

AFL-CIO

LEGISLATIVE ALERT

December 12, 2020

Dear Senator:

On behalf of the AFL-CIO, I urge you to reject any broad liability shield legislation that would prevent the federal government from ensuring that workers are protected from the spread of COVID-19 in our workplaces.

In particular, we urge you to reject the liability shield proposed by Senator John Cornyn of Texas. The Cornyn proposal would not only deny a day in court to people whose sickness or death from the virus was caused by the negligence of a corporation, it would also prevent government agencies from carrying out their statutory mandates to ensure that working people are protected from hazards on the job.

The proposal contains an enormous and dangerous loophole that will let employers off the hook for not following workplace safety requirements. It says an employer “shall not be subject to any enforcement proceedings” if it has even “attempted to satisfy” its legal obligations by “exploring options to comply with such obligations.” So an employer could get away with thumbing its nose at federal or state workplace safety requirements by simply claiming that it explored options to comply with those requirements but decided not to act on them. The health and safety of workers demands action, not exploration. This provision would apply for as long as 18 months going forward, as well as retroactively, so employers that already failed to comply with workplace requirements earlier in the year would also be off the hook.

In addition, the Cornyn proposal would prevent the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) from enforcing new safety standards that would prevent workplace outbreaks of COVID-19. This would handcuff the federal government and prevent it from safeguarding workers in the future.

The Cornyn proposal would also prevent states from stepping in to safeguard workers. The draft proposal specifically bars enforcement of state occupational health and safety standards. So states that have adopted strong OSHA standards to protect working people from the virus in the absence of federal action, such as Virginia and California, would be prevented from enforcing them.

The COVID-19 virus has spread rampantly in workplaces across America; millions of essential workers have become sick; and hundreds of thousands of Americans have died from the virus; but it did not have to be this way. Employers could have controlled this pandemic with sensible safety measures. That did not have to happen. The federal government, and OSHA and MSHA in particular, have been completely absent throughout the pandemic.

The liability shield proposed by Senator Cornyn would only compound this tragedy, ratcheting up the infection and death count, by making it impossible for agencies charged with protecting workers to carry out that fundamental mission.

Finally, the Cornyn proposal would harm workers in other ways in no way justified by the pandemic. It includes broad and vague language that could insulate an employer from such basic workplace standards as the requirement to pay the minimum wage. If workers are forced to work longer hours “related to an actual, alleged, feared, or potential for exposure to coronavirus”—for example, if they have to work longer hours to make up for coworkers not being able to work after being exposed to the virus—the Cornyn proposal would again shield employers that merely “explore options to comply” with laws such as the Fair Labor Standards Act’s minimum wage and overtime requirements. In other words, all an employer would have to do is “explore options” to pay its workers what they are owed in order to be freed from the obligation to do so.

In this case, “liability protection” is really a misnomer. What the Cornyn proposal actually does is undermine worker safety and strip workers of our protections. To use a pandemic relief proposal to actively harm the lives and livelihoods of workers is among the most disgraceful things ever to be put forth by the United States Congress. We urge you to reject this proposal and any other such proposal that undermines worker safety.

As Congress prepares to adjourn, millions of America’s workers are suffering from the devastating effects of the pandemic. And with many of the most critical programs included in the CARES Act due to expire, the suffering is about to get much worse. We urge you not to leave for the holidays without providing emergency aid to state and local governments and extending critical support to unemployed workers and to those who have lost health insurance. Millions of essential workers have been doing our jobs since the start of the pandemic, often at great risk to our own health and the health of our families. Millions more have gone without a paycheck and are on the verge of losing a home. Instead of denying workers the right to a safe and healthy job, Congress must deliver relief to the people who need it most.

Sincerely,



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