



Less Exposure and More Protection: What We Can Do Now to Protect More Black and Brown Workers' Lives



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“Race doesn’t put you at higher risk. Racism puts you at higher risk. It does so through two mechanisms: People of color are more infected because we are more exposed and less protected. Then, once infected, we are more likely to die because we carry a greater burden of chronic diseases from living in disinvested communities with poor food options [and] poisoned air and because we have less access to health care.”ⁱ

— Camara Phyllis Jones, MD

The coronavirus pandemic has upended lives the world over, weaving a path of destruction that has left hundreds of thousands dead, millions sick or hospitalized, and hundreds of millions unemployed. The enormity of this pain, however, has not been borne equally. Latinx and Black Americans are three times as likely to become infected as their white neighbors and nearly twice as likely to die from the virus as white people.ⁱⁱ

The Centers for Disease Control and Prevention (CDC) give this reason for their stark June 25th finding: *Long-standing systemic health and social inequities have put some members of racial and ethnic minority groups at increased risk of getting COVID-19 or experiencing severe illness, regardless of age.*ⁱⁱⁱ

Many of these “long standing systemic and health inequities” will take many years of focused attention and funding to address. The racism that produces higher rates of diabetes and hypertension, for example, cannot be cured through an act of Congress or a governor’s Executive Order.

Emergency policies, however, can effectively address some of the impacts of racism during the COVID-19 pandemic. The twice as high death rate for Black and Latinx people could be reduced by mandating COVID-19 safety protections at their jobs. The President and his administration have the power to lower the incidence of COVID-19 by enacting and enforcing an emergency temporary workplace health and safety rule that will give workers the equipment, distance, handwashing time, and working conditions they need to keep themselves safe.

If the president won’t act, governors must do what they can to protect workers, especially workers of color, in their state.

Systemic Inequality is Especially Evident in the Meatpacking Industry

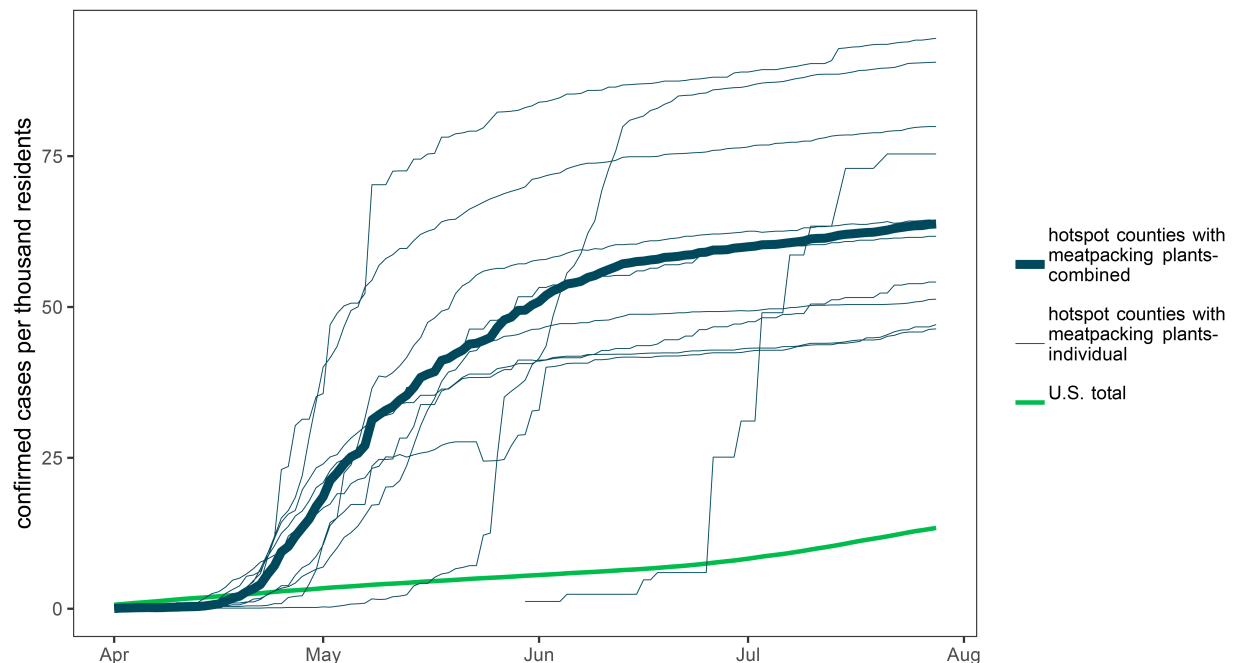
From meatpackers to home health aides, Black and Latinx workers are more likely to have jobs that require them to physically report to a workplace where there are lower wages and a higher risk of exposure to the COVID-19 virus. A New York Times analysis of 2018 census data shows that 43 percent of Black and Latinx workers are employed in service or production jobs while only about one in four white workers held such jobs.^{iv} According to Brookings, while 13% of American workers are Black, 35% of nursing assistants, 22% of

laborers, and freight, stock, and material movers, and 17% of janitors, and cleaners are Black. About 19% of essential jobs that pay less than \$16.54 an hour are held by Black people;^v this is the wage necessary to meet the basic needs of a family of four.^{vi}

These alarming and shameful trends can be clearly seen in the meatpacking industry. Even before the COVID-19 pandemic, animal slaughtering and processing was a dangerous job with injury rates higher than construction, mining and chemicals production.^{vii} Adding insult to injury, these jobs are done by workers who are paid a median hourly wage of \$14.23 or \$29,600 a year.^{viii} Almost one quarter of the frontline workers in the meatpacking industry are Black and more than 44% are Latinx, many of whom are recent immigrants. About one-quarter (25.1 percent) of these workers live in households in which all of the members age 14 or older have limited proficiency in English, over six times the rate for U.S. workers overall. Meatpacking workers also disproportionately lack health insurance (15.5 percent), have one or more children to care for (44.3 percent), and are less educated (2.5 percent have a college degree or more).^{ix}

As of May 20, the Midwest Center for Investigative Reporting calculated that 15,300 meatpacking workers in 193 plants in 23 states have diagnosed cases of the COVID-19 virus and 63 had died. By July 27, the number of diagnosed meatpacking workers had jumped to 37,197 from 370 plants in 33 states and the number of deaths had increased to 168 workers.^x Ninety-percent of these cases were minority workers.^{xi}

According to our analysis of data from the New York Times,^{xii} on July 26, outbreaks at meatpacking plants were responsible for 10 of the 25 counties in the United States with the highest per capita case totals of COVID-19. In one of the most severe hotspots—McDonald County, Missouri—where Tyson’s processes chicken—over one third of the county’s infections were Tyson workers. The Sioux Falls, South Dakota Smithfield Food pork processing plant is the source of the largest non-prison disease cluster in the U.S. with 853 reported cases.^{xiii} Minnehaha County, which includes Sioux Falls, reports 4,018 residents with COVID-19—almost half of the cases in the state.^{xiv}



Instead of addressing these inequities, all too often the official response to the shocking realities of this pandemic is to blame the victim themselves, frequently through racist tropes. When Florida Governor DeSantis downplays the rising incidence of COVID-19 in his state by reproaching the "overwhelmingly Hispanic workers and day laborers" who "go to work in a school bus, and they're all just like packed there like sardines going across like Palm Beach County or some of these other places and all of these opportunities to have transmission,"^{xv} he misses the opportunity to implement rules that will protect those workers and everyone else in his state.

When Senate Majority Leader Mitch McConnell describes COVID-19 relief packages as "blue-state bailouts"^{xvi} and Health and Human Services Secretary Alex Azar defends Donald Trump's decision to use the Defense Production Act to force meatpacking plants to remain open by stating that he believes infected employees were being exposed to the virus in their communities and bringing it into processing plants as opposed to being exposed to the virus in the plants themselves,^{xvii} they blind themselves to the reality of this pandemic. They abrogate themselves of their sworn responsibility to promote the general welfare of the people of the United States. And they make themselves and everyone else in the country more likely to join the list of COVID-19 victims.

Rather than protect these workers, the Trump administration chose the exact opposite: on April 28, President Trump issued Executive Order 13917, invoking the Defense Production Act to open the meat and poultry processing plants that had closed because of COVID-19 outbreaks and to keep other plants running.^{xviii} The Order also held the promise of Justice Department defense of companies who are sued for harming workers and the surrounding community.

In the Executive Order, the president directs Secretary of Agriculture Sonny Perdue, "to take all appropriate actions to ensure that meat and poultry processors continue operations consistent with the guidance for their operations jointly issued by the Centers for Disease Control (CDC) and the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA)."^{xix} But guidance from these federal agencies are not the same as a rule and in OSHA's own explanation, "creates no new legal obligations." President Trump's order to keep meat and poultry processing lines running without an emergency COVID-19 OSHA rule is responsible for much of the documented increase in COVID-19 illness and death in these communities.

An OSHA Emergency Temporary Standard Will Make Meatpacking and Meatpacking Communities Safer

The most comprehensive way to make meatpackers and all other workers safer is to replace OSHA's and CDC's voluntary guidance with an emergency OSHA standard that can be strongly enforced. A standard is a set of rules that are enforceable. A guidance is advice that can be ignored without legal consequences.

The U.S. House of Representatives has twice passed bills that would require OSHA to issue and enforce a strong emergency temporary standard.^{xx,xxi} The U.S. 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 HEROES Act would require the Secretary of Labor to promulgate an emergency temporary OSHA standard to protect all workers at risk of occupational exposure to COVID-19 after consulting with the CDC and NIOSH. Title III provides enforcement discretion when there is a shortage of appropriate PPE and mandates that states with OSHA state plans promulgate their own emergency COVID-19 rules that are at least as effective within 14 days of enactment of the federal law, The HEROES Act also appropriates 100 million dollars for federal and state enforcement of and education on the emergency standard.

With lives on the line in their states, U.S. Senators from the states where cases are rising fastest—Missouri, Maryland, Kentucky, Oklahoma, Mississippi, Indiana, Nebraska^{xxii}—should be clamoring for Senate action that would require OSHA to issue an emergency rule.

In an April 20 letter to USDA Secretary Perdue and Vice President Mike Pence, the United Food and Commercial Workers (UFCW)—the union that represents more than 250,000 meatpacking and food processing workers in the United States—laid out the steps that could lower the rates of COVID-19 in meat and poultry processing plants.

1. **Prioritize Essential Workers for Testing:** In order to ensure the health and safety of workers and protect the food supply, essential workers, such as those in meatpacking and food processing, must be prioritized for testing.
2. **Immediate Access to PPE:** Though social and physical distancing are essential to preventing the spread of COVID-19, workers still need access to PPE, such as masks and gloves. The reality is that many of our members lack the critical personal protection equipment necessary to do their job and reduce the risk of exposure. It is essential that the USDA, in conjunction with the White House Task force, prioritize all meatpacking and food workers for PPE to ensure the health and safety of these workers, and to protect our food supply.
3. **Immediate Halt on Line Speed Waivers:** In the first two weeks of April, the USDA's Food and Safety Inspection Service approved 11 regulatory waivers for poultry plants to increase their maximum line speed.^{xxiii} Rather than protect our food supply and workers, these waivers guarantee that workers are more crowded along a meatpacking line and more workers are put at risk of either catching or spreading COVID-19. It is critical that the USDA immediately cease granting any new waivers and suspend all existing waivers that allow plants to operate at faster speeds.
4. **Mandate Social Distancing Where Possible:** In order to responsibly protect workers and prevent spread of the disease, companies must enforce and practice six-foot social and physical distancing to the greatest extent possible, even if this means production slows down. Where distancing is not possible, companies should use plexiglass barriers to separate and protect workers, and/or ensure that all workers are provided with masks that can safely be used under these extreme conditions.
5. **Isolate Workers Who Show Symptoms or Test Positive for COVID-19:** In light of the largest outbreak to date at Smithfield Foods in Sioux Falls, South Dakota, it is critical to identify and isolate workers who have tested positive or who exhibit symptoms of COVID-19. These workers should be allowed to quarantine at home,

with pay, per the recommendations set by the Centers for Disease Control and Prevention.^{xxiv}

An effective emergency temporary OSHA standard for all American workplaces would mandate these five steps. Tragically, the Trump administration has chosen a different path. On June 15, 2020, U.S. Labor Secretary Eugene Scalia spoke to the Heritage Foundation's National Coronavirus Recovery Commission. In his speech, Secretary Scalia explained why the Trump administration refused to issue an emergency temporary OSHA standard to protect meatpackers and other U.S. workers. He spoke of the need for "vigilance against unnecessary regulatory burdens." He explained that "we do not believe that for every new challenge, there must be a new federal rule." He lectured that "the Founders of this country were principally concerned to restrain government, not with creating a hulking government to restrain free enterprise."^{xxv} Meanwhile, the meatpacking industry was demonstrating why the regulatory burden of enforceable rules are necessary to safeguard the health of workers. According to a June 12, 2020 ProPublica review of thousands of emails:

Tyson Food in Wilkesboro North Carolina refused to share COVID-19 data with the county's public health department. When state intervention forced the company to release the information, it showed 599 workers, more than 20% of Tyson's local workforce had tested positive for the coronavirus.

A few weeks before the Sioux Falls Smithfield Foods outbreak became public, Kenneth Sullivan, Smithfield's CEO, sent a letter to Nebraska Governor Pete Ricketts complaining that the public concern about COVID-19 was causing "hysteria." Instead of implementing the CDC guidelines, Sullivan argued that, "Social distancing is a nicety that makes sense only for people with laptops."

In Louisa County, Iowa, where a Tyson's pork processing plant is the largest employer, the county health director wrote to state officials, "I am very concerned about their handling of this situation. I am concerned politics are winning over what we know is right for the citizens of our county and state."^{xxvi}

An Emergency Temporary OSHA Standard will reduce the politics, hysteria, and the reluctance to report. It will also reduce COVID-19 transmission, hospitalizations, and deaths.

An OSHA Emergency Temporary Standard Will Make Other Hotspot Workers and Communities Safer, Too

Like meatpacking, nursing homes and long-term care facilities have been identified as major contributors to the COVID-19 epidemic. As of July 23, The New York Times calculates that 8% of all cases and 42% of the deaths from the coronavirus are connected to nursing homes and other long-term care facilities.^{xxvii} People of color are more likely to have the jobs in long term care facilities that have been the source of so many COVID-19 deaths.^{xxviii,xxix} On June 29, 2020, the Washington Post estimated that tens of thousands of nursing home workers have contracted the coronavirus and at least 200 have died.^{xxx}

Strong, enforceable workplace protections would lower the number of COVID-19 cases and deaths in nursing home workers and in the patients in their care.

Governors Do Not Need To Wait For The U.S. Senate To Take Action

States can do more to protect workers. And they must do more to lower the number and severity of COVID-19 cases. By turning federal advice into Executive Orders and regulations, governors, state OSHAs, and legislatures can do what the federal government has failed to do to protect workers against COVID-19 and other infectious diseases: ensure safe and healthful working conditions for working men and women by setting and enforcing standards which protect workers from exposure to COVID-19 and infectious diseases, and by providing training, outreach, education, and assistance. The following are good models of state action.

In Michigan, Governor Gretchen Whitmer 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.^{xxxix}

In Washington, Governor Inslee issued a proclamation on March 23rd that turns much of the OSHA guidance into rules.^{xxxix} 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.^{xxxix} 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.^{xxxix}

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.^{xxxv,xxxvi} The May 29 order includes these requirements for all businesses that reopen:

All businesses must:

- Continue to evaluate which employees are able to work from home, and are encouraged to 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 Department of Commerce & Economic Opportunity guidance, which include:

- Provide face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
- Ensure that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing; and
- Modify and downsize 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.^{xxxvii}

In 2009, California adopted the Cal/OSHA Aerosol Transmissible Diseases (ATD) standard to protect employees who work in health care, medical response and transport, correctional facilities, homeless shelters, laboratories, funeral homes, and drug treatment programs who are at increased risk of contracting certain airborne infections due to their work activities.^{xxxviii} COVID-19 is an aerosol transmissible disease because it can be contracted through inhalation or direct contact with the 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. On May 14, Cal/OSHA issued new interim guidelines that require employers not covered by the ATD Standard to establish and implement an Injury and Illness Prevention Plan (IIPP) that includes protections against COVID-19 if it is a potential hazard in their workplace. The new guideline states, “For most California workplaces, adopting changes to their IIPP is mandatory since COVID-19 is widespread in the community.”^{xxxix}

The mandatory requirements of Republican Governor DeWine’s “Responsible Restart Ohio” plan show that implementing workplace rules to protect against COVID-19 does not need to be a partisan activity. The Ohio rules for manufacturing, distribution and construction includes six feet minimum between workers or the installation of barriers and facial coverings. Employees must perform a daily symptom assessment and are required to stay home if symptomatic. Regular handwashing is required as is staggered 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. Confirmed cases must be isolated and reported to the health department.^{xl}

On July 15, the Commonwealth of Virginia became the first state to adopt an emergency temporary standard to protect workers from COVID-19 through their Occupational Safety and Health Program rather than by Executive Order. The standard mandates personal protective equipment, sanitation, social distancing, infectious disease preparedness and response plans, record keeping, and training. Employers are required to

notify all employees within 24 hours if a coworker tests positive for the virus and to prevent employees who are known or suspected to be positive for COVID-19 from returning to work for 10 days or until they receive two consecutive negative tests.^{xli}

While we wait for the federal government to do what it should, every state—through a governor’s emergency public health authority like Michigan, Washington, Illinois and Ohio, through emergency regulatory action of state agencies like Virginia or through the statutory action of state legislatures—can and should adopt workplace safety and health protections against the Coronavirus. At the same time, state leaders should help press for the more comprehensive solution of a federal OSHA Emergency Temporary Standard for COVID-19 which would immediately take effect in all Federal OSHA states and quickly be adopted in state OSHA plans.

On April 28, the Trump administration invoked the Defense Production Act (via Executive Order^{xlii}) with respect to meatpacking plants by finding that the meat and poultry supply chain is a matter of national security. While this action likely prevents cities or states from ordering a meat processing plant to close for safety reasons, it does not prevent state governments from adopting safety standards to protect workers from the risks of COVID-19. These standards could be enforceable so long as they do not result in the plant’s shutdown.

In addition to occupational safety and health rules and standards, workers who are organized within unions have the right under the National Labor Relations Act, and through their bargained union contract to stand up for the implementation of safety and health protections in their workplaces. All workers must have the unobstructed right to organize and join a union and have a voice in their workplace safety and health.

For 50 years, since the passage of the Occupational Safety and Health Act, workers in the United States have had the stated right to be safe at work.

The General Duty Clause—Section 5(a)(1)^{xliii} 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."^{xliv}

In Standard 1977.12 of the OSH Act, 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 would be protected against subsequent discrimination.^{xlv}

Since the passage of the OSH Act in 1970, Congress has expanded the agency’s whistleblower protection authority to protect workers from retaliation under 22 federal laws.^{xlvi} These laws are intended to protect employees who report violations of various workplace safety laws—including food production workers.

In addition to occupational safety and health rules, states can help to ensure their workers can actually exercise their federal rights by ordering enforcement of these protections and by enshrining these rights in Executive Orders and state regulations, as the Commonwealth of Virginia did in April.^{xlvii}

The rules for eligibility for unemployment insurance should reinforce these rights. Iowa Governor Kim Reynolds' warning that workers who do not go back to work because of the COVID-19 risk might be ineligible for future unemployment benefits^{xlviii} directly undermines Iowa workers' right to refuse. Nebraska, South Carolina and Tennessee have issued similar warnings,^{xlix,l} forcing workers to choose between their health and their eligibility for unemployment benefits. These actions follow the guidance of the federal Department of Labor, which has "strongly encouraged" states to report workers refusing to return to jobs because of safety concerns^l. In contrast, Minnesota Governor Tim Walz's May 13 Emergency Executive Order 20-54 assures that the Minnesotans who quit or are fired because they exercise their rights to raise concerns about or refuse dangerous work will not lose their eligibility for unemployment.^{lii}

Safety and health rules and the protection of the rights to use those rules are both necessary to lower the number of COVID-19 cases and COVID-19 related deaths. Also necessary is an official state methodology to recognize and report workplace outbreaks as Colorado is already doing.^{liii} In May, the CDC released a new form for COVID-19 reporting that included workplace information.^{liv} But states' use of that form is not required. It should be.

Lives on the Line

On May 20, Columbia University researchers published their analysis showing that 36,000 U.S. deaths could have been prevented by imposing social distancing one week earlier.^{lv} Policy delays cost 36,000 Americans their lives. For each of the states included in the Columbia University analysis, the death rate for Black people is higher. In Illinois for example, Blacks make up 14% of the population but 28% of the COVID deaths.^{lvi}

We cannot undo this tragedy. We can honor those victims and address the inherent racism in the numbers by quickly implementing safety and health rules and regulations that specifically address the hazards of COVID-19 as well as state Executive Orders to lower the number of COVID-19 illnesses and deaths in frontline workers of color and protect other American workers at the same time.

The most immediate and far reaching effort would be for President Trump, Secretary of Labor Eugene Scalia and Secretary of Agriculture Perdue to stand at the podium today and announce that OSHA will be issuing an emergency temporary standard to protect workers, including meat and poultry processing workers, from COVID-19.

In the absence of that White House announcement, the U.S. Senate must join the House in requiring OSHA to issue an emergency standard and provide funding for federal and state education and enforcement, as stated in the House passed HEROES Act.

In the absence of Senate concurrence, states must use governors' executive orders and state regulation and legislation to protect workers.

Every day of delay can be calculated in more lives lost.

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