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His Excellency Charles D. Baker, Jr.  
Governor  
Commonwealth of Massachusetts  
Massachusetts State House, Room 280  
24 Beacon St.  
Boston, MA 02133,

May 28, 2020

Dear Governor Baker,

After reviewing the report of the Reopening Advisory Board and your Executive Order 33 – Implementing a Phased Reopening of Workplaces And Imposing Workplace Safety Measures to Address COVID-19 issued on May 18, 2020 we are submitting comments, questions and seeking clarifications and amendments on several points regarding worker protections for those workers who are concerned for their safety.

In several places the report highlights “*Zero Tolerance for sick workers reporting to work*”. Section B of the SECTOR SPECIFIC WORKPLACE SAFETY STANDARDS FOR CONSTRUCTION SITES TO ADDRESS COVID-19 is titled “*Employee Health Protection – ZERO Tolerance*”. The first 3 sentences of Section B highlighted in all capital letters reads: “*ZERO TOLERANCE FOR SICK WORKERS REPORTING TO WORK. IF YOU ARE SICK, STAY HOME! IF YOU FEEL SICK, GO HOME!*”

The language for employer responsibilities stands in stark contrast to that for workers. In multiple provisions the requirements and responsibilities for employers are watered down with qualifiers including “*if possible*”, “*should*”, “*recommend*”, “*where feasible*”, and even “*please*”.

While we share the opinion that sick workers should not report to work the report needs to include similarly forceful language and emphasis when discussing the failure of employers to comply with the recommendations and standards spelled out in the report. If we are truly all in this together, then the standards need to be the same for everyone. ZERO TOLERANCE must apply across the board.

Another item which is glaring in its absence is the lack of a single mention of the rights of workers to refuse unsafe work or protections for those who exercise those rights. This

concern has taken on new significance as multiple business lobbying groups, including the Chamber of Commerce, are actively working in the media and behind closed doors, seeking blanket indemnification from any liability for workplace related infection. Absent any liability or responsibility, irresponsible employers will needlessly place their workers at risk because they have no reason to do so. Without such protections for their right to a safe workplace, I can guarantee that many workers will be forced to make the unconscionable choice between the health and safety of themselves and their families and their economic survival. This situation was on public display at numerous construction sites during the months of March and April where unscrupulous employers ignored all warnings and safety recommendations, denying their workers even the most basic protections like masks and hand washing stations.

The executive order must be amended to include strong worker rights to refuse unsafe work when adequate PPE or safety protocols are not provided, with no loss of pay. It must also be amended to provide strong whistleblower protections for workers who report hazardous conditions and non-compliance.

We are seeking clarification regarding face masks. The report appears to require the wearing of *“standard face mask, gloves, and eye protection”* only *“In work conditions where required social distancing is impossible to achieve”*. The report does not require employers to provide or pay for face coverings or other PPE. Given that the Governor and municipal officials are requesting and/or ordering the general public to wear face coverings when outside the home we assume that this is a drafting error and that all construction workers will be required to wear face coverings (preferably a respirator) at all times on the job. Employers and employees would benefit from a clarification or amendment of the of the report and Executive Order.

We are seeking clarification regarding reporting & tracking of COVID-19 infections and exposures. The report leaves gaps in several points regarding this topic. Under *D. Worker Infection Protocol* there is no clear directive for the collection of data by industry, occupation, or worksite. The subsection *“Identification of Exposure”* only directs *“The Massachusetts Department of Health (DPH) or a local board of health will make appropriate notifications to those who had direct prolonged contact with the COVID-19 positive workers.”* And further directs *“The Contractor shall work with the local board of health to identify any potential job site exposures...”*. Further on in the same section the contractor is not directed to notify any public agency, only, *“Upon learning of an infection, the contractor must immediately notify the designated COVID-19 safety officer, the site safety officer, and the owner.”* There is no place for the identification, collection and reporting of this data to a centralized public health source.

Our comments, submitted to the Reopening Advisory Board dated May 12, 2020 recommended that, *“The Massachusetts Department of Public Health must be directed to include industry, occupation and employer name when collecting data on individuals tested for, found positive for, hospitalized due to a confirmed or presumed case of, or who died from a confirmed or presumed case of COVID 19. This data is invaluable in protecting workers and the general public from infection.”* This a critical tool which will allow us to identify employers that are failing to implement the recommended protocols and practices. It will also provide public health officials with a robust data set to effectively track COVID-19 infections and deaths among the general public.

The recent case at the Walmart in Worcester highlights the need and value of this data. In early April eight workers were diagnosed positive with COVID-19. *“But because the people who were diagnosed didn’t provide their work addresses, it was difficult to link them to*

*Walmart, he said. So, for the next two weeks the store continued to operate.” (Boston Globe 5/5/2020)* It wasn't until Worcester's public health director was finally able to get a call back from Walmart, that the company revealed that out of 400 workers at the store, 23 people had contracted the virus. The City of Worcester shut the store down. After two more days of testing approximately 400 workers it was discovered that 81 employees tested positive for the virus, many of whom were asymptomatic. We can only guess how many more members of the general public were unnecessarily exposed.

Cases like this are avoidable if the proper reporting, data collection and tracking by a centralized government agency - the Massachusetts Department of Public Health, are put in place. Otherwise, cases like this are inevitable, placing workers and the public at unnecessary risk.

I respectfully request an expedited response to the above inquiries and comments in order that we may better protect the health and safety of the 75,000 men and women we represent and their families.

Respectfully submitted,



Francis X. Callahan, Jr.  
President

cc: The Honorable Karyn Polito

Secretary Mike Kennealy EOHED

The Honorable Robert A. DeLeo

The Honorable Karen E. Spilka