



AMERICAN FEDERATION
OF GOVERNMENT
EMPLOYEES LOCAL 3525

**The National Association of Immigration Judges and AFGE Local 3525
Call on EOIR to Immediately Implement Workplace Safety Precautions and
Provide Greater Transparency Regarding Coronavirus Health Risks in EOIR Workspace**

April 22, 2020

The National Association of Immigration Judges (NAIJ) and the American Federation of Government Employees (AFGE) Local 3525 (certain employees of the Board of Immigration Appeals) call on the Executive Office for Immigration Review (EOIR) to immediately implement workplace safety precautions recommended by the Center for Disease Control (CDC) and the Office of Safety Health Administration (OSHA), as well as, provide greater transparency in how it is making critical workplace safety decisions related to COVID-19.

EOIR has failed to provide a safe workplace that is free from serious hazards for the judges and staff of the immigration courts and for employees at the Board of Immigration Appeals (the Board). At the same time, EOIR has refused to allow many Board employees and immigration judges and court staff to telework and has ordered them to continue to travel to EOIR space, often on a daily basis. EOIR has not provided personal protection equipment such as masks, gloves, and hand sanitizer. EOIR has also not adhered to recommended social distancing practices. EOIR has thus refused to implement even the most fundamental safety precautions recommended by OSHA in *Guidance on Preparing Workplaces for COVID-19*, including “Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2.”

Of those recommended guidelines, EOIR has, in many instances, failed to:

- implement good hygiene and infection control practices including providing staff and the public with tissues, masks, gloves, hand sanitizer, and other personal protective equipment;
- establish policies and practices, such as flexible worksites and flexible work hours, to increase the physical distance among employees;
- develop policies and procedures for prompt identification and isolation of sick people;
- develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19; and
- develop, implement, and communicate about workplace flexibilities and protections such as actively encouraging sick employees to stay home, and ensuring that sick leave

policies are flexible and consistent with public health guidance and that employees are aware of these policies.

EOIR has also refused to follow CDC guidance on cleaning EOIR workspace after COVID-19 exposure incidents as set out in the CDC's *Cleaning and Disinfection for Community Facilities*. For example, the CDC recommends waiting a minimum of 24 hours before beginning cleaning and disinfection, but often EOIR space is cleaned and reopened within 24 hours of a symptomatic individual's last contact with the space.

EOIR's failures in providing a safe working environment are accompanied by a stunning lack of transparency about incidents of COVID-19 exposure in EOIR workspace and what actions EOIR has taken (and not taken) to address these incidents. Employees have the right to know what hazards exist in the workplace and they have the right to know how to best protect themselves. The limited information provided by EOIR management lacks the necessary detail to allow employees to make crucial health decisions based on their individual health, living circumstances, and family obligations. This is particularly relevant given that the CDC reports an incubation period of between 2 and 14 days for the coronavirus and explains that the coronavirus can be transmitted through shared space after coming in contact with infected surfaces or objects.

For example, EOIR failed to provide timely notice to headquarters employees after learning of five instances of employees in building space testing positive for or presenting symptoms of COVID-19 between March 26, 2020, and April 16, 2020. In one case, EOIR declined to knowledge that Social Security Administration (SSA) employees in the same building were evacuated after one SSA employee began demonstrating COVID-19 symptoms. The employee later tested positive, and AFGE Local 3525 has since been notified that the employee has died. Although SSA employees have been prohibited from reporting to the building since March 19th, certain Board staff have been required to report to the same building on a daily basis during the same time period.

The last four reported incidents at the Board have required the closure of floor space exclusively occupied by the Board. Yet, despite the serious safety concerns, most of the closures lasted less than 24 hours after a reported incident. In each case, management delayed notifying employees for extended periods ranging from multiple hours to, in some instances, a full day. This failure to report deprives staff from making informed decisions about whether to leave the premises or take other protective steps aimed at safeguarding their own health. EOIR management has not established operational procedures and has not maintained clear communications regarding workplace risks so that employees can be on notice to follow safety and health requirements.

Because of EOIR's failure to provide a safe workplace, numerous immigration judges and court staff and Board employees have been required to self-quarantine because of potential exposure, putting at risk their health and the health of their family members. In addition, more than half of the immigration courts nationwide have reported at least one instance of COVID-19 positive or symptomatic individuals in the workspace, resulting in not only continued spread of the virus but grave danger to the immigration judges, court staff, and greater community. EOIR has steadfastly refused to share information about these events with the public or its employee

unions. NAIJ has been able to gather information from judges and members of the court staff and has learned that immigration judges have contracted the virus and have suffered a range of serious symptoms including pneumonia. NAIJ has also learned that individuals with COVID-19 have been present throughout EOIR workspace, including a court security officer who has since died of COVID-19 and private bar and Department of Homeland Security attorneys.

In sum, the COVID-19 outbreak has presented a global challenge beyond the confines of EOIR, and yet EOIR is too often operating in a business-as-usual fashion rather than working to ensure the health and safety of all EOIR employees. Rather than being proactive and transparent, EOIR appears reactive, taking the most minimal actions it can and refusing to provide information on what criteria EOIR is using to make critical decisions affecting everyone's health. We urge EOIR to protect all its employees by providing greater transparency and immediately implementing CDC- and OSHA-recommended safety precautions before requiring employees to report for work in EOIR space.