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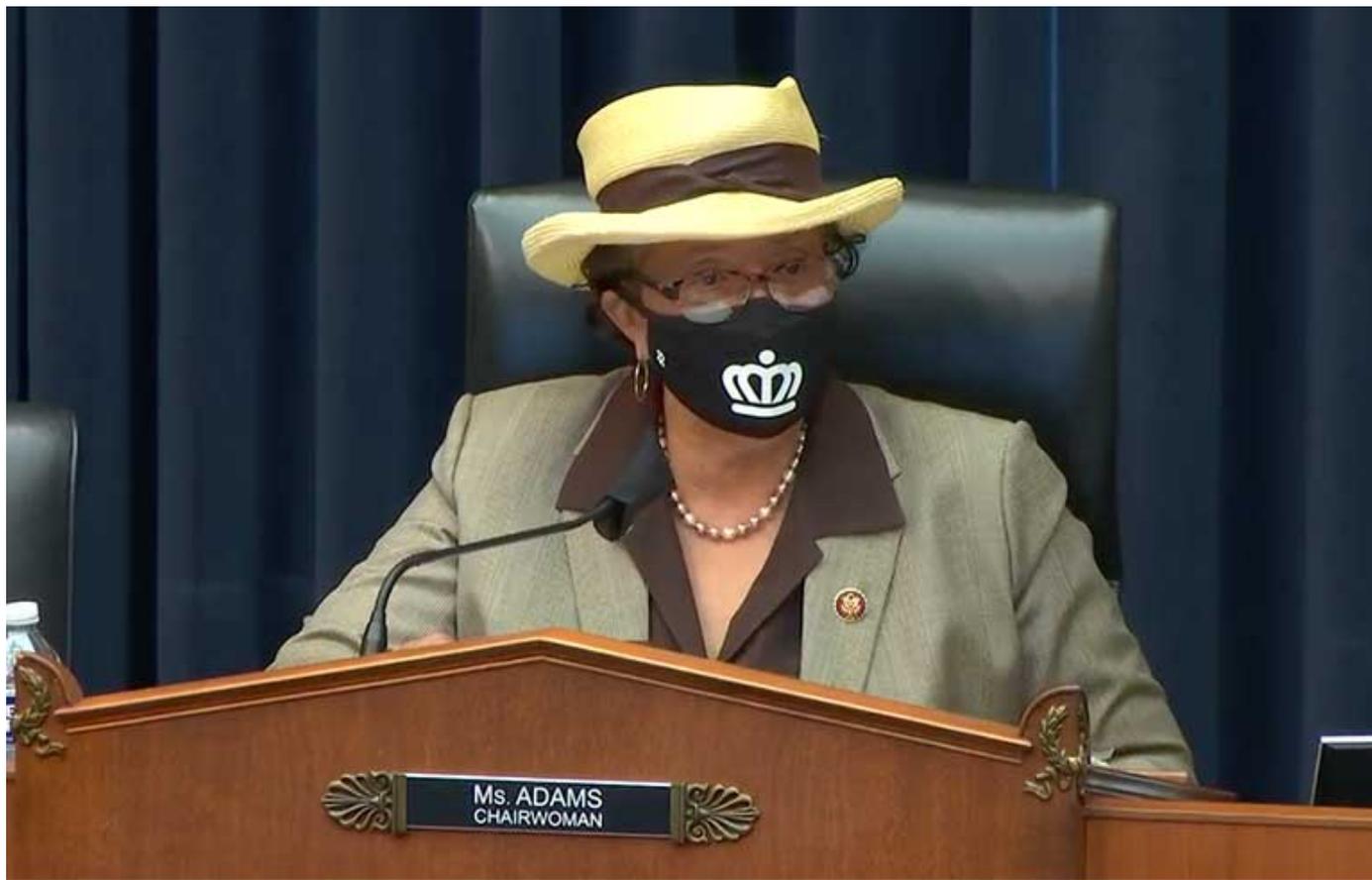


Photo: House Workforce Protections Subcommittee

No infectious diseases standard forthcoming, acting OSHA head says

May 29, 2020

Washington — An infectious diseases standard won't be coming anytime soon, acting OSHA administrator Loren Sweatt indicated during a [May 28 hearing](#) convened by the House Workforce Protections Subcommittee, adding that “the regulatory agenda speaks for itself.”

Sweatt declined to comment about calls for an emergency temporary standard amid the COVID-19 pandemic, citing a [pending AFL-CIO lawsuit](#).

A standard on infectious diseases is listed among the “long-term” actions on the Department of Labor’s [current regulatory agenda](#), meaning no progress is expected in the near future. Work on an infectious diseases standard began in May 2010, near the end of the swine flu (H1N1) pandemic. The latest public step was the completion of

a [review by a Small Business Advocacy Review panel](#) in December 2014. The standard was moved to the long-term portion of the agenda in July 2017.

Sweatt noted that OSHA would have to repeal two standards if it issued an infectious disease standard, as required under [President Donald Trump's "2-for-1" deregulatory Executive Order](#) issued in January 2017.

The Heroes Act ([H.R. 6800](#)), which passed in the House on May 15, calls on OSHA to immediately create an emergency temporary standard and issue a permanent infectious diseases standard 24 months later. The AFL-CIO filed a petition May 18 in the U.S. Court of Appeals for the District of Columbia Circuit, asking the court to direct the agency to issue an emergency temporary standard.

Subcommittee Chair Rep. Alma Adams (D-NC) contended that Sweatt's refusal to answer questions about an emergency temporary standard has "no legal basis." When asked by Rep. Bobby Scott (D-VA), chair of the House Education and Labor Committee, which legal privilege she was claiming, Sweatt replied, "I've been advised by Department (of Labor) counsel not to answer questions on ETS."

Guidance vs. standards

Rep. Bradley Byrne (R-AL), the subcommittee's ranking member, argued that the issuance of guidance documents is the same method the agency used during other recent pandemics, including the swine flu pandemic from 2009 to 2010.

"We are still learning about this disease and we just don't know enough information to meet the level necessary and appropriate to construct an adequate emergency temporary standard and a permanent federal regulation," Byrne said in his opening statement. "That's why the various guidance documents already issued are so useful. They can be issued relatively quickly and modified as we learn more from the [Centers for Disease Control and Prevention] and other public health officials, and from the workplaces themselves.

"And if OSHA's response was the best way to go for SARS, MERS, H1N1 and Ebola, why is it not best for COVID-19?"

In response to a question from Byrne, Sweatt said, "We have followed the H1N1 pandemic strategy almost to the T."

Byrne asked NIOSH Director John Howard, who testified at the hearing, whether the evolving COVID-19 situation would make the creation of a standard difficult as opposed to issuing guidance. "I think it's very difficult," Howard said. "Guidance is, as you mention, an easier pathway. When we learn something new, that guidance can be changed almost instantaneously."

In her closing statement, Adams said she wanted to emphasize that the emergency temporary standard being called for in the Heroes Act is "not a rigid or inflexible, one-size-fits-all standard that fails to accommodate changing scientific knowledge." Instead, she said, it calls for an infection control panel based on hazards in a particular workplace and requires a hazard assessment in the specific workplace.

As an example, Adams called attention to the [Aerosol Transmissible Disease Standard](#) issued in 2009 by the California Division of Occupational Safety and Health, or CAL/OSHA.

Similarly, Rep. Joe Courtney (D-CT), one of the many guests from the House Education and Labor Committee, pointed to the changes in OSHA's Bloodborne Pathogens Standard ([1910.1030](#)), which were required when the Needlestick Safety and Prevention Act of 2000 was signed into law.

"When we talk about having a standard put into place, this is not some wild, unprecedented sort of notion," Courtney said.

One COVID-19-related citation issued

Sweatt revealed that OSHA so far had issued one citation related to the current pandemic, but said the agency is investigating more than 5,000 complaints related to COVID-19. She explained that the agency has up to six months to complete these investigations and take enforcement action. Sweatt added that OSHA has to “build a legal case” on any citation to stand up against legal scrutiny.

“Looking at citations is maybe not the best parameters here,” Sweatt said in response to a question from Rep. Suzanne Bonamici (D-OR). “What we’re really trying to do is remove the worker from the hazard or remove the hazard from the workplace. Our priority has been that.”

Sweatt added that if OSHA finds an employer is not protecting workers, “we will enforce.”