

# United States Senate

May 22, 2020

The Honorable Mark Esper  
Secretary  
Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Esper,

As the Department of Defense (DoD) continues working to mitigate the spread of COVID-19 within the armed services, we are writing to ensure that the Pentagon continues to prioritize the safety and security of military contractors who fill an essential role within the national defense enterprise. In particular, we are looking to obtain more clarity on DoD's enforcement and oversight of COVID-19 safety guidelines as it pertains to defense contractor personnel who have continued to work on federal military installations as part of the Essential Critical Infrastructure (CI) Workforce.

We appreciate the ongoing guidance issued by DoD with respect to potential impacts of COVID-19 on contractor personnel, such as the March 10 Defense Pricing and Contracting memorandum emphasizing the importance of the welfare and safety of the total workforce – military personnel, civilians, and contractors alike – to the DoD mission. We also appreciate the emphasis placed by that memorandum on the need for contracting officers to actively encourage contractor site leads/leadership to engage with their employees in order to identify potential impacts to the safety and security of the workforce.<sup>i</sup>

Further, we are aware that DoD components were directed by the Office of the Under Secretary of Defense for Personnel and Readiness to “immediately implement appropriate procedures to protect all personnel from disease transmission in DoD workplaces,” with components required to restrict access to military workspaces for those individuals, including contractors, exhibiting COVID-19 symptoms. All asymptomatic personnel with potential exposure are generally advised to remain at home until the end of a full 14 days of self-isolation (with exceptions for the performance of mission critical activities and the issuance of an exception approved by a General Officer or member of the Senior Executive Service (SES) in the chain of command or supervision).<sup>ii</sup> The guidance also mandates that all individuals on military property, including contractors, maintain six feet of separation from one another and wear face coverings.

However, we are concerned that social distancing and face covering requirements are not being uniformly enforced for federal contractors at some military installations; that individuals who are sick or have potential COVID-19 exposure have not been sent home for the full period of self-isolation or quarantine; and work areas have not been properly segregated and disinfected. Moreover, we are concerned that the ongoing close communication and transparency necessary to ensure the welfare and safety of the contracting workforce while ensuring mission continuity is not consistently being carried out.

Finally, a crucial element to ensuring the safety of the workforce includes reimbursing contractors for paid leave as a result of COVID-19, when applicable. On April 9, Defense Pricing and Contracting released a class deviation to Federal Acquisition Regulation Part 31 and Defense Federal Acquisition Regulation Supplement Part 231 implementing Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which allows for reimbursement to contractors who cannot physically travel to their place of work. However, despite DoD's guidance, there remains ambiguity as to how contractor employees can take advantage of paid leave reimbursement under Section 3610 of the CARES Act.

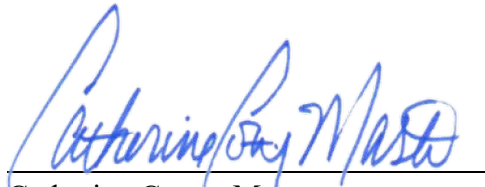
With this in mind, we look forward to hearing how the Department is addressing the uniform application of its guidance to protect the work force, and request answers to the following questions no later than June 12, 2020.

1. Regarding defense contractors who work on military installations, who is ultimately responsible for enforcing CDC guidelines for proper social distancing?
2. Who is ultimately responsible for ensuring that federal contractors have access to PPE, such as face masks, on military installations?
3. If a contractor on a military installation is sick or has been exposed to someone with COVID-19, who is responsible for deciding if that employee continues coming to work or must stay home?
4. If a General Officer or SES official grants an exception to the requirement for self-isolation to an individual deemed mission essential, is that exception made public to all other individuals, service members, civilian employees and contractor personnel, who work on the relevant military installation?
5. What is DoD doing to promote an environment in which contractors working on military installations are able to express concerns regarding their workplace safety during this pandemic without retaliation? What specific procedures and mechanisms are in place to ensure this?
6. Have all contracting officers followed the guidance to engage with their contractor site leads/leadership regarding employee welfare?
7. When navigating potential reimbursements for paid leave under Section 3610 of the CARES Act, who has final say as to whether or not a contractor working at a military installation is able to work? Does DoD have any responsibility to proactively identify opportunities for telework or paid leave, or otherwise encourage these options to contractors?
8. What steps is DoD taking to ensure that all contractors are aware of the potential for paid leave reimbursement under Section 3610 of the CARES Act? What instructions have contracting officers received regarding ensuring their contract site leads know of this opportunity to provide paid COVID-19 related leave to their employees?

9. Is there any recourse for contractor personnel to appeal for Section 3610 paid leave if their employing firm does not choose to pursue such an option?
10. DoD's updated FAQs regarding Section 3610<sup>iii</sup> states that contractors do not have to be unable to perform 100% of their jobs in order to be reimbursed for the time in which they are unable to work as a result of COVID-19. Who makes the final determination as to the percentage of time a contractor is able to telework versus the percentage of time for their other duties for which they can receive reimbursement under Section 3610?

We appreciate your attention to this matter and look forward to your responses to our questions.

Sincerely,

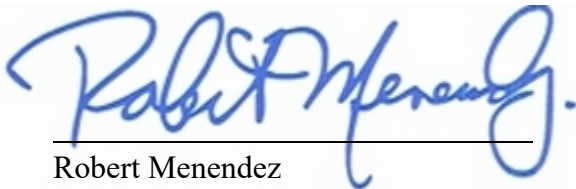


Catherine Cortez Masto  
United States Senator

/s/ Doug Jones

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Doug Jones  
United States Senator



Robert Menendez  
United States Senator

/s/ Chris Van Hollen

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Chris Van Hollen  
United States Senator



Jacky Rosen  
United States Senator

CC: Chairman of the Joint Chiefs of Staff General Mark Milley  
Under Secretary of Defense for Acquisition and Sustainment Ellen Lord

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<sup>i</sup> DoD Memorandum, *Planning for Potential Novel Coronavirus Contract Impacts*, March 10, 2020, [https://www.acq.osd.mil/dpap/policy/policyvault/Planning\\_for\\_Potential\\_Novel\\_Coronavirus\\_Contract\\_Impacts\\_DPC.pdf](https://www.acq.osd.mil/dpap/policy/policyvault/Planning_for_Potential_Novel_Coronavirus_Contract_Impacts_DPC.pdf).

<sup>ii</sup> DoD Memorandum, *Force Health Protection Guidance (Supplement 8) – Department of Defense Guidance for Protecting Personnel in Workplaces during the Response to the Coronavirus Disease 2019 Pandemic*, <https://media.defense.gov/2020/Apr/13/2002280147/-1/-1/1/FORCE-HEALTH-PROTECTION-GUIDANCE-SUPPLEMENT-8.PDF>.

<sup>iii</sup> DoD Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, "Frequently Asked Questions," [https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ\\_Implementation\\_Guidance\\_CARES\\_Act\\_Sec\\_3610\\_2020.04.24.pdf](https://www.acq.osd.mil/dpap/pacc/cc/docs/covid-19/FAQ_Implementation_Guidance_CARES_Act_Sec_3610_2020.04.24.pdf).