The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC  20210  

Dear Secretary Scalia:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America’s engineering industry – I appreciate the opportunity to share the industry’s concerns related to reopening their workplaces as COVID-19 government shutdown orders are lifted.

Founded in 1906, ACEC is a national federation of 52 state and regional organizations representing more than 5,600 engineering firms and 600,000+ engineers, surveyors, architects, and other specialists nationwide. ACEC member firms drive the design of America’s infrastructure and built environment. Our members look forward to the day when our economy is functioning more normally. They have identified a number of issues that they are considering as part of any decisions to reopen their offices once government stay home orders permit.

Government policies and guidance

- **Access to childcare:** Until state and local governments allow schools and daycare facilities to reopen, many employees will need to continue teleworking in order to care for their children.
- **Increasing the capacity for testing:** Many employers want to see sufficient testing capacity so that only individuals who test negative for COVID-19 may return to the workplace. This would require regular testing of employees until a vaccine is available.
- **Public transportation:** Many engineering firm employees use public transportation to commute to work, and employers urge transit agencies to take steps to ensure that people are able to ride safely.
- **Definitions of essential services:** As state and local governments begin to modify their stay-home orders, engineering firms will face inconsistencies in the definitions of essential services. A uniform definition that encompasses both the office and infrastructure-related aspects of engineering – based on existing
Department of Homeland Services guidance – as an essential service would help firms that serve clients in multiple jurisdictions.

- **Fair Labor Standards Act**: Firms are concerned about the potential for wage and hour claims while employees are working remotely.
- **WARN Act**: Firms need clarification on how the WARN Act applies during this national emergency, as they manage their workforce to meet the shifting workload.
- **Regulatory flexibility**: Employers would appreciate flexibility in meeting certain regulations when employees have limited access to medical physicals and related certifications. For example, OSHA requires employees performing certain tasks to have current CPR/first aid certifications but those courses are not currently available.

**Worksite needs**

- **Expanded access to personal protective equipment**: Employees will need access to face masks, in particular when they are on construction sites, which engineers and surveyors often visit in the course of infrastructure design work. While there are shortages of PPE and remote work makes it difficult to fit the PPE properly to employees, DOL should provide clear exceptions or flexibility in the PPE standards.
- **Expanded access to cleaning supplies**: Workplaces will need to be cleaned with disinfecting products on a routine basis, and the current shortage of these cleaning supplies presents a barrier to reopening offices.
- **Workspace distancing**: Work sites will be reconfigured as required to allow for physical distance between employees, including desks and offices, conference rooms, and common areas such as kitchens.
- **Screenings**: Employers need guidance regarding whether to develop a regime for screenings for anyone entering the office, such as temperature checks and hand washing/sanitizing upon when arriving and leaving.
- **Extended telework**: Employees with health concerns or who have family members with health concerns may need to telework for an extended time until vaccines and treatments are widely available. Some employees may not be comfortable returning to the worksite, and employers need to know what accommodations they are required to provide in this regard.

**Liability concerns**

- **Risk exposure**: Engineering firms need clear governmental guidance on the risk exposure of office work and of construction site work. In addition, before engineering firm employees are allowed to travel for work purposes, governmental guidance on the risk exposure of travel is needed.
- **Prevailing governmental guidance**: State and local agencies, as well as the CDC, have offered different guidance on COVID-19. Firms need a clear understanding of which guidance prevails and should govern office reopening. In addition, once
worksites reopen, employers need a uniform definition of safer practices with respect to PPE and social distancing for both offices and construction sites.

- **Temperature checks and privacy:** If prevailing governmental guidance concludes that employers should check temperatures of anyone entering the worksite, then that guidance should also protect employers against claims of violating the health care privacy of the individual.

- **Standards for claims against employers:** Firms that make reasonable efforts to maintain a safe workplace in accordance with prevailing governmental guidance should receive the protection of a safe harbor against legal claims that an individual contracted COVID-19 at the worksite.

Thank you for the opportunity to share the engineering industry’s workplace reopening concerns. We look forward to working with you on these matters.

Sincerely,

Linda Bauer Darr
President & CEO