



May 20, 2020

Gov. Tim Walz & Lt. Gov. Peggy Flanagan
130 State Capitol
75 Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Governor Walz & Lt. Governor Flanagan,

We are grateful for the leadership you have shown over the past eight weeks during this crisis, and the measures that you have already taken to help protect Minnesotans from the Covid-19 illness, including those announced on May 13, 2020. We are also keenly aware, however, of the chorus of voices urging you to more fully reopen the economy quickly, and we write today to ask that you implement the policy recommendations outlined in this letter prior to taking any further action to significantly reopen businesses. Without these protections in place, the drive to reopen at all costs will fail to stimulate the economy while putting frontline workers at risk of illness and death.

Despite the thoughtful actions you have taken, the realities of this pandemic are stark, and many workers remain vulnerable to this disease, especially workers of color.¹ As but one example, nearly 85% of workers in Minnesota are not covered by recent federal legislation requiring sick leave. We are particularly concerned with the health and safety of workers in the food processing industry, and have been alarmed to see actions taken at the federal level to undermine the safety of workers at meat and poultry processing plants. Recent data clearly shows that coronavirus has been spreading more than twice as fast in counties with major meatpacking plants, as compared to the national rate.² We cannot ask these workers to put their lives at risk in order to put food on our tables.

As this crisis has unfolded, we have been appreciative that your Department of Labor and Industry (DOLI) has demonstrated a commitment to transparency, access, and a willingness to listen to workers and collaborate on solutions that improve health and safety. But as an administrative agency, DOLI is necessarily constrained in the scope of solutions that they may

¹ Although Black Minnesotans comprise only 5-6% of our total population, they comprise 18% of confirmed Covid-19 cases. See MN Department of Health, *Situation Update for Coronavirus Disease 2019 (Covid-19)*, updated May 12, 2020. Available online: <https://www.health.state.mn.us/diseases/coronavirus/situation.html#raceeth1>.

² Bloomberg Law Daily Labor Report, "Infections Near U.S. Meat Plants Rise at Twice the National Rate," May 12, 2020. Available online: <https://news.bloomberglaw.com/daily-labor-report/virus-spreading-near-u-s-meat-plants-at-twice-the-national-rate>.

consider. Your executive authority can provide the necessary tools that DOLI needs to not just improve health and safety, but to ensure that all workers are protected to the maximum extent feasible. To that end, and in addition to your Executive Orders of May 13, 2020, we ask that you take the following actions to protect Minnesotan workers before our state takes further action to significantly reopen our doors:

1. Direct DOLI to adopt a mandatory, enforceable rule (covering all workers in Minnesota) based on the U.S. Occupational Health and Safety Administration's *Guidance on Preparing Workplaces for Covid-19*.³ These guidelines provide criteria for social distancing, face masks, hand sanitizing, washing, and gloves, regular disinfection, ventilation, notification of workers of illness in the workplace, and deep cleaning after confirmed cases. For meatpacking workers, we especially note that plexiglass barriers cannot substitute for the necessary social distancing, and reductions in line speed may be required to allow for appropriate distancing between workers. While we appreciate that Executive Order 20-56 requires reopening businesses to implement a Covid Preparedness Plan based on the OSHA Guidance, as you note in your order, personal protective equipment has not always been provided by the employer. We believe that nothing less than an enforceable rule will ensure that all employees are appropriately distanced at their workplaces and provided with the appropriate protective equipment and sanitation necessary to protect their health.

2. Clarify that an employer's refusal or failure to appropriately distance workers, provide personal protective equipment, or otherwise fail to comply with the U.S. OSHA's *Guidance on Preparing Workplaces for Covid-19* constitutes a work condition that presents an imminent danger of death or serious physical harm, such that an employee may exercise their right to refuse to work under Minnesota Statutes § 182.654, subd. 11. Because Minnesota law also provides that a worker refusing to work under Section 182.654 is entitled to continued wages upon refusing the unsafe work and requesting the Commissioner to inspect the hazardous condition, we ask that you clarify that the right to wages continues until the Commissioner determines that the employer has complied with the OSHA guidance. We appreciate the clarification under Executive Order 20-54 that non-compliance with the OSHA guidance⁴ constitutes an adverse work condition under Minnesota Statute § 268.095, and we believe that a similar clarification is necessary for the "dangerous conditions" provision of Section 182.654, subd. 11.

³ U.S. Department of Labor, Occupational Health and Safety Administration, *Guidance on Preparing Workplaces for Covid-19*, OSHA 3990-03 2020. Available online: <https://www.osha.gov/Publications/OSHA3990.pdf>.

⁴ We note that although Executive Order 20-54 refers to "CDC guidelines in the workplace related to Covid-19," the referenced CDC guidelines effectively incorporate the OSHA guidelines by reference. See Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (Covid-19)*, May 2020. Available online: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

3. Clarify that, despite the May 11, 2020 U.S. Department of Labor Insurance Program Letter No. 23-20, the state will not allow employers to report employees who have refused to work due to an employer's failure to comply with the OSHA guidance on COVID-19 safety. The program letter from the U.S. Department of Labor "strongly encourage[s]" states to "provide information when workers refuse to return to their jobs for reasons that do not support their continued eligibility for [unemployment] benefits."⁵ We appreciate the clarification of Executive Order 20-54 that an employer's "failure to adequately implement Minnesota OSHA Standards or MDH and CDC Guidelines in the workplace related to Covid-19" constitutes an adverse work condition that would provide eligibility for unemployment insurance benefits should the worker quit if their employer has failed to correct the unsafe condition (or if the employer retaliates against the refusal to work by terminating the employee). Because eligibility for unemployment insurance benefits is not affected in such a situation, a worker's refusal to work in this context cannot be a "reason that do[es] not support . . . continued eligibility" for unemployment benefits under the federal Department of Labor's Program Letter No. 23-20. Indeed, any encouragement that employers report workers refusing to work due to their employer's failure to comply with the OSHA guidance would be clearly contrary to state law, and employers must be directed as such. It is difficult to overstate the importance of this issue. Recent information demonstrates that Black and Latinx workers are far more likely to report losing their jobs because of the Covid pandemic, and in Minnesota, the percentage of Black workers applying for unemployment is 50% higher than for white workers.⁶ We cannot jeopardize this important lifeline for those that have been hit hardest by this pandemic by stigmatizing and punishing the exercise of lawful rights.

4. Direct the Department of Health to collect and publish occupational and workplace data as part of their Covid-19 related data collection. As we have noted in this letter, the coronavirus does not affect every workplace equally, and meat and poultry processing has proven to be especially vulnerable to outbreaks. As you take steps to begin the reopening process, collecting this data will be critical to identifying areas that need intervention and outbreak suppression.

5. Direct the Department of Labor and Industry to expand the rebuttable presumption on Covid-19 worker's compensation cases to include every worker contracting Covid-19 within 14 days of reporting to work. Recent legislation adopted this standard for a selection of frontline workers, but many workers employed in essential industries remain at risk

⁵ U.S. Dep't of Labor, Employment and Training Administration Advisory System, Unemployment Insurance Program Letter No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020*, May 11, 2020. Available online: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_23-20.pdf.

⁶ Jim Tankersley, *Job or Health? Restarting the Economy Threatens to Worsen Economic Equality*, The New York Times, April 27, 2020. Available online: <https://www.nytimes.com/2020/04/27/business/economy/coronavirus-economic-inequality.html>.

of infection, including workers employed in grocery stores, pharmacies, convenience stores, meat and poultry processing, transportation, banks, mail and shipping, educational institutions, social services, child care (not already covered by HF 4537), and manufacture, distribution, and supply chain for critical products and industries. Without action from your office, it is very likely that thousands of frontline workers contracting Covid-19 at their workplaces will be unable to successfully navigate the worker's compensation process, leaving them uncompensated for putting their lives at risk. Under the authority conferred to you by Minnesota Statutes §§ 12.21, 12.32, 175.17, 175.171 and 176.83, you have the clear authority to take action now to address these once-in-a-lifetime circumstances and protect Minnesotan workers.

6. Commit to vetoing any legislation that would immunize employers from putting their employee's health and safety at risk. Efforts to protect employers from any accountability for creating an unsafe workplace most often accord immunity if the employer makes a "good faith" effort at instituting workplace protections. This virus is too serious for an act of good faith to effectively immunize employers that fail to take feasible, known precautions that would keep workers safe. We urge you to pledge now to veto any legislation that would allow employers to escape accountability for putting worker health and safety at risk.

These are unprecedented times, but you have shown Minnesotans the value of effective leadership and we are confident that you will continue to do so in the coming weeks. Lives are at risk, and we urge you to take these actions now to protect all Minnesotans in the months to come.



Jason Walsh, Executive Director of the BlueGreen Alliance

Supporting organizations

USW District 11

Sierra Club North Star Chapter

BCTGM Local 22

CWA State Council

Education Minnesota

IAMAW District 77

SEIU Healthcare

UFCW 1189

Minneapolis Regional Labor Federation

St. Paul Regional Labor Federation

National Wildlife Foundation - Minnesota