

Congress of the United States
Washington, DC 20515

March 18, 2020

Thomas J. Donohue
Chief Executive Officer
U.S. Chamber of Commerce

Dear Mr. Donohue,

As strong supporters of local businesses in Orange County and Connecticut, we understand that our employers face a stark reality as the 2019 Novel Coronavirus (“the coronavirus” or SARS-CoV-2) devastates our local and national economies; however, as lifelong consumer advocates, we were deeply disturbed by your March 16, 2020 letter to President Donald Trump, Speaker Nancy Pelosi, and Minority Leader Kevin McCarthy.¹

The requests that the U.S. Chamber of Commerce makes in this letter are egregious violations of longstanding consumer protection laws. If implemented, they would place the privacy and health of our nations’ workforce at risk. We ask that you withdraw these requests immediately, understanding the grave risk they pose to millions of employees in California and across our country.

In your letter, under a section that you claim is focused on “Employee Support,” you ask Congress to “provide protections to employers under medical privacy laws, the Americans with Disabilities Act and the various civil rights laws to allow businesses to inquire about employee health information relating to the Coronavirus to ensure a safe workplace.”²

Let us be clear: what you propose is not protections for employees, but unnecessary exceptions for employers who should otherwise be following medical privacy laws, the American with Disabilities Act, and various civil rights laws. These laws protect employees and should not be violated during any period, especially a public health crisis.

Further, under the “Employee Support” section, you ask that “Congress should pass legislation that would hold harmless companies that must reveal the identity of someone diagnosed with the Coronavirus.”³ Understanding that critical health precautions must be taken to protect the health of all employees, widespread knowledge of the exact identity in a company of more than 500 employees is unnecessary to protect the public health interest of all employees in the company.

While we understand that employers would like to have information regarding who is and who has not been exposed to or infected with the coronavirus, patients still must be afforded protections against employers who would abuse employee health information during and after this crisis. Further, employers already have some abilities, under the Americans with Disabilities Act, to take action if necessary to protect their employees. During this public health crisis, employers may have legitimate claims under the Americans with Disabilities Act “direct threat” defense. The term “direct threat” is defined in the American with Disabilities Act as “[a] significant risk of substantial harm to health or safety of self or others that cannot be eliminated or reduced by reasonable accommodation.”⁴ For a direct threat to exist, it

¹ <https://www.uschamber.com/letters-congress/letter-us-government-leaders-coronavirus-response>

² <https://www.uschamber.com/letters-congress/letter-us-government-leaders-coronavirus-response>

³ <https://www.uschamber.com/letters-congress/letter-us-government-leaders-coronavirus-response>

⁴ 29 C.F.R. § 1630.2(r)

must be based on an individualized assessment of an employee's present ability to complete their position without endangering themselves or others.⁵

According to the Equal Employment Opportunity Commission (EEOC), "This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence."⁶ The EEOC has put out clear guidance in the past for influenza, and now may be an appropriate time for guidance from the Administration on what may constitute a direct threat during a pandemic.⁷ With the input of appropriate stakeholders, we ask that clear and detailed guidance should be issued if necessary. Organizations representing large corporations should not be attempting to control or alter employee protections.

Again, we ask that you withdraw these requests, and we ask Speaker Pelosi, Leader McCarthy, and President Trump not to bow to corporate special interests at a time when our workforce needs these protections afforded to them more than ever.

Very truly yours,



KATIE PORTER
Member of Congress



ROSA L. DeLAURO
Member of Congress

cc: President Donald Trump
Speaker Nancy Pelosi
Leader Kevin McCarthy



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https://www.eeoc.gov/facts/pandemic_flu.html

⁶ <https://www.natlawreview.com/article/ada-direct-threat-defense-just-got-little-easier>

⁷ https://www.eeoc.gov/facts/pandemic_flu.html