



## How Local Governments Can Improve Workplace Standards for Frontline Workers During COVID-19 and Beyond

Model Policies to Guarantee Premium Pay, Paid Sick Days, COVID-19 Worker Health and Safety, and Protection Against Retaliation

More than a year into the pandemic, communities across the U.S. continue to depend on frontline labor, yet the workplace rules and policies needed to hold employers accountable for providing safe conditions and fair treatment to frontline workers are still not in place. Federal, state, and corporate policies still do not guarantee frontline workers fair wages or the right to paid days off when they or family members are sick; many lack enforceable COVID-19 health and safety protections; and none have adequate protections against being punished for speaking up on the job about unsafe conditions or violations of their rights.

Occupational segregation means that this frontline workforce is [disproportionately comprised](#) of Black and Latinx workers. The demands of workers of color across the country are tied to the fights for racial, gender, and economic justice. **Workers, along with their communities, are demanding premium pay and other crucial protections, and lawmakers must heed their calls.**

While the Biden administration has responded to pleas from working people and advocates to address some of these issues, and Congress is providing long overdue COVID-19 relief—though more is needed—workers still lack crucial protections as the virus continues to spread. The wellbeing and recovery of this workforce is connected to the wellbeing and recovery of communities and society as a whole.

**Local governments can and must act now to create a just recovery by providing workers with the protections they need during the remainder of the pandemic and beyond.** Some cities are already doing this by guaranteeing premium pay, adopting protections against retaliation, and other key safeguards.

This toolkit offers four model laws that cities and counties can and should adopt to protect workers, especially those who are still most at risk on the COVID-19 frontlines. These model local laws would establish:

1. Emergency premium pay for frontline workers;
2. A permanent right to paid sick leave with additional time off during a declared public health emergency;
3. Health and safety protections for certain frontline and essential workers who will not be protected by the upcoming federal Occupational Safety and Health Act (OSHA) or state COVID-19 protections (including those who are classified or misclassified as independent contractors, like gig workers, and domestic workers employed by an individual in their own residence); and
4. Anti-retaliation protections to ensure workers can speak up about job conditions and enforce their rights safely during and after the COVID-19 crisis.

The model laws in the toolkit are designed so localities can adapt them to meet local needs. Several of the model laws provide options and recommendations for industries most appropriate for coverage. Below are overviews of each. *This publication was released in April 2021.*

*September 2021 Update: As of September 13, 2021, federal OSHA has only issued a [COVID-related Emergency Temporary Standard for health care workers](#). It does not cover all workers exposed to COVID-19 hazards at work. States and counties should therefore consider setting their own standards to protect these workers and mitigate against the spread of COVID-19 at work. A good template for such a standard is OSHA's new [guidance on mitigating the spread of COVID-19 in non-health care workplaces](#). A separate anticipated Emergency Temporary Standard on vaccinations and testing is not expected to include requirements for other important COVID-19 prevention policies.*

## Summary of Model Local Laws in This Toolkit:

### 1. Emergency Premium Pay for Frontline Workers

- Throughout the pandemic, millions of frontline workers—disproportionately, due to occupational segregation, women and workers of color—were required by their employers to come to work, often jeopardizing their health and the health of their families. Yet despite shouldering that risk, few received any additional compensation. For those that did, pay premiums were often [just about \\$2](#) an hour and most were rolled back in the spring of 2020—long before the pandemic and the threat to workers' welfare was over.
- Just as overtime laws require workers be paid a premium for working more than 40 hours per week, premium pay laws require employers to pay additional compensation when

workers are required to work under dangerous circumstances during a declared emergency. Where workers are asked to put themselves or their families in harm's way—whether from a pandemic, a natural disaster, or a similarly dangerous event—they should be compensated for the additional risk they bear. Such laws should never exempt employers from taking adequate steps to protect workers' health and safety. But, recognizing that not every risk can be eliminated, recognition pay laws should reward workers asked to take on that risk and discourage employers from requiring staff to work when doing so is not essential.

- A [growing number of cities](#) are stepping in to require employers to provide premium pay during emergencies—especially large employers in industries that are booming during the pandemic, yet failing to share those profits with their frontline workforce. At least a dozen cities, including Los Angeles, San Jose, and Seattle, have acted to require premium pay for grocery workers and in some cases, drug store workers. Seattle has similarly required premium pay for app-based delivery workers at companies like Door Dash and Grubhub.
- Notably, the American Rescue Plan Act of 2021, adopted into law in March 2021, allows local governments to use funds appropriated under Title IX, Subtitle M of the Act to pay for premium pay to eligible essential COVID-19 workers. So, in addition to the model proposed here requiring employers/certain hiring entities to pay workers premium pay, local governments can consider establishing a premium pay program paid for with funds received through the American Rescue Plan Act of 2021.
- Our model premium pay law for frontline workers:
  - **Requires that employers provide essential workers in select fields, such as grocery stores, with additional pay during the length of the pandemic emergency.** The premium pay provided by the statute amounts to \$5 an hour or \$25 a day, whichever is greater. This premium is paid in addition to minimum wage or other wage rates required by law, so that tips or gratuities are not counted toward payment of the premium amount.
  - **Prohibits retaliation** against a worker who exercises their rights under this law, including by communicating to their employer, other workers, the government, or the public.
  - **Incorporates best practices for local enforcement**, including: Assigning a local department to enforce the law; allowing workers affected by a violation of the law to bring a private civil action to hold employers accountable; and allowing workers affected by a violation or a representative organization to bring a public enforcement action on behalf of the local department when the department declines to investigate a case itself.

[\[Download Premium Pay Model Law\]](#)

## 2. Paid Sick Days

- Access to paid sick time has been shown to improve the health and wellbeing of workers and reduce the costly and disruptive spread of illnesses within the workplace. Despite these documented benefits, nearly [1 in 4 private sector workers](#) do not have any paid sick time, and many who do are disciplined for using it or cannot use the time to care for sick children or other family members.
- Frontline workers, individuals working in jobs with high levels of [public contact](#), workers in low-wage jobs, and [Black and Latinx workers](#) are less likely to receive paid sick time and would significantly benefit from passage of a paid sick time law.
- Although the federal Families First Coronavirus Response Act provided some workers with emergency COVID-19 paid sick days—which was [documented](#) to lower the spread of COVID-19—the law’s guaranteed emergency paid leave expired on December 31, 2020. Congress has not renewed COVID-19 paid sick leave, leaving a critical need for local governments to pass paid sick leave laws to protect workers, safeguard public health, and ensure businesses can reopen—and stay open—safely.
- A [growing number](#) of jurisdictions are stepping in to guarantee paid sick time. Thirteen states, Washington D.C., and nearly two dozen localities have passed paid sick time laws, and an [increasing number](#) of state and local governments are ensuring that workers receive emergency sick leave during the pandemic. These laws are working well for employees, [employers](#), and [public health](#).
- Our model paid sick time law:
  - **Ensures that all employees are entitled to earn a modest amount of paid sick time** for personal health needs, to care for a loved one, or address domestic or sexual violence.
  - **Provides employees with additional paid sick time during a declared public health emergency** for health and caregiving needs related to the emergency.
  - **Prohibits retaliation** against a worker who exercises their rights under this law, including the use of paid sick time to care for themselves or their loved ones.
  - **Incorporates best practices for local enforcement**, including: Assigning a local department to enforce the law; allowing workers affected by a violation of the law to bring a private civil action to hold employers accountable; and allowing workers affected by a violation or a representative organization to bring a public enforcement action on behalf of the local department when the department declines to investigate a case itself.

[\[Download Paid Sick Days Model Law\]](#)

### 3. Health and Safety Protections for Certain Frontline Workers Not Protected by Federal OSHA or State COVID-19 Protections (Including Those Classified Incorrectly or Correctly as Independent Contractors and Domestic Workers Employed by an Individual in Their Own Residence)

- After the Trump administration left workers unprotected for the first year of the pandemic, the Biden administration's Occupational Safety and Health Administration is expected to issue a COVID-19 Emergency Temporary Standard (OSHA ETS) mandating binding precautions that all employers must take to keep their workforces safe.
- However, any new OSHA ETS protections will leave out independent contractors and therefore may also leave out workers who are misclassified by the businesses they work for as independent contractors. This gap may especially impact app-based or gig workers like food delivery workers, who have been on the frontlines during the pandemic, and who corporations have placed in harm's way by failing to provide masks and other protections workers need to be safe on the job.
- The expected OSHA ETS requirements will also leave out domestic workers employed by an individual in their residence.
- Local governments can and should step in by adopting local health and safety laws to protect workers who will be left out of the upcoming OSHA ETS. They can put in place protections now based on local standards, and once OSHA's ETS is issued, a local law can ensure that companies take the same precautions and provide the same protective equipment that all other employers must provide for their workers under the OSHA ETS. Where workers are not covered by OSHA protections, federal law allows cities and states to protect them—and our local governments should act swiftly to do so.
- Our model health and safety protection law for frontline workers:
  - **Requires companies classifying their workers as independent contractors in frontline essential industries to comply with local safety guidelines until the new OSHA ETS goes into effect (or until a state standard is adopted by a state administered OSHA program to protect employees from COVID-19). Under the model law, once an OSHA ETS or state standard goes into effect, entities classifying workers as independent contractors must comply with the OSHA ETS or state standard. The model also protects those individuals hiring domestic workers to work in their residence because the OSHA ETS will not cover such domestic workers.**

- **Prohibits retaliation** against any worker who raises a good-faith concern about COVID-19 disease control to their employer, other workers, the government, or the public.
- **Incorporates best practices for local enforcement**, including: Assigning a local department to enforce the law; allowing workers affected by a violation of the law to bring a private civil action to hold employers accountable; and allowing workers affected by a violation or a representative organization to bring a public enforcement action on behalf of the local department when the department declines to investigate a case itself.

[[Download Health & Safety Model Law](#)]

## 4. Protection Against Retaliation for Workers Who Speak Up on the Job

- To protect all of us from the spread of COVID-19, employers and our government must take measures to control the spread in workplaces. But unless workers feel safe sounding the alarm when employers are endangering them or the public, such protections are hard to enforce, putting all of us at risk.
- A 2020 survey found that almost [one in five Black workers reported fear of retaliation in their workplaces](#) for reporting COVID-19 risks. And during the pandemic, employers from [Amazon](#), to major hospitals, to meatpacking companies have punished workers who complain about or publicize COVID-19 risks at work.
- Such retaliation is common because federal and most state laws do not adequately protect workers from retaliation for speaking up about workplace conditions or enforcing their rights. Federal anti-retaliation protections under the National Labor Relations Act and OSHA are difficult to enforce and do not include a critical private right of action enabling workers who face retaliation to go directly to court. A [recent survey](#) of anti-retaliation laws covering workers who speak up about wage theft in all 50 states found that only a handful provide the critical protections workers need, including a right to monetary damages, a right to recover attorney's fees and costs (so that workers have a better chance of finding legal representation), a right to bring a complaint to an agency or to a court, and a government-imposed fine. In addition, a recent NELP report showed that the federal Occupational Safety and Health Administration investigated and resolved [just 2 percent](#) of retaliation complaints filed during the COVID-19 pandemic.
- Recognizing the urgent need to protect workers from retaliation, cities and states have started to step in, with [Philadelphia](#) and [Colorado](#) adopting important new anti-retaliation protections for the pandemic period.

- Workers who cannot speak up to report unsafe conditions or other workplace concerns will remain at risk, which also forces communities to assume the health risks and the costs of poor working conditions.
- Cities should adopt retaliation protections and make them permanent, to protect workers during the pandemic and beyond. Local retaliation protections should also go beyond allowing workers to report health and safety risks and protect workers when they raise concerns about their workplace conditions or suspected violations of their rights.
- Our recommended model anti-retaliation law:
  - **Protects workers from retaliation** when they raise a good-faith concern about the terms and conditions of their employment.
  - **Incorporates best practices for local enforcement**, including: Assigning a local department to enforce the law; allowing workers affected by a violation of the law to bring a private civil action to hold employers accountable; and allowing workers affected by a violation or a representative organization to bring a public enforcement action on behalf of the local department when the department declines to investigate a case itself.

[\[Download Retaliation Protection Model Law\]](#)

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*NOTE: A city or county's authority to adopt the model laws in this toolkit may vary depending on state law. For additional resources to assist in understanding the nature and scope of local city or county authority in a particular state, we recommend the [Local Solutions Support Center's \(LSSC\) online resources](#) (including, for example, an overview of [home rule](#) in all 50 states; memos [for advocates](#) considering local authority; and a [guide to the legal analysis](#) involved in evaluating local authority).*

*This publication was released in April 2021.*