

American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

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May 18, 2009

Mr. Jordan Barab
Acting Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Acting Assistant Secretary Barab:

We are writing to request action by the Occupational Safety and Health Administration (OSHA) to protect healthcare workers, responders and other workers at high risk from workplace exposure to the novel Influenza A (H1N1) virus.

Since the first reported cases of infection by the novel H1N1 virus in the United States in April, the virus has spread widely. As of Monday, May 18, 2009, the Centers for Disease Control reported 5,123 laboratory confirmed and probable cases of H1N1 infection and five related deaths in 48 states, including the District of Columbia. The cases include 82 infections among healthcare workers in 23 states, which are being investigated to determine their origin. According to CDC, the overall number of confirmed cases understates the actual level of infection, and the virus is still actively spreading.

As OSHA and CDC have recognized, healthcare workers, emergency responders and other workers who come into close contact with patients infected with the novel H1N1 virus are at increased risk of exposure and infection and require protection. CDC's Interim Guidance for Infection Control for Care of Patients with Confirmed or Suspected Novel Influenza A (H1N1) Virus Infection in a Healthcare Setting (May 13, 2009) recommends that patients with a confirmed, probable or suspected case of novel H1N1 be segregated from other patients, and that high risk procedures likely to generate aerosols be conducted in an airborne isolation room.

The guidance recommends that all healthcare personnel who interact with patients with a confirmed, probable or suspected case of novel H1N1 in a healthcare or laboratory setting be protected. For all patient care activities, standard contact procedures plus eye protection are recommended. In addition, the guidance recommends that all healthcare personnel who enter the room of a patient or come into close contact with a patient wear a fit-tested N95 respirator or a respirator with a higher protection factor. (Note: It is the unions' view that a fit-tested P-100 respirator with an elastomeric seal is the minimum level of protection that should be provided for such activities.)

These CDC guidelines on the novel H1N1 virus are consistent with CDC's October 2006 "Interim Guidance on Planning for the Use of Surgical Masks and Respirators in Healthcare Settings During an Influenza Pandemic, OSHA's Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers (2007) and OSHA's Guidance on Preparing Workplaces for an Influenza Pandemic (2007).

Unfortunately, there is documented evidence that in a number of states and facilities, these guidelines are not being followed. A recent review conducted by the Service Employees International Union (SEIU) of the recommendations of 20 state and local health departments for protecting healthcare workers from the H1N1 virus found that many did not conform to the CDC and OSHA guidance. Specifically, ten of the state and local health departments recommended droplet, as opposed to airborne precautions, and the use of surgical masks instead of NIOSH certified respirators to protect against airborne exposures (Bureau of National Affairs, Daily Labor Report, May 14, 2009). In addition, a survey completed by nurse leaders at 16 SEIU-represented healthcare facilities in California conducted by the union during the week of May 4-8, 2009, found that almost all respondents (92%) "strongly disagreed" or "disagreed" with the statement that the facility was adequately protecting its staff during the H1N1 infection outbreak. The survey also indicated that none of the facilities had staff that were familiar with the infection control plans for H1N1.

The Occupational Safety and Health Administration has the legal responsibility and authority to ensure that healthcare workers who are exposed to the novel H1N1 virus at work are protected. While CDC may issue guidelines that are voluntary, this action does not supplant OSHA's requirements and authority, or employers' obligations to comply with the Occupational Safety and Health Act. But since there presently is no specific OSHA standard for airborne infectious diseases or pandemic influenza, it appears that there is confusion about what protective measures are required under OSHA to protect healthcare workers and other workers at high risk of exposure to the H1N1 virus.

At a May 7, 2009 hearing before the House Committee on Education and Labor on "Ensuring Protection Against the Flu Virus at School and at Work," you testified that "OSHA stands prepared to use its existing authority to aggressively enforce safe work practices to ensure employees receive appropriate protection" from the H1N1 virus through the application of standards on personal protective equipment and respiratory protection and the general duty clause. In order to ensure that healthcare workers are protected, we request that you take action to implement this policy.

Specifically, we request that OSHA immediately issue a hazard alert and/or compliance directive that makes clear that exposure to the novel H1N1 virus in healthcare settings and in emergency response activities poses a recognized hazard to workers and requires protective measures. The directive should specify that OSHA's respiratory protection standard and personal protective equipment standard apply to exposures to the novel H1N1 virus in these settings. It should also make clear that the CDC's Interim Guidance for Infection Control for Care of Patients with Confirmed or Suspected Novel Influenza A (H1N1) Virus Infection in a Healthcare Setting (May 13, 2009), CDC's 2006 "Interim Guidance on Planning for the Use of Surgical Masks and Respirators in Healthcare Settings During an Influenza Pandemic, OSHA's Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers (2007) and OSHA's Guidance on Preparing Workplaces for an Influenza Pandemic (2007) will be enforced under OSHA's general duty clause. Given the widespread nature of the current novel H1N1 virus outbreak, the directive should also be binding on states that operate their own section 18 occupational safety and health plans.

This action is similar to the action taken by OSHA in the 1980's to protect healthcare workers from exposure to HIV and Hepatitis B prior to the promulgation of OSHA's Bloodborne Pathogens standard, and to the action taken by OSHA in the 1990's to protect healthcare workers from Tuberculosis. In 1996, OSHA issued CPL02-00-106 – Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis that made clear that occupational exposure to TB constituted a recognized hazard and that OSHA would use existing standards and the general duty clause to enforce protections.

Taking these steps will make clear to healthcare employers their obligations to protect workers, and will reaffirm to healthcare workers that the government is taking the necessary steps to ensure that they are protected.

The current outbreak of H1N1 has confirmed that novel influenza and other airborne diseases pose a significant risk to workers, particularly those at high risk of exposure, and that permanent measures are needed to ensure that workers are protected. We urge OSHA to move expeditiously to develop and adopt a mandatory comprehensive standard to protect healthcare workers and others at high risk, from airborne infectious diseases similar to the existing comprehensive standard on bloodborne diseases.

The AFL-CIO and unions appreciate your leadership in the government's efforts to protect healthcare workers from the novel H1N1 virus and stand ready to provide our assistance.

Sincerely,



Peg Seminario
Safety and Health Director
AFL-CIO

American Federation of Teachers
American Federation of State, County and Municipal Employees
Communications Workers of America
International Association of Fire Fighters
International Union, United Automobile, Aerospace
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