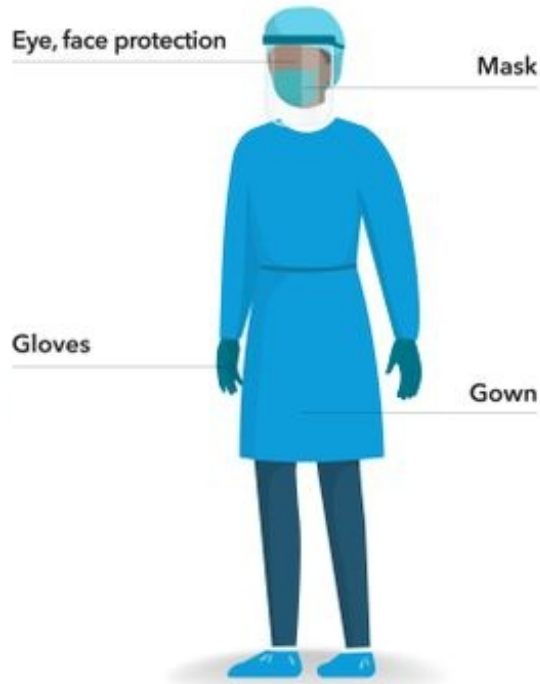
There's no federal standard that specifically addresses the airborne transmission of Covid-19, but employers must [comply](#) with other workplace safety regulations during the pandemic.

OSHA's personal protective equipment (PPE) standards require employers to provide workers with protective equipment when workplace hazards warrant it. The standard could apply when employees need eye, face, hand, or respiratory protection against exposure to the coronavirus.

When efforts to remove a hazard aren't feasible, employers are required to supply certified respirators under a related standard. OSHA granted exceptions to that standard when there was a shortage of N95 respirators, including on [reusing respirators](#) and [using uncertified equipment](#).

Current OSHA Standards Could Protect Some Workers

No standard directly addresses workplace exposure to Covid-19.



Note: PPE – Personal protective equipment
Source: Occupational Safety and Health Administration (OSHA)

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OSHA Standards

OSHA can issue workplace safety and health standards on its own or in response to petitions submitted to the agency by the public, employer or employee groups, federal agencies, or states.

It has taken the agency an average of more than seven years to issue standards, according to a [study](#) from the Government Accountability Office. That timeline was broadly attributable to additional rulemaking requirements, shifting priorities, and a rigorous standard of judicial review.

OSHA can also establish an emergency temporary standard without having to go through the regular rulemaking process. An emergency standard would remain in effect for as long as six months, after which it would be replaced by a permanent standard. The agency hasn't used such authority since setting a 1983 [asbestos standard](#), which was later overturned.

Before issuing an emergency standard, the agency is required to determine that workers are exposed to "grave danger" and that a standard is necessary to protect them.

States can also create their own occupational safety and health plans with state-specific standards, which OSHA is required to approve if they are at least as effective as its standards and enforcement. California, for example, issued a standard in 2009 that requires certain employers to protect workers against infectious airborne diseases, such as the coronavirus. All state plans are required to comply with any federal emergency standard.

In addition, state plans must cover public sector employees, who aren't subject to OSHA regulations. Currently, 21 states have plans that cover public and private sector employees and five states have plans that cover only public sector employees, [according](#) to the agency.

Democrats' Coronavirus Standard

House Democrats' measure would require OSHA to issue an emergency standard requiring employers to protect health-care workers, emergency responders, and other at-risk employees from exposure to the virus.

A temporary standard would be issued within seven days of the measure's enactment and a permanent standard would be issued within 24 months.

OSHA would have discretion over enforcement actions if, for example, an employer isn't able to fully comply because of an equipment shortage, and the employer is making a good-faith effort to protect workers.

The measure would require all employers to report work-related coronavirus infections and deaths. Current rules require employers with more than 10 workers to [keep](#) a log of serious injuries, illnesses, or deaths. OSHA [issued](#) guidance May 19 requiring employers, with exceptions, to report infections if they're job-related.

The measure would prohibit employers from retaliating against workers for reporting violations of the standard or for using equipment with a higher level of protection than the employer provides.

The emergency standard also would apply to public sector employers in states without their own plans.

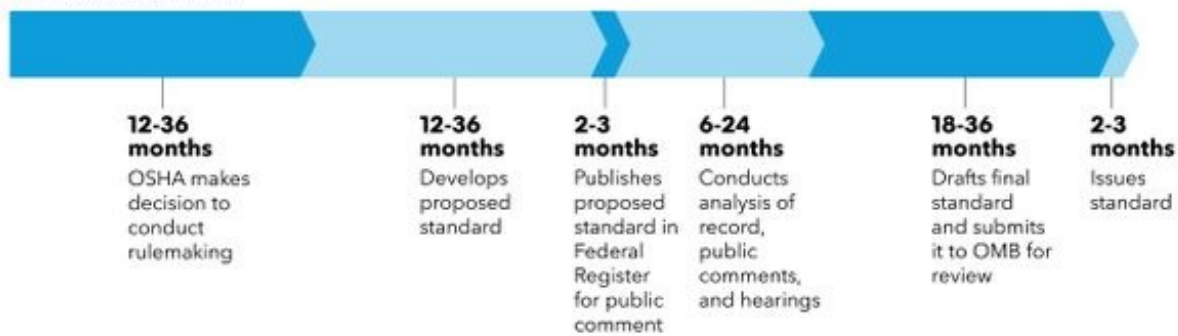
Emergency Temporary Standards Bypass Lengthy Rulemaking Procedures

It can take OSHA approximately 4.4 to 11.6 years to issue a permanent standard.

Coronavirus Emergency Standard Under H.R. 6800



Permanent Standard



Notes: OMB – White House Office of Management and Budget. A permanent standard is required to be submitted to Congress and GAO before it can take effect.

Sources: Occupational Safety and Health Administration (OSHA); Government Accountability Office (GAO);
Heroes Act – H.R. 6800

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Republicans' Liability Protections

Senate Majority Leader [Mitch McConnell](#) (R-Ky.) said that any new package would have to include liability protections and is drafting legislation that would create a safe harbor against coronavirus-related lawsuits for businesses, nonprofits, governments, schools, and drug manufacturers.

"A second epidemic of frivolous lawsuits could follow the actual pandemic and crush our recovery before it begins," McConnell [said](#) in May 12 floor remarks.

Some Senate Republicans have [said](#) that OSHA guidance, in addition to limited legal protections for businesses, is necessary to support the reopening of the economy.

House Speaker [Nancy Pelosi](#) (D-Calif.) has [indicated](#) she's open to providing protections for businesses that comply with federal regulations.

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