

Summary of Recommendations for Protecting Workers and Families

Compiled and edited by the Editorial Committee

The editors asked the authors to provide their best recommendations for legal action in response to COVID-19. Recommendations for *Protecting Workers and Families* address food security, housing, and worker safety. Recommendations include both calls for urgent action now, as well as longer term changes that reflect the way the pandemic has highlighted deeper problems in American law and policy. We have organized the recommendations into federal, state, and local guidance.

Each recommendation is referenced back to its author(s). Please refer to specific chapters for a complete list of recommendations on a particular topic

Action at the Federal Level

- To reduce COVID-19 transmission and cushion the economic impact of COVID-19 on workers and their families, Congress should
 - o Strengthen, extend for a longer period of time, and eliminate the employer exemptions to paid leave in the Families First Coronavirus Response Act (FFCRA) and provide comprehensive emergency paid sick leave and paid family and medical leave, fully funded by the federal government (Terman, Protecting Workers; Silverman, Contact Tracing; Gable, Mass Movement; see also Krueger, Mental Health)
 - o Enhance FFCRA enforcement by
 - Allocating more funding to the Department of Labor (DOL) for FFCRA enforcement and outreach
 - Funding legal aid and community organizations to engage in outreach and enforcement
 - Requiring DOL to advise workers and employers to consult state and local laws that go above and beyond federal law to increase awareness of and compliance with all applicable leave protections
 - Requiring employers claiming exemptions under FFCRA to report and justify the exemptions to DOL (Terman, Protecting Workers; see also Krueger, Mental Health)
 - o Extend unemployment benefits, including Pandemic Unemployment Compensation and the Paycheck Protection Program, for the duration of the pandemic (Terman, Protecting Workers; Krueger, Mental Health)
 - o Create a permanent paid family and medical leave social insurance program (Terman, Protecting Workers)
 - o Enact a national paid sick leave law, not limited by worker status or employer size, with retaliation protection (Yearby, Protecting Workers; Terman, Protecting Workers)
 - o Revise unemployment insurance rules
 - To eliminate penalties on workers with both wages and self-employment earnings
 - Clarify that workers have the right to refuse unsafe work and remain eligible for unemployment benefits
 - Reform the Pandemic Unemployment Assistance program to allow waivers of overpayments (Terman, Protecting Workers)
 - o Expand access to the workshare program (Terman, Protecting Workers)
- To make workplaces safer from COVID-19 and future pandemics,
 - o Congress should enact law giving OSHA authority to address food production speeds to enable social distancing (Yearby, Protecting Workers)
 - o OSHA should
 - Adopt an emergency temporary standard based on the proposed airborne infectious disease rule
 - Publish a final rule based on the proposed airborne infectious disease rule that includes the authority to regulate food production speeds
 - Make complaint data publicly available and disaggregate by industry to determine businesses that are hotspots for COVID-19
 - Conduct in-person inspections of business that are hotspots for COVID-19, including, but not limited to hospitals, long-term care facilities, meat and poultry processing facilities, farms, and food processing facilities
 - Mandate testing of workers employed at businesses that are hotspots for COVID-19, including, but not limited to hospitals, long-term care facilities, meat and poultry processing facilities, farms, and food processing facilities
 - Work with CDC to Track COVID-19 infections and deaths by occupation to determine what workers are most impacted by COVID-19
 - Mandate testing of all workers after identification of

an infected worker to prevent the spread of COVID-19 at workplaces (Yearby, Protecting Workers; see also Sinha, PPE)

- Congress should not pass any legislation shielding businesses from liability for failing to protect the health of customers and employees (Haddow et al., Preemption; Terry, Liability Shields)
 - o Any limited immunity granted at the federal level (for example, to protect vaccine manufacturers and prescribers) should be carefully calibrated and include a federal compensation scheme (Terry, Liability Shields)
 - o In any laws enacted to shield businesses from liability, include worker economic and safety protections including, but not limited to hazard pay, death benefits, workers' compensation for COVID-19 infections, mandatory infectious disease protections, and significant increased funding and authority for enforcement of worker health and safety laws (Yearby, Protecting Workers)
- Congress should amend the Federal Arbitration Act (FAA) to allow state and local laws restricting or prohibiting mandatory arbitration between employers/employees and businesses/ consumers (Haddow et al., Preemption)
- To promote affordable housing and keep people in their homes during and after the COVID-19 pandemic, Congress should
 - o Amend the Affordable Housing Credit Improvement Act of 2019 to increase the tax credit allocations by 50% in order to increase the supply of affordable housing
 - o Amend Section 8 of the United State Housing Act of 1937 and use its appropriations powers to:
 - Increase the income eligibility limits to 200% of the Federal Poverty Level
 - Increase the funding levels for Housing Choice Vouchers by at least 300%
 - Allow non-violent, formerly incarcerated individuals to be eligible for Housing Choice Vouchers and prohibit state and local government from increasing the duration of any bans or otherwise enact more restrictive laws than federal law
 - o Amend the CARES Act to
 - Extend the time limit on eviction and foreclosure moratorium for homeowners with FHA-insured single-family mortgages
 - Provide loan forgiveness for three months for owners of multifamily properties with federally-backed loans
 - Allow for the allocated \$4 billion for Homeless Assistant Grants and Emergency Solution Grants to be used for permanent, supportive housing for people experiencing homelessness, and increase the availability and amount of these funds beyond September 2022 (Anderson, Housing)
- To enhance food security,

- o Congress should
 - Temporarily increase the maximum value of the SNAP allotment by 15% or by linking benefit calculations to the Low-Cost Food plan, with duration of this allotment increase linked to an economic recovery metric
 - Increase the minimum value of a SNAP allotment from \$16 to \$30
 - Link the duration of the temporary Able-Bodied Adult Without Dependents Requirement (ABAWD) waiver to the nation's economic recovery, rather than the termination of the public health emergency declaration
 - Repeal legislation that bans individuals with felony drug convictions from participating in the SNAP program (21 USC § 862a)
 - Pass legislation that makes the online SNAP pilot a permanent program
 - Pass legislation requiring food retailers participating in the online SNAP program to offer free delivery under certain conditions
- o The Department of Agriculture should
 - Rescind recently promulgated regulations (84 Fed Reg 66,782) that restrict ABAWD access to SNAP
 - Rescind regulations (84 Fed Reg 35,570) that decrease access to nutrition programs by restricting SNAP categorical eligibility
 - Work with states and food retailers to expand the online SNAP pilot to all 50 states (Swinburne, Food Insecurity)

Action at the State Level

- To protect workers, their families and communities from COVID-19 and future pandemics
 - o Governors, through executive orders, and/or legislatures, through amending extant housing, utilities, and employment laws, should extend protections against eviction, mortgage foreclosure, utility shut off, discrimination, and employment loss due to quarantine and/or isolation or other COVID-19-related events (Silverman, Contact Tracing; Gable, Mass Movement)
 - o Legislators should enact a statewide paid sick leave requirement, not limited by worker status or employer size, with retaliation protection for those not covered by a national law
 - o OSH agencies in states with approved plans should
 - Adopt an emergency temporary standard based on the proposed airborne infectious disease rule
 - Publish a final rule based on the proposed airborne infectious disease rule that includes the authority to regulate food production speeds
 - Make complaint data publicly available and disaggregate by industry to determine businesses that are hotspots for COVID-19

- Conduct in-person inspections of business that are hotspots for COVID-19, including, but not limited to hospitals, long-term care facilities, meat and poultry processing facilities, farms, and food processing facilities
- Mandate testing of workers employed at businesses that are hotspots for COVID-19, including, but not limited to hospitals, long-term care facilities, meat and poultry processing facilities, farms, and food processing facilities (Yearby, Protecting; see also Sinha, PPE)
- Legislatures should not pass any legislation shielding businesses from liability for failing to protect the health of customers and employees (Terry, Liability Shields)
 - o In any laws and regulations enacted to shield businesses from liability, include worker economic and safety protections including, but not limited to hazard pay, death benefits, workers' compensation for COVID-19 infections, mandatory infectious disease protections, and significant increased funding and authority for enforcement of worker health and safety laws (Yearby, Protecting Workers)
 - o In adjudicating claims of immunity, courts should
 - Interpret emergency COVID-19 shields narrowly to avoid creating unjustifiably broad immunities, recognize [1][2] they were designed to protect front-line workers during a limited period of unprecedented demand, stress, and shortness of supplies
 - Carefully scrutinize the constitutionality of shields and not show the same deference to legislative action given to malpractice reform
 - Void the exculpatory clauses being inserted into theme park and other contracts (Terry, Liability Shields)
- To reduce evictions and increase safe and affordable housing options, state legislatures should
 - o Appropriate funds and enact laws to provide rental assistance grants to low-income renters and to landlords to reduce evictions and rehabilitate structures with environmental hazards
 - o Establish or clarify the rule that evictions are limited to where housing owners can demonstrate good cause
 - Good cause should be generally limited to a) incidents that threatened the life or well-being of any tenant in the building, or b) a violent crime
 - During and for six months after the COVID-19 emergency, good cause should exclude non-payment of rent (Anderson, Housing)
- Courts should interpret emergency orders or declarations regarding evictions broadly, to freeze evictions in all forms and at all stages, including filings and notices (Anderson, Housing)
- To enhance food security in the absence of federal action, state legislatures should
 - o Completely opt out of the SNAP ban on individuals with felony drug convictions
 - o Increase the minimum value of SNAP allotment within the state and allocate the necessary state funds to supplement the federal benefit (Swinburne, Food Security)
- To address social and behavioral factors that increase the risk of mental illness, legislators should
 - o Enact and implement laws to limit access to guns among those who are shown to pose a danger to themselves or others (extreme risk protection orders or red flag laws)
 - o Identify and provide funding to fill gaps in practical assistance at the federal level, such as diaper need, which may be addressed through grants and assistance to diaper banks, assistance to families receiving work support, and exemptions from state sales tax
 - o Make free, public pre-kindergarten available to all children in the state, and establish guidelines regarding social and emotional learning
 - o Increase the minimum wage (Krueger, Mental Health)

Action at the Local Level

- Government officials should authorize the use of Homeless Assistance Grant funds received from states via the CARES Act for safe alternative, longer-term housing for people experiencing homelessness that includes supportive services and sanitation measures (Anderson, Housing)
- Local government, through Emergency Orders and/or amending extant housing, utilities, and employment laws, should extend protections against eviction, mortgage foreclosure, utility shut off, discrimination, and employment loss due to quarantine and/or isolation or other COVID-19-related events (Silverman, Contact Tracing; Gable, Mass Movement)
- To prevent public housing tenants from experiencing homelessness,
 - o PHAs by rule and/or local governments by ordinance should:
 - Stop the initiation or completion of evictions for non-violent or emergency reasons until after state or local emergencies are over
 - Extend the repayment period to a minimum of six months after the end of the moratorium
 - Stop the collection of any late fees during the suggested extended repayment period, even if such fees were charged prior to the beginning of the moratorium
 - Eliminate any restrictions on individuals who were evicted from private housing from the Housing Choice Voucher program
 - o PHAs should exercise their authority to cease enforcement of any minimum rent during the pandemic and for a period for at least six months after (Anderson, Housing)