



**BLUEGREEN**  
ALLIANCE

# Crafting State Policy That Protects Workers From Infectious Diseases



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# INTRODUCTION

The realities of the coronavirus pandemic are stark, and many workers remain vulnerable to this disease, especially workers of color. Workers of color have seen disproportionately higher rates of illness and death related to COVID-19, and recent information demonstrates that Black and Latinx workers are far more likely to report losing their jobs because of the Covid pandemic.<sup>1</sup> In some cities, black residents account for about 25% of the population, but 70% of the deaths from COVID-19.<sup>2</sup>

This tragic pandemic has occurred at a time of unprecedented administrative failures at the federal level. The Trump administration's Occupational Safety and Health Administration (OSHA), the federal agency charged with protecting American workers from unsafe workplaces, has declined to issue an emergency health and safety standard to protect workers from contracting COVID-19. Early on in the pandemic, OSHA even **issued official guidance** stating that it would not respond to most Covid-related safety complaints from workers, ensuring that OSHA would not intervene to make workplaces safer.

Many states have now begun the process of reopening businesses after the shutdowns of March-May 2020. But these reopening efforts have often been driven by public pressure, not by epidemiological data. As a result, reopening without having protections in place to protect workers from infection will force workers to choose between their job and their health. States can act now to ensure that reopening efforts do not place workers at increased risk. Some states are already seeing increased rates and there is a very real risk to see more increases in the fall, **when a second wave of infections becomes likely**, and at a time when precautions are rapidly waning. State policymakers must take action now to protect workers from the virus itself, and from the financial difficulties that come with job loss or reduced hours.

This toolkit is intended to represent some of the policy responses that can help workers affected by the coronavirus, using examples drawn from state



executive orders and legislation that implement those policies.<sup>3</sup> This toolkit highlights policy response in four key areas: enacting state-level workplace health and safety standards to protect workers from being infected by COVID-19; protecting workers from retaliation if they refuse unsafe work or report dangerous conditions; ensuring that affected workers are financially protected through worker's compensation and unemployment insurance; and collecting actionable information about the pandemic from workplaces. This document is intended as a resource for advocates and policymakers that are seeking to craft policies at the state level to protect workers from the risks of infection and from the financial harm that befalls those affected by the virus. It is not intended to be a comprehensive accounting of every state action in response to the pandemic. Inclusion of any particular policy in this toolkit is not intended as an endorsement by BlueGreen Alliance or any of its partners, but as an example of promising policies that have passed or could be passed to protect workers from COVID-19.

# SECTION 1: OCCUPATIONAL HEALTH AND SAFETY STANDARDS THAT ENSURE SAFE WORKPLACES

When Congress passed and Richard Nixon signed the Occupational Safety and Health Act in 1970, the [new law](#) aimed “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.” The OSH Act (along with the regulations implementing the Act) contains a set of requirements for employers that provide some protection for workers against COVID-19:

- The General Duty Clause, [Section 5\(a\)\(1\)](#) of the [Occupational Safety and Health \(OSH\) Act](#) of 1970, 29 USC 654(a)(1), requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- OSHA’s Personal Protective Equipment (PPE) standards (in general industry, [29 CFR 1910 Subpart I](#)), requires employers to provide gloves, eye and face protection, and respiratory protection when job hazards warrant it and to train employees in their proper use. The employer must assess the hazard of every job in the workplace, buy the necessary equipment and provide it to workers based on the hazard category of their job.
- In [29 CFR 1977.12](#), the right to refuse dangerous work is explained: If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he or she would be protected against subsequent discrimination.

Since the passage of the OSH Act, Congress has expanded the agency’s [whistleblower protection authority](#) to protect workers from retaliation under 22 federal laws. These laws protect employees who report violations of various workplace safety laws including food safety workers.

These requirements along with OSHA’s and CDC’s voluntary guidance on COVID-19 could be quickly turned into an emergency OSHA standard that can be

strongly enforced. But it needs to be a standard not a guidance. OSHA explains the important difference in the preface to their March 2020 Guidance on Preparing Workplaces for COVID-19:<sup>4</sup>

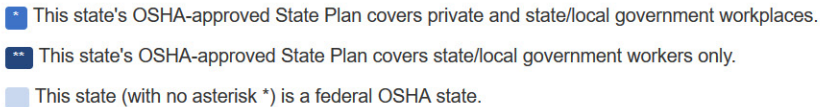
**This guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace.**

A guidance is advice that can be ignored without legal consequences. Unlike an OSHA standard, workers and their unions cannot reference guidance documents to compel employers to protect their workforce.

If OSHA immediately issued an Emergency Temporary Standard, the 22 states and territories that have their own workplace safety and health programs covering both private sector and state and local government workers, the six states and territories that cover only state and local government workers in their state plans, and the 28 other states and territories that are directly served by federal OSHA would all be better protected.

Since March, the United States House of Representatives has twice passed bills—CARES and HEROES Act—that would require OSHA to issue and enforce a strong emergency temporary standard on COVID-19 exposure. The Senate removed those provisions from the CARES Act and has yet to consider the HEROES Act that contains as Title III the COVID-19 Every Worker Protection Act of 2020.

First introduced as The Every Worker Protection Act by Representative Bobby Scott (D-VA), Title III of the





COVID-19.<sup>6</sup> Six states could enact COVID-19 rules for the public employees that are covered by their OSHA plan.

States that are not state plan states, however, may still be able to enact some limited standards directed at infectious diseases such as COVID-19. The federal OSH Act specifically allows any state to adopt health and safety standards “with respect to which no standard is in effect.”<sup>7</sup> If the federal agency has adopted a standard, however, that federal law unquestionably preempts any state or local health and safety law pertaining to that same issue.<sup>8</sup> In those states that are not plan-approved states, decision makers must evaluate the current state of federal safety standards to determine the scope of available actions that would not be preempted. It is possible, for instance, that the federal standard on the provision of PPE ([29 CFR 1910](#)) would preempt a non-state plan state from passing a COVID-19 specific standard for PPE. These preemption determinations are very fact-specific and particular to the actual proposed language of the standards themselves.

The following are examples of legislation and executive actions that have created COVID-19-specific workplace health and safety standards, which can be used as a reference point for crafting similar policies in states that have not already taken action.

### Example Language for Legislation or Executive Order

**California:** In 2009, California adopted the [Cal/OSHA Aerosol Transmissible Diseases \(ATD\) standard](#) to protect employees who are at increased risk of contracting certain airborne infections due to their work activities. COVID-19 is an aerosol transmissible disease because it can be contracted through inhalation or direct contact with infectious particles or droplets. The ATD provisions requiring employers to create Injury and Illness Prevention Plans that includes source control measures, exposure assessments for all job classifications, properly fitted respirators for all high hazard job responsibilities, and the procedures that must be followed during a surge or an exposure incident can be adapted for all workplaces. Appendix 1 contains model language that can be used to adapt the ATD standard to create a COVID-19 health and safety standard.



**Illinois:** On May 29, Governor Pritzker of Illinois issued his [36th Executive Order](#) implementing [Restore Illinois](#), a five phase plan that includes guidelines and toolkits for ten industry sectors.

The May 29th order includes these requirements for all businesses that reopen:

- Continue to evaluate which employees are able to work from home, and facilitate remote work from home when possible;
- Ensure that employees practice social distancing and wear face coverings when social distancing is not always possible;
- Ensure that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing;
- Ensure that all visitors (customers, vendors, etc.) to the workplace can practice social distancing; but if maintaining a six-foot social distance will not be possible at all times, encourage visitors to wear face coverings; and
- Prominently post the guidance from the Illinois Department of Public Health (IDPH) and Office of the Illinois Attorney General regarding workplace safety during the COVID-19 emergency.

In addition, Illinois manufacturers must ensure all employees practice social distancing and must take appropriate additional public health precautions, in accordance with DCEO guidance, which include:

- Providing face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
- Ensuring that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing; and
- Modifying and downsizing operations (staggering shifts, reducing line speeds, operating only essential lines, while shutting down non-essential lines) to the extent necessary to allow for social distancing and to provide a safe workplace in response to the COVID-19 emergency.

**Michigan:** In Michigan, Governor Whitmore has issued an [executive order](#) that requires employers to develop a COVID-19 response plan, provide training to employees including how to report unsafe conditions, conduct daily entry screening, implement physical

distancing, provide job-appropriate PPE, increase cleaning and disinfection of the workplace, make frequent handwashing and hand sanitizing available, and report confirmed COVID-19 cases to the public health department and other workers.

**New York:** Pursuant to a suite of Executive Orders issued by Governor Cuomo, the New York Department of Health issued Interim Guidance that effectively implement the CDC's Guidance as an enforceable standard in the state. The [state guidance](#) provides:

**No office-based work activities can operate without meeting the following minimum State standards, as well as applicable federal requirements, including but not limited to such minimum standards of the Americans with Disabilities Act (ADA), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA), and United States Department of Labor's Occupational Safety and Health Administration (OSHA). The State standards apply to all office-based work activities (essential and non-essential) in operation during the COVID-19 public health emergency until rescinded or amended by the State.**

**Ohio:** The mandatory requirements of Republican Governor DeWine [Responsible Restart Ohio](#) for manufacturing, distribution, and construction includes six feet minimum between workers or the installation of barriers and facial coverings. Employees must perform daily symptom assessments and are required to stay home if symptomatic. Regular handwashing, staggered or limited arrivals of employees and guests, daily disinfection of desks and workstations, change in shift patterns (e.g. fewer shifts), and the staggering of lunch and break times are also mandated. Confirmed cases must be isolated and reported to the health department.

**Virginia:** By [Executive Order 63](#), Governor Northam directed his state labor industry to adopt emergency workplace health and safety regulations to "control, prevent, and mitigate the spread of COVID-19 in the workplace." The order states:

The Commissioner of the Virginia Department of Labor and Industry shall promulgate emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace. The regulations and standards adopted in accordance with §§ 40.1-22(6a) or 2.2-4011 of the Code of Virginia shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program as described in 16 Va. Admin. Code § 25-60-20 and Va. Admin. Code § 25-60-30. These regulations and standards must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication.

**Washington:** Governor Inslee issued a [proclamation](#) on March 23, that turns much of the OSHA guidance into rules. The Governor's Stay Home, Stay Healthy order [requires employers](#) to ensure social distancing for employees and customers, the means for frequent and adequate employee hand-washing, and a requirement that sick employees stay home. Employers must also provide basic workplace hazard education about coronavirus and how to prevent transmission in languages best understood by employees. On May 1, Governor Inslee extended the Stay Home order and outlined his [Safe Start approach](#) with required safety criteria that 19 types of businesses must meet before they can reopen.

## ■ State Policies that Engage Workers in the Development of Workplace Safety Standards

Even while refusing to issue an emergency temporary standard to protect workers from the COVID-19, OSHA advocates for worker participation in the creation and implementation of safety and health programs. The [OSHA website](#) explains:

**To be effective, any safety and health program needs the meaningful participation of workers and their representatives. Workers have much to gain from a successful program and the most to lose if the program fails. They also often know the most**

**about potential hazards associated with their jobs. Successful programs tap into this knowledge base.**

**Worker participation means that workers are involved in establishing, operating, evaluating, and improving the safety and health program. All workers at a worksite should participate, including those employed by contractors, subcontractors, and temporary staffing agencies (see “[Communication and Coordination for Host Employers, Contractors, and Staffing Agencies](#)”).**

**Note: Worker participation is vital to the success of safety and health programs. Where workers are represented by a union, it is important that worker representatives also participate in the program, consistent with the rights provided to worker representatives under the Occupational Safety and Health Act of 1970 and the National Labor Relations Act.**

The U.S. House of Representatives passed legislation that ensured worker and worker representative participation in employers' development of a comprehensive infectious disease exposure control plan in the permanent standard that follows the implementation of the emergency COVID-19 rules.<sup>9</sup> The [2009 California OSHA Aerosol Transmissible Disease Standard](#) includes the requirement of an effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan. More recent California OSHA rules offer additional engagement language. California's Violence Prevention in Health Care standard includes that every employer's injury and illness prevention plan include:

**Effective procedures to obtain the active involvement of employees and their representatives in developing, implementing, and reviewing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.**

# SECTION 2: PROTECTING WORKERS AND WHISTLEBLOWERS FROM RETALIATION

## ■ Clarifying When Workers May Refuse to Work

Although federal law provides workers a right to refuse to work in unsafe conditions, workers are justifiably skeptical that this right would protect them if they are forced to choose between their work and their health. OSHA regulations allow a worker to refuse to go to work if there is a “real danger of death or serious injury” that cannot be eliminated within a reasonable time.<sup>10</sup> However, given the ongoing failure of the U.S. Department of Labor’s OSHA to adopt an emergency COVID-19 safety standard, many workers are uncertain about whether the existing OSHA right to refuse dangerous work will protect them from being fired or from losing unemployment benefits if they are fired. This problem is particularly acute for workers of color, who are much more likely to report concerns about economic security that would lead them to still report to work even if they had a fever.<sup>11</sup> In these circumstances, states can step in to help workers understand when they may lawfully refuse to attend work for safety reasons, by clarifying that the risks of infection from COVID-19 is a dangerous working condition.

### Example Language for Legislation or Executive Order

**Minnesota:** Governor Walz’s [Executive Order 20-54](#), which is based on the state law creating the right to refuse unsafe work, states:

Pursuant to Minnesota Statutes 2019, section 182.654, subdivision 11, workers have the right to refuse to work under conditions that they, in good faith, reasonably believe present an imminent danger of death or serious physical harm. This includes a reasonable belief that they have been assigned to work in an unsafe or unhealthful manner with an infectious agent such as COVID-19. Employers must not discriminate or retaliate in any way against a worker for the worker’s good faith refusal to perform assigned

tasks if the worker has asked the employer to correct the hazardous conditions but they remain uncorrected. These situations should be immediately reported to the Minnesota Department of Labor and Industry (“DLI”).

**Ohio:** Ohio state law grants a right to refuse unsafe work for public employees in circumstances that may be applicable to COVID-19 risks. [Ohio Revised Code § 4167.06\(a\)](#) establishes the right to refuse, and clarifies that an employee exercising that right shall continue to receive wages:

A public employee acting in good faith has the right to refuse to work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that such conditions are not such as normally exist for or reasonably might be expected to occur in the occupation of the public employee. A public employer shall not discriminate against a public employee for a good faith refusal to perform assigned tasks if the public employee has requested that the public employer correct the hazardous conditions but the conditions remain uncorrected, there was insufficient time to eliminate the danger by resorting to the enforcement methods provided in this chapter, and the danger was one that a reasonable person under the circumstances then confronting the public employee would conclude is an imminent danger of death or serious physical harm to the public employee. A public employee who has refused in good faith to perform assigned tasks and who has not been reassigned to other tasks by the public employer shall, in addition to retaining a right to continued employment, receive full compensation for the tasks that would have been performed. If the public employer reassigns the public employee, the public employer shall pay the public employee’s full compensation as if the public employee were not reassigned.

## ■ Protecting Workers from Retaliation

In addition to clarifying the right to refuse dangerous work at the state level, states can also take actions to protect workers from retaliation and from losing unemployment coverage if they are forced to refuse work that would expose them to COVID-19 infection. Workers are already protected from retaliation for exercising their rights, including the right to refuse unsafe work, but federal authorities have already indicated that they do not believe a worker has the right to refuse to work based on fears of COVID-19 infection. In fact, federal agencies have [published guidance](#) to the states that “strongly encourage[s]” states to report workers refusing to return to jobs because of safety concerns. Following this lead, Iowa Governor Kim Reynolds has warned that workers who do not go back to work because of the COVID-19 risk might be ineligible for [future unemployment benefits](#) directly undermining Iowa workers’ right to refuse. South Carolina and Tennessee [have issued similar warnings](#), forcing workers to choose between their health and their eligibility for unemployment benefits.

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-19 pandemic, and in Minnesota, the percentage of Black workers applying for unemployment is 50% higher than for white workers.<sup>12</sup> 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.

### Example Language for Legislation or Executive Order

**Michigan:** Governor Whitmer’s [Executive Order 2020-36](#) protects workers from retaliation and discrimination related to COVID-19 concerns. The order states that “it is the public policy of the state that an employer shall not discharge, discipline or otherwise retaliate against an employee for staying home when he or she is at particular risk of infecting others with COVID-19.” To that end, the order prohibits an employer from “discharg[ing], disciplin[ing], or otherwise retaliat[ing] against an

employee for staying home” if they have COVID-19 or are symptomatic, or have had contact with COVID-19 patients or those with similar symptoms. The order also clarifies that employees staying home for these reasons should be treated as though they were using leave under the state Medical Leave Act.

**Minnesota:** Governor Walz’s [Executive Order 20-54](#) contains multiple anti-retaliation measures and prohibits retaliation against workers reporting unsafe conditions:

**Pursuant to Minnesota Statutes 2019, section 182.654, subdivisions 8 and 9, workers and authorized representatives of workers have the right to request that DLI conduct an inspection of their workplace if they believe that a violation of a safety or health standard that threatens physical harm exists or that an imminent danger exists. Employers must not discriminate or retaliate in any way against a worker because such worker has requested an inspection or exercised any other right under Minnesota Statutes 2019, Chapter 182.” It also prohibits relation against workers who have refused work due to an employer’s failure to provide adequate protection against the risks of COVID-19 infection: “Employers must not discriminate or retaliate in any way against a worker for the worker’s good faith refusal to perform assigned tasks if the worker has asked the employer to correct the hazardous conditions but they remain uncorrected. These situations should be immediately reported to the Minnesota Department of Labor and Industry (“DLI”).**

**New Jersey:** By [Emergency Rules](#) effective April 1, 2020, the New Jersey Labor and Workforce Development Agency “prohibits an employer from terminating or otherwise penalizing an employee, if the employee requests or takes time off from work based on the written or electronically transmitted recommendation of a medical professional licensed in New Jersey that the employee take that time off for a specified period of time because the employee has, or is likely to have, an infectious disease, which may infect others at the employee’s workplace.” Upon returning to work from that protected leave, “an employee must be restored to the position such employee held immediately prior to the commencement of

the protected leave, with no reduction in seniority, status, employment benefits, pay, or other terms and conditions of employment; however, the new section also states that if such position has been filled, the employer must reinstate the employee returning from protected leave to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment.”

**Washington:** [Executive Order 20-46](#) provides expansive protections against employer retaliation for workers affected by potential exposure to the coronavirus. The order effectively requires all

employers to allow their workers to use alternative work arrangements wherever possible, “including telework, alternative or remote work locations, reassignment, and social distancing measures.” The order also allows employees to use accrued leave and unemployment insurance in “in any sequence at the discretion of the employee,” and prohibits employers from “taking adverse employment action against the employee for exercising their rights . . . that would result in loss of the employee’s current employment position by permanent replacement.”

## SECTION 3: COLLECTING RELEVANT, ACTIONABLE INFORMATION FROM WORKPLACES

To date, most of what we know about workplace outbreaks of the coronavirus has come from media reports rather than the official data collected by health departments. [OSHA’s initial guidance](#) to the states in April 2020 made clear that the federal agency would not enforce federal regulations requiring most employers to report work-related illnesses related to COVID-19. On May 19, OSHA issued a [new enforcement memo](#) that announced, starting on May 26, they would enforce the recording of work-related COVID-19 cases.

[Colorado](#) appears to be unique among the states in posting a complete set of work sites where workers,

residents, or inmates have contracted COVID-19. Most of the information about workplace outbreaks of COVID-19 have come from media reports.

On May 1, the CDC [modified the form](#) the agency offers but does not require for recording COVID-19 cases. The optional form now includes a section that asks if the infected person is a health care worker and another section on work settings. The use of the new CDC form should be required by every state to give us a more complete picture of this still too mysterious disease.

## SECTION 4: ENSURING AFFECTED WORKERS ARE FAIRLY COMPENSATED FOR HARM

### ■ Adopting a Rebuttable Presumption for Worker’s Compensation

Typically, state law on worker’s compensation pays benefits for illnesses contracted directly from a person’s employment. In the case of an infectious disease such as COVID-19, however, it may be

impossible to prove that the virus was contracted through a person's work and not through exposure in their personal lives. But being unable to prove that a virus was contracted at work does not change the fact that this disease does not affect occupations equally. Employees working on the frontlines and in essential jobs are more likely to be exposed to the virus and contract COVID-19. Unless state law is changed, Employees who are more likely to become sick from the coronavirus because of their jobs will be largely unable to receive compensation to cover their bills. Because of the difficulty in proving where a particular virus came from, states can take action to create a presumption that high-risk workers who fall ill have contracted the virus at work, thereby allowing them to access worker's compensation benefits.

### Example Language for Legislation or Executive Order

**California:** By [Executive Order N-62-20](#), Governor Newsom established a rebuttable presumption for COVID-19 related illnesses. The order states that "Any COVID-19 related illness of an employee shall be presumed to arise out of and in the course of employment for purposes of awarding worker's compensation benefits if the employee tests positive for COVID-19 within 14 days of reporting to work." Notably, this order is not limited to certain classes of workers.

**Illinois:** On April 16, 2020, the Illinois Worker's Compensation Commission passed an [emergency amendment](#) extending COVID-19 related compensation coverage for first responders and "essential front-line workers." Unfortunately, this rule was challenged in court by business groups, and the rule was [blocked by the court](#). The Commission repealed the rule but pledged to reissue a revised rule. The state legislature is also considering similar legislation, which has yet to pass.

**Kentucky:** By [executive order](#), Governor Beshear extended total disability payments for first responders and frontline workers, ordering that "it shall be presumed that removal of the following workers from work by a physician is due to occupational exposure to COVID-19: employees of a healthcare entity; first responders ; corrections officers; military; activated National Guard; domestic violence shelter workers; child advocacy workers; rape crisis center staff; Department for Community Based Services workers;

grocery workers; postal service workers; and child care workers . . . provid[ing] child care in a limited duration center during the State of Emergency." By including grocery store workers and postal service workers, the order extends compensation coverage beyond first responders, though many categories of essential workers are left uncovered by the order.

**Michigan:** Under their emergency powers, the Michigan Worker's Disability Compensation Agency issued [Emergency Rules](#) on March 30, 2020, created a rebuttable presumption for first responders: "unless proven otherwise, a first response employee suffers a personal injury that arises out of and in the course of employment if the first response employee is diagnosed with COVID-19, whether by a physician or as a result of a test." The rule used an inclusive definition of "first responders," including emergency care, nursing homes, home health care, law enforcement and firefighters, but it did not include workers in grocery stores, transportation, critical supply chains, and more.

**Minnesota:** In the early weeks of the COVID-19 pandemic, Minnesota legislators passed a bill expanding worker's compensation coverage for frontline workers by creating a rebuttable presumption of coverage. The bill ([HF 4537](#)) established that "an employee who contracts COVID-19 is presumed to have an occupational disease arising out of and in the course of employment" if the illness is confirmed by a lab test or licensed physician. This presumption of coverage, however, applies only to firefighters, paramedics, health care workers, correctional officers, and home-care or residential-care employees, and did not extend coverage to other frontline workers such as grocery store employees, drug store employees, critical supply chain employees, or transportation workers.

**Wisconsin:** Like Minnesota, Wisconsin created (by [Act 185](#)) a rebuttable presumption for coverage of COVID-19 related illnesses, but only for first responders: "where an injury to is found to be caused by COVID-19 during the public health emergency declared by the governor . . . and where the employee has been exposed to persons with confirmed cases of COVID-19 in the course of employment, the injury is presumed to be caused by the individual's employment." In their law, first responders include

firefighters, law enforcement, emergency services, and health care workers exposed to COVID-19 patients.

## ■ Protecting Unemployment Benefits for Workers Affected by COVID-19

Workers facing unsafe conditions at their workplace face an unsettling choice, and no matter what protections are afforded them, the possibility of unemployment is a very real consequence. Although state laws may protect a worker from retaliation in these circumstances, navigating through the process of getting a job back can be time-consuming, and bills can pile up in the meantime. To protect workers that are fired for refusing to work, states can enact protections to ensure that these workers are eligible for unemployment insurance benefits that provide a critical lifeline.

In addition to the risks of unemployment through retaliation or an employer's refusal to create a safe workplace, many workers are facing unemployment simply because of the economic downturn that the coronavirus has caused. Some of these workers are protected by unemployment insurance, but states and federal agencies are continually pushing to remove workers from the unemployment rolls. States can take action now to ensure that unemployment benefits continue to provide support for workers affected by COVID-19.

**Multiple states:** At the time of this writing, at least 35 states have [taken actions](#) to streamline eligibility for unemployment benefits by eliminating the one-week waiting period and waiving the work search requirement.

**Minnesota:** Early in the coronavirus crisis, Governor Walz signed an [executive order](#) to facilitate unemployment benefits on a timely basis, principally by eliminating the one week waiting period. But the order also clarifies that a worker receiving unemployment benefits must not accept available employment if it would put their health and safety at risk. This has been a particular policy need in light of [the efforts](#) of the federal Department of Labor to encourage employers to help identify

workers that are not accepting available work due to fears of COVID-19 infection. Many states have warned that workers who do not go back to work because of the COVID-19 risk might be ineligible for [future unemployment benefits](#), forcing workers to choose between their health and their eligibility for unemployment benefits.

Executive Order 20-54 also contains language that protects a worker's eligibility for unemployment insurance benefits when a worker has quit due to their employer's failure to protect them from the risk of COVID-19 infection, or when an employer has terminated an employee in retaliation for reporting unsafe conditions, requesting protective equipment, or requesting a workplace inspection. The Executive Order specifically refers to compliance with the CDC guidelines for COVID-19 safety in the workplace:

**Pursuant to Minnesota Statutes 2019, section 268.095, any worker who quits their employment because the employer has failed to correct an adverse work condition related to the pandemic which would compel an average, reasonable worker to quit, if the worker has complained to the employer about such adverse work condition and has given the employer a reasonable opportunity to correct such adverse work condition, to no avail, or has been retaliatorily terminated from their employment as a result of exercising the worker rights described in paragraphs 1 through 4 of this Executive Order, shall not lose unemployment insurance benefits eligibility under existing law and Executive Order 20-05. Examples of an adverse work condition include an employer's failure to develop or implement a COVID-19 Preparedness Plan, as required by applicable Executive Orders, or failure to adequately implement Minnesota OSHA Standards or MDH and CDC Guidelines in the workplace related to COVID-19.**

**New Hampshire:** By [executive order](#), Governor Sununu directed the state agency to "develop recommendations for specific actions the State can take to ensure that individuals unable to work in the following situations related to COVID-19 are able to access state unemployment benefits: (1) individuals

quarantined due to confirmed or potential exposure; (2) individuals needing to care for themselves due to related illness; (3) individuals needing to care for an ill family member; and (4) individuals needing to care for a dependent. These recommendations shall be submitted to the Governor's Office for follow up directives." The Governor followed that order up with a more [specific emergency order](#) on access to unemployment. The emergency order clarified that self-employed workers and independent contractors are eligible for benefits if they have been affected by COVID-19.

**Washington:** Governor Inslee's [Executive Order 20-46](#) covers workers impacted by an employer that is forced to downsize due to the economic downturn. The order states that it "shall not be construed to prohibit an employer from taking employment action when no work reasonably exists, such as in the circumstance of a reduction in force, for a high-risk employee during this [order]. However, in the case that no work exists, employers shall not take action that may adversely impact an employee's eligibility for unemployment benefits."

## APPENDIX 1: MODEL LANGUAGE FOR WORKPLACE HEALTH AND SAFETY PROTECTION SPECIFIC TO HEALTH CARE, EMERGENCY RESPONSE AND OTHER EMPLOYERS WITH HIGH RISK WORKFORCE MEMBERS

Employers in health care, emergency response and other sectors with work activity that is reasonably anticipated to create an elevated risk of contracting the COVID-19 virus must comply with the following measures:

### 1. The Employer's Injury and Illness Prevention Plans must include:

**A.** A list of the procedures performed at their workplace that are considered high hazard and the engineering and work practice controls, cleaning and decontamination procedures, and personal protective equipment, and respiratory protection required for each procedure, following CDC guidelines.

**B.** The job classifications and operations in which employees are exposed to those procedures.

**C.** A list of all assignments or tasks requiring personal or respiratory protection.

**D.** The method of implementation for each work area where exposures may occur. Specific control measures shall be listed for each operation or work area in which occupational exposure occurs. These measures shall include applicable engineering and work practice controls, cleaning and decontamination procedures, and personal protective equipment and respiratory protection.

**E.** A description of the source control measures to be implemented in the facility, service or operation, and the method of informing people entering the work setting of the source control measures.

**F.** The procedures the employer will use to identify, temporarily isolate, and refer or transfer COVID-19 cases or suspected cases to all rooms, areas or facilities. These procedures shall include the methods the employer will use to limit employee exposure to these persons during periods when they are not in airborne infection isolation rooms or areas. These

procedures shall also include the methods the employer will use to document medical decisions not to transfer patients.

**G.** The procedures for employees and supervisors to follow in the event of an exposure incident, including how the employer will determine which employees had a significant exposure.

**H.** The procedures the employer will use to evaluate each exposure incident, to determine the cause, and to revise existing procedures to prevent future incidents.

**I.** The procedures the employer will use to communicate with its employees and other employers regarding the suspected or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties.

**J.** The procedures the employer will use to ensure that there is an adequate supply of personal protective equipment and other equipment necessary to minimize employee exposure to ATPs, in normal operations and in foreseeable emergencies.

**K.** The work practices, decontamination facilities, and appropriate personal protective equipment and respiratory protection to be used during a surge. The procedures shall include how respiratory and personal protective equipment will be stockpiled, accessed or procured, and how the facility or operation will interact with the local and regional emergency plan.

## **2. Health Care, Emergency Response and other Employers with high risk workforce members must:**

**A.** Provide information about infectious disease hazards to any contractor who provides temporary or contract employees who may be reasonably anticipated to have occupational exposure so that the contractors can institute precautions to protect their employees.

**B.** Where respirator use is required for protection against COVID-19, the employer shall provide a respirator that is at least as effective as an N95 filtering face piece respirator, unless the employer's evaluation of respiratory hazards determines that a more protective respirator is necessary, in which case the more protective respirator shall be provided.

**C.** The employer shall perform either respirator quantitative or qualitative fit tests. The fit test shall be performed on the same size, make, model and style of respirator as the employee will use. When quantitative fit testing is performed, the employer shall not permit an employee to wear a filtering face piece respirator or other half-face piece respirator, unless a minimum fit factor of one hundred (100) is obtained. When fit testing single use respirators, a new respirator shall be used for each employee. The employer shall ensure that each employee who is assigned to use a filtering face piece or other tight-fitting respirator passes a fit test at the time of initial fitting; when a different size, make, model or style of respirator is used; and at least annually thereafter.



# ENDNOTES

1. New York Times “Job or Health? Restarting the Economy Threatens to Worsen Economic Equality,” April 27, 2020. Available online: <https://www.nytimes.com/2020/04/27/business/economy/coronavirus-economic-inequality.html>.
2. Johns Hopkins Medicine, *Coronavirus in African Americans and Other People of Color*, April 20, 2020. Available online: <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid19-racial-disparities>.
3. This document is one part of a larger toolkit that is being prepared and issued by the BlueGreen Alliance in phases. Phase 1, on incorporating labor and workforce standards into climate policy, was issued in July 2020. Later phases will include policies that help to rebuild American manufacturing, decarbonize infrastructure projects, protect workers and communities from industrial hazards, and protect workers affected by closures of coal and gas plants. U.S. Occupational Safety & Health Administration (OSHA), Guidance on Preparing
4. Workplaces for COVID-19. Available online: <https://www.osha.gov/Publications/OSHA3990.pdf>.
5. See State Jurisdiction and Plans in 29 U.S.C. § 667(b). Available online: <https://www.govinfo.gov/app/details/USCODE-2011-title29/USCODE-2011-title29-chap15-sec667>.
6. AK, AZ, CA, HI, IN, IA, KY, MD, MI, MN, NV, NM, NC, OR, PR, SC, TN, UT, VT, VA, WA, and WY. U.S. Occupational Safety and Health Administration, State Plan Frequently Asked Questions. Available online: <https://www.osha.gov/stateplans/faqs>.
7. See State Jurisdiction and Plans in 29 U.S.C. § 667(b). Available online: <https://www.govinfo.gov/app/details/USCODE-2011-title29/USCODE-2011-title29-chap15-sec667>.
8. See *Gade v. National Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 97 (1992).
9. U.S. House of Representatives, H.R. 6800. Available online: <https://www.congress.gov/bill/116th-congress/house-bill/6800>.
10. See 29 C.F.R. § 1977.12(b)(2). Available online: <https://www.osha.gov/laws-regs/regulations/standardnumber/1977/1977.12>.
11. Roosevelt Institute, *Understanding the COVID-19 Workplace: Evidence from a Survey of Essential Workers*, June 2020. Available online: [https://rooseveltinstitute.org/wp-content/uploads/2020/06/RI\\_SurveyofEssentialWorkers\\_IssueBrief\\_202006-1.pdf](https://rooseveltinstitute.org/wp-content/uploads/2020/06/RI_SurveyofEssentialWorkers_IssueBrief_202006-1.pdf).
12. New York Times, “Job or Health? Restarting the Economy Threatens to Worsen Economic Equality,” April 27, 2020. Available online: <https://www.nytimes.com/2020/04/27/business/economy/coronavirus-economic-inequality.html>.



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