

United States Senate

August 4, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Ms. Loren Sweatt
Principle Deputy Assistant Secretary
Occupational Safety and Health
Administration
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Scalia and Assistant Secretary Sweatt:

We write today with serious concerns regarding reports that workers of color face disproportionate acts of retaliation when reporting workplace concerns related to the coronavirus disease (COVID-19) pandemic. COVID-19 is the worst public health crisis in a century, with four million recorded infections and over 150,000 American lives lost in just a few short months. With the lack of specific, enforceable standards issued from the Occupational Safety and Health Administration (OSHA) on COVID-19, essential employees who are on the front lines are rightfully concerned that their employers are not taking the necessary precautions to prevent the spread of COVID-19 at their workplaces. To date, federal OSHA has received over 5,000 complaints related to COVID-19, yet it has only issued a handful of citations, one of which was a reporting violation.¹² As workers who were home at the start of the pandemic begin to return to work, these concerns of unsafe workplaces will only grow.

We are troubled by recent reports that employers have taken retaliatory actions against workers, specifically workers of color, who have asked that their concerns regarding COVID-19 be addressed. A June data brief released by the National Employment Law Project (NELP) found that Black and Latino workers were more likely than white workers to report that they or someone at work may have been punished or fired for raising concerns about COVID-19 in the workplace.³ Employers were twice as likely to retaliate against Black workers as white workers. In addition, employers were two times less likely to address Black workers' concerns than their white peers. These disturbing statistics are a stark illustration of one of many barriers communities of color face in overcoming this pandemic.

¹ <https://www.dol.gov/newsroom/releases/osha/osha20200721>

² <https://news.bloomberglaw.com/safety/first-virus-related-osha-citation-goes-to-georgia-nursing-home>

³ <https://s27147.pcdn.co/wp-content/uploads/Silenced-About-COVID-19-Workplace-Fear-Retaliation-June-2020.pdf>

According to NELP, Black and Latino workers would be more willing to speak out against employers if there were strong legal protections that would protect them from being punished or fired. Instead, workers avoid addressing issues of COVID-19 in the workplace altogether, out of fear of retribution from employers. Moreover, OSHA's failure to implement specific, enforceable standards on COVID-19 only exacerbates the existing challenges Black and Latino workers face.

It is long past time for every part of the federal government, including OSHA, to take a hard look at the systemic racism, inequality, and biases that are layered into every facet of our society. The same communities of color that have long suffered discrimination are now being disproportionately impacted by the COVID-19 pandemic. The recent findings from NELP on employer retaliation against workers of color is but one of the many types of prejudices these communities continue to endure. As the nation's top watchdog for worker safety, OSHA should bring justice to all workers facing punishment for speaking out, and it should resolve the implicit and explicit racial biases that underlie employer retaliation which disproportionately impacts Black and Latino workers. Workers need to trust that OSHA will enforce whistleblower protections to shield them against retaliation when reporting workplace hazards, and hold bad employers accountable. Without confidence in OSHA, as the report illustrates, employers will be free to silence and punish Black and Latino workers.

In light of the findings in the report, please respond to the following questions no later than August 14, 2020:

- What are the total number of on board whistleblower investigators and supervisory investigators at OSHA for each year from 2013 through 2020?
- To date, how many COVID-19 related whistleblower complaints (i.e. COVID-19 related 11 C complaints) has OSHA received? How many of these complaints have been docketed? Please provide a breakdown of the North American Industry Classification System (NAICS) codes of these complaints.
- How many of these complaint investigations have been completed? How many are ongoing?
- How many of the complaints involved workers being fired or terminated for allegedly exercising their rights under the OSH Act?
- Of the completed cases, in how many cases has OSHA found employers to be in violation of whistleblower protection laws? In how many cases has OSHA found employers not in violation?
- Are you aware of disproportionate higher rates of retaliation cases against Black and Latino workers? If yes, how long as OSHA been aware and what has OSHA done to address the issue?

Thank you for your time and attention to this important matter. OSHA needs an effective, and reliable whistleblower protection program to protect marginalized workers from workplace retaliation. We look forward to your prompt response to our questions.

Sincerely,

ROBERT MENENDEZ
United States Senator

SHERROD BROWN
United States Senator

CHRIS VAN HOLLEN
United States Senator

TINA SMITH
United States Senator

KAMALA D. HARRIS
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