



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

January 28, 2021

The Honorable Dereck Davis, Chair
Economic Matters Committee
Room 231, House Office Building
Annapolis, Maryland 21401

RE: House Bill 124 - Occupational Safety and Health Standards to Protect Employees - Aerosol Transmissible Diseases and COVID-19 - Letter of Information

Dear Chairman Davis and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information on House Bill 124 - Occupational Safety and Health Standards to Protect Employees - Aerosol Transmissible Diseases and COVID-19.

During the COVID-19, catastrophic health emergency and the state of emergency, we remain committed to working with our Maryland Department of Labor (Labor) colleagues and federal partners in implementing federal guidance and best practices on this subject. Please see our Labor colleagues' response to the federal delegation on this subject from November 2020.

It may be duplicative to develop an Emergency Temporary Occupational Safety and Health Standard and introduce confusion to Maryland businesses. In addition, the bill as drafted could introduce potentially unnecessary rigidity into statute. CDC has on several occasions altered its recommendations regarding testing, return to work, and other aspects of COVID-19 that could be locked into place by the statute, or a temporary standard. For example, as drafted, the bill's return to work requirements are inconsistent with CDC guidelines on returning to work for people who are ill with or test positive for COVID-19. Codifying outdated language may cause confusion for employers who may have multiple contradictory legal obligations or require MDH to amend any Orders or Directives that pertain to COVID-19 guidelines or requirements for businesses.

I hope this information is useful. If you would like to discuss this further, please do not hesitate to contact me at webster.ye@maryland.gov / (410) 260-3190 or Heather Shek, Deputy Director of Governmental Affairs at heather.shek@maryland.gov and at the same phone number.

Sincerely,

Webster Ye
Assistant Secretary, Health Policy

November 23, 2020

The Honorable Benjamin L. Cardin
U.S. Senate
509 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Chris Van Hollen
U.S. Senate
110 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
1705 Longworth House Office Building
Washington, D.C. 20515

The Honorable Anthony G. Brown
U.S. House of Representatives
1323 Longworth House Office Building
Washington, D.C. 20515

The Honorable C.A. Dutch Ruppersberger
U.S. House of Representatives
2206 Rayburn Building
Washington, D.C. 20515

The Honorable David Trone
U.S. House of Representatives
1213 Longworth House Office Building
Washington, D.C. 20515

The Honorable Andy Harris
U.S. House of Representatives
2334 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Kweisi Mfume
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Sarbanes
U.S. House of Representatives
2370 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jamie Raskin
U.S. House of Representatives
431 Cannon House Office Building
Washington, D.C. 20515

Dear Members of the Maryland Congressional Delegation:

Thank you for your letter regarding your request for an emergency statewide temporary workplace standard under Maryland Occupational Safety and Health (MOSH) to prevent, contain, and mitigate community spread of COVID-19. Maryland's proactive response to the pandemic has been a model for the country, and our strategy is carefully aligned with the latest science and medical information available from experts and scientists, including the Centers for Disease Control and Prevention (CDC).

Governor Hogan has adopted a multi-pronged approach to protect all workers in Maryland, with MOSH as a critical component providing support in these unprecedented times. MOSH has continued to closely monitor all federal OSHA guidance and CDC recommendations and guidelines related to the pandemic. As COVID-19 evolves, CDC recommendations and guidelines also evolve, ensuring Maryland workers are protected by the best science available.

To implement Governor Hogan's multi-pronged approach, multiple state agencies are currently working together on COVID-19 safety. The Departments of Commerce, Health, and Labor all have complementary authorities and functions that allow greater reach and more inclusiveness in their coverage:

- The Governor's Executive Orders related to public health concerns like facial coverings, social distancing, and occupancy levels for gatherings are enforced by the County Health Departments to ensure all Marylanders do their part to protect themselves and limit transmission of the virus. Under authority delegated to them by the Governor, The local health officials have the authority to issue notices to employers that prescribe immediate corrective actions and, if the conditions are not corrected, to take actions ranging from partial to complete closure of the specific business. Local health departments (LHDs) are also working with local law enforcement and licensing boards, to ensure business compliance with applicable orders.
- MOSH provides guidance, enforcement, and assistance for COVID related issues concerning filtering facepiece respirators, sanitizing, chemical use, blood borne pathogens, or required PPE where an employee and employer relationship exists. MOSH maintains jurisdiction over anti-retaliation whistleblower protection, which includes COVID-19 safety concerns.
- The MD Department of Commerce convened focus groups of businesses and stakeholder groups to develop guidance documents for safely reopening. The goal was for businesses to have the information they need and for employees and customers to feel comfortable doing business with them. Commerce set up several websites and coordinated Maryland's Business Response to ensure businesses have the support they need to survive and thrive in the face of the pandemic.

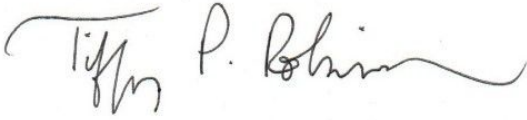
MOSH operates under the authority of the federal Occupational Safety and Health Administration (OSHA). MOSH authority is limited to instances where an employee and employer relationship exists. MOSH must maintain that enforcement of standards is "at least as effective as" OSHA. There are several reasons why Maryland's current approach is not just "at least as effective as" OSHA, it is more effective than what would happen under an Emergency Temporary Standard (ETS) enforced by MOSH:

- The OSHA standards already in place (use of respirators, PPE selection, bloodborne pathogens, chemical use, sanitizing) are relevant and cover the vast majority of COVID-19 related medium, high, and very high risk establishments. MOSH has, and continues to, address issues in these environments through enforcement. Implementing a programmatic ETS could be duplicative for these establishments and would quickly be vulnerable to conflicting requirements as science evolves. MOSH has existing authority to enforce corrective action as needed in situations that fall under MOSH standards and refers those that directly reference the Governor's Executive Order (EO) to the LHDs that were specifically designated as the enforcement authority in the EO.
- Under MOSH law, employers are required to provide employees with a safe and healthful workplace. MOSH law does *not* provide authority to regulate non-employees. The Governor's Executive Orders and orders from the Secretary of Health have requirements related to both customer and employer alike. This expanded coverage makes these legal authorities more appropriate to handle a community pandemic like COVID.
- LHDs have been given the authority by the Governor to shut down a noncompliant business immediately. MOSH does not have the authority to shut down a business immediately, only to issue citations and monetary penalties. The goal is the safety of Marylanders, not generating revenue for the General Fund.
- LHDs can shut down a location immediately. MOSH, on the other hand, generally has up to 6 months from the date of the hazardous event to issue citations. Employers have 15 business days to accept the citation, meet with MOSH for an informal conference, or contest the citation. If a citation is contested, it can take several months or even years to adjudicate the citation in court. During this time, the employer is under no obligation to comply until the citation becomes final order.
- Most ETS versions in other states include a training requirement. Training is designed to make employees aware of hazards and what can be done to mitigate risk and would be considered a general, and enforceable, requirement currently. Governor Hogan has been very effective in communicating the importance of wearing masks and social distancing, as has the President-elect. All Maryland citizens should be aware of the need for mask wearing and social distancing.

While we share the delegation's urgency to prevent, contain, and mitigate community spread of COVID-19, we believe that an Emergency Temporary Standard would actually slow the state's response and cause confusion for already struggling employers and employees. We remain confident in the multi-pronged approach we have established to swiftly respond to and shut down businesses not adhering to the latest CDC guidelines.

If you have additional questions, please contact Governor Hogan's Director of Federal Relations, Tiffany Waddell, at tiffany.waddell@maryland.gov.

Sincerely,

A handwritten signature in black ink that reads "Tiffany P. Robinson". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Tiffany P. Robinson
Secretary, Maryland Department of Labor