

Protecting Worker Safety & Health in the COVID Crisis: A State & Local Model Policy Response

Workers who are providing the critical services on which everyone relies are facing dire health and safety hazards during the COVID crisis. These threats are endangering millions of workers and the broader public, since unsafe workplaces during the pandemic put customers, patients, workers' families, and everyone at risk. Already, tens of thousands of workers have fallen ill at work and hundreds have died, including workers in hospitals, first response, nursing homes, meat and poultry plants, grocery stores, warehouses and mass transit. And the hazards will only grow worse as states start to re-open their economies in the coming months.

The workforce in many of these industries, including food processing, supermarkets, warehouses, and nursing homes, are disproportionately workers of color. Workers in these industries are underpaid, lack health benefits, and have few worksite protections. And due to systemic inequalities leading to inadequate access to health care, workers of color are already at increased risk of serious complications should they become infected with COVID-19.

Unfortunately, the federal agency in charge of ensuring that employers provide safe conditions and protect workers from serious hazards—the Occupational Safety and Health Administration (OSHA)—has abdicated its responsibility for protecting workers. OSHA is not even requiring that employers follow the specific Centers for Disease Control and Prevention (CDC) guidance for employers. Existing worker protections are grossly inadequate to ensure safe workplaces and protect workers who speak up about hazards.

States and cities must step in to protect workers—and many are starting to do so.

This policy paper outlines recommended policies that states and cities should adopt to protect workers and respond to the crisis. All of the policy menu that we detail can be adopted by states—through executive action by governors or through legislation—and much of it can be adopted by local governments through municipal ordinances or orders.

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Background

In this COVID-19 pandemic, [protecting worker health](#) is central to protecting public health. All workers who are on the job during this pandemic—from workers in the health care industry and emergency responders, to those working in supermarkets, delivery, meat and poultry processing, agriculture, janitorial jobs, pharmacies, warehouses, factories, transportation, sanitation, and all other essential workplaces—[must be protected](#) from disease transmission. This in turn will protect the broader public.

Employers can choose to follow the federal guidance or ignore it. Despite legal petitions and calls to OSHA from legislators, OSHA has so far not issued a standard with mandatory protections that employers must implement to protect workers from COVID-19.

Worker health is in crisis in this pandemic. OSHA is failing in its responsibility to ensure that employers keep workers safe on the job during the pandemic. OSHA has not issued any enforceable COVID-19-specific requirements, practices, or policies that employers must implement to protect workers. OSHA and CDC have issued voluntary guidelines recommending policies and procedures that employers should implement to keep workers safe. These guidelines, however, are just that—they are advisory to employers. Employers can choose to follow the federal guidance or ignore it. Despite legal petitions and calls to OSHA from legislators, OSHA has so far not issued a standard with mandatory protections that employers must implement to protect workers from COVID-19.

The lack of mandated protections at work has resulted in thousands of workers falling ill from exposure at work, and many have died. Although CDC recommends that the public practice social distancing and wear masks when outside the home, employers in non-health care workplaces are not required by OSHA to follow these guidelines, and many are refusing to offer even these basic protections to workers. There are meat and poultry plants, for example, where hundreds of workers are infected because of transmission at work, where companies did not implement social distancing recommendations or provide protective masks and face shields. Because the companies failed to implement very basic measures to prevent the virus from spreading in the workplace, not only are workers getting sick and dying from exposure at work, but this has dramatically increased the spread of the virus into the community.

To protect themselves and the public during the pandemic, workers must be able to speak up and raise concerns about their safety and their lack of protection. Their voices are critical to ensuring that our workplaces and communities are safe. But current federal protections are weak and do not provide sufficient protection against retaliation and discrimination for workers who speak up.

The federal government has abandoned its responsibility to assure that workers and the general public are safe in this pandemic. As the number of workers infected with and dying from this disease continues to grow, and as we see spread in communities where workers live, it is clear that a voluntary approach to worker safety is not mitigating this public health disaster. Communities of color are paying the price for this federal failure. It is therefore crucial that state and local policymakers step up to protect workers and the general public in this pandemic.

States and Cities Have the Authority to Respond

Both states and municipalities have broad power to protect public health and protect workers. Federal OSHA law does not preempt or limit states and cities from acting to protect workers from the threat of COVID-19 transmission in the workplace. Since OSHA has not adopted a federal standard that deals with the workplace health and safety risks associated with COVID-19, states remain free to adopt their own.¹ Nor does any federal law preempt state and local laws that protect whistleblowers.² States and cities have long had such protections³—though most are too narrowly written to adequately protect workers, especially during this crisis.

Much of the policy menu that we detail can be adopted by either states or local governments:

- Governors, using their emergency public health powers, can mandate much of the menu by executive order;
- State legislatures can adopt all of it by statutory action; and
- Local governments, through local ordinances or in some cases through mayoral or health department orders, can adopt many of the recommended protections, although the scope of local authority to do so varies from state to state. Note, however, that cities do not have authority to adopt the components addressing state workers' compensation protection of COVID-related illness and unemployment insurance protection for workers refusing to work under unsafe conditions.




¹ 29 USC 667(a) of the OSHA Act provides “Assertion of State standards in absence of applicable Federal standards. Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title.”

² Under the OSHA Act, only OSHA standards issued under Section 6 of the Act preempt state regulation. *See* 29 USC 667(a). Since the OSHA Act’s anti-retaliation protection, Section 11(c), is a statutory provision, it does not preempt state whistleblower protections.

³ Examples include N.Y. Labor Law §§ 740, 741, and Cal. Labor §§ 1102.5 to 1105.

Model Policy Language & Explanation

- This policy proposal is meant to be modular—so that governors, legislatures, and local governments can adopt and adapt pieces of it, tailoring them in accordance with their local authority and integrating them with existing state and local standards and protections.
- All of the outlined components are, however, crucial—and no state currently fully and adequately protects worker health and safety.
- NELP is available to work with advocates in developing specific language for state or local policies. Please contact dberkowitz@nelp.org or psonn@nelp.org.

Policy Language	Commentary
 <p>Section 1. Definitions</p> <p>(a) “Worker” means any person whom an employer suffers or permits to work, and shall include independent contractors, and persons performing work for an employer through a temporary services or staffing agency.</p> <p>(b) “Employer” means an individual or entity that suffers or permits a person to work, and shall include contracting for the services of a person. More than one entity may be the “employer.” “Employer” includes a health care and emergency responder employer and an employer in other sectors.</p> <p>(c) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60 percent alcohol.</p>	<ul style="list-style-type: none">• In order to protect workers and the public during the COVID-19 crisis, it is essential that worker health and safety protections and related protections for whistleblowers apply broadly to all workers, regardless of how they are classified (or in many cases misclassified).• This policy therefore uses a broad definition of “worker” that includes employees (using the broad “suffer or permit” to work employment standard found in the federal Fair Labor Standards Act), but also independent contractors and employees performing work through temporary services or staffing agencies.

- (d) “Health care and emergency response employer” means employers, both public and private, of health care and long-term care sector workers, including nursing home and home health care workers; of paramedic and emergency medical services workers, including such services provided by firefighters and other emergency responders; of corrections, detention, or secure treatment facility workers; and of mortuary and laboratory workers.
- (e) “Employers in other sectors” means employers other than health care and emergency response employers.
- (f) “Department” means the Department of Labor, or other state or local agency responsible for enforcing this Act.

- As discussed in depth below in Section 2, it recognizes two broad categories of employers: Health and Emergency Responder Employers, and Employers in Other Sectors.
- It also recognizes a Department chiefly charged with enforcement of the policy—which could be either the state Department of Labor or, for a municipal policy, a city or county labor or health agency.
- As discussed below in the enforcement section, it also empowers a full range of law enforcement entities, including the attorney general, district attorneys, and city and county attorneys to enforce the law, recognizing that limited enforcement capacity is a major obstacle to ensuring safe workplaces.
- And crucially, it authorizes workers and other whistleblowers to enforce the law through a private right of action and “qui tam” enforcement, supplementing limited government enforcement resources.



Section 2. Protecting Workers From COVID-19

(a) Health Care and Emergency Response Employers

Health care and emergency response employers must comply with the precautions mandated by the California OSHA Aerosol Transmissible Diseases standard. [States and cities should adopt the California standard in its entirety, by codifying its provisions into state or city law, and apply it broadly to all health and emergency response employers.]

Reference:

<https://www.dir.ca.gov/title8/5199.html>

(b) Employers in Other Sectors

Employers in other sectors must comply with the following measures:

- (1) **Social Distancing:** The employer shall maintain six feet between workers, and between workers and customers, by using one or more of the following measures: Implementing flexible worksites (e.g., telework); Implementing flexible work hours (e.g., staggered shifts);

- Since OSHA has failed to adopt a COVID-19 standard—or any airborne infectious disease standard—to protect workers, states and even cities can act to adopt such standards.
- As noted above, the federal OSHA law expressly provides that states (and by implication cities) remain free to “assert[] jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect [federal OSHA law].”⁴ This includes both those states that are OSHA “state plan” states and those that aren’t.
- In many states, cities have the authority to adopt health and safety standards as well, wielding their public health authority. Cities exploring adopting these standards should evaluate the scope of their local powers under state law.
- This section outlines strong standards that states and cities should adopt. It is divided into two parts: (a) Requirements for Health Care and Emergency Response Employers, and (b) Requirements for Employers in All Other Sectors.
- Workers in health care and emergency response are those most at risk. They are exposed to and care for infected patients, and the protections they need reflect this.

⁴ 29 USC 667(a)

Increasing physical space between workers at the worksite to six feet; Increasing physical space between workers and customers (e.g., drive-through, partitions, and limits to the number of customers in grocery stores , for example); Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events); Delivering services remotely (e.g. phone, video, or web); or Delivering products through curbside pick-up or delivery. Further, this should include reconfiguring spaces where workers congregate including lunch and break rooms, locker rooms and time clocks.

- (2) **Face Masks:** All workers shall be provided (free of charge) cotton face masks (double layer cotton) by their employer. All customers in grocery stores and pharmacies shall be required to wear face masks. Face shields shall also be made available by employers free of charge to workers.
- (3) **Hand Sanitizing, Hand Washing, and Gloves:** Employers must provide hand sanitizers that are readily available in multiple locations in the workplace. Workers must have the ability to wash their hands with soap and water regularly. Gloves shall be provided by employers to workers who request them.
- (4) **Regular Disinfection:** Employers must clean and disinfect regularly all frequently touched surfaces in the workplace, such as workstations, touchscreens, telephones, handrails, and doorknobs.
- (5) **Increase ventilation rates.** Increase the percentage of outdoor air that circulates in the system.
- (6) **Notification of Workers:** If a worker is confirmed to have COVID-19 infection, the employer must inform fellow workers of their possible exposure to COVID-19 in the workplace while keeping the infected worker’s identity confidential as required by the Americans with Disabilities Act (ADA).
- (7) **Deep Cleaning after Confirmed Cases:** If a worker is suspected or confirmed to have COVID-19, the employer shall close off workplace areas visited by the ill person. Open outside doors and windows and use ventilating fans to increase circulation in the area. Wait 24 hours or as long as practical, and then conduct cleaning and disinfection as

- The best model standard for protecting health care and emergency response workers is the [California OSHA “Aerosol Transmissible Diseases standard”](#) standard. This standard, which was adopted by California OSHA in 2009, mandates strong protections for this workforce. We therefore recommend that states and cities adopt its standards in their entirety by codifying them into state or city law.
- This strong California standard includes requirements for training, infection control and isolating procedures in hospitals, implementation of engineering and work practice controls, and strong requirements for respirators and other personal protective equipment necessary to protect workers in health care, emergency response and related industries.
- Note that while CDC has issued guidance for health care and emergency response employers, [they are weak](#) and do not provide adequate protection, and so are not an appropriate benchmark for the states. Note further that CDC standards are advisory and do not preempt regulation by states or cities.
- The second part of this section outlines standards that states or cities should adopt to protect workers in all other sectors. We recommend that these standards apply broadly to all employers in all industries, and not be limited simply to “essential” industries. As state economies re-open, workers in all sectors will be at risk and will need protection in order to control the pandemic.
- The model includes basic protections in six areas: (1) Social distancing; (2) Face masks; (3) Hand sanitizing, hand washing and gloves; (4) Regular disinfection; (5) Ventilation; (6) Notification of workers of illness in the workplace; and (7) Deep cleaning after confirmed cases.
- This proposed standard is drawn in large part from voluntary, non-binding guidance that CDC and OSHA have issued for employers on how to protect all other essential workers. That guidance is gathered and linked to below the proposed standard.
- Already states are beginning to step in to mandate some of these protections for workers during the COVID crisis—though none has yet mandated the full range of needed protections. In addition to California, [New York Governor Andrew Cuomo](#) recently issued an executive order that

directed by CDC Cleaning and Disinfection for Community Facilities guidelines.

References:

- <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>;
- <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (employers must provide masks that are at least as protective as the more protective masks made from two layers of cotton sheet);
- <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>;
- <https://www.osha.gov/Publications/OSHA3990.pdf>

requires all employers to provide essential workers with masks free of charge when interacting with the public.

- Cities are also now stepping in to require employers to protect workers. For example, [Los Angeles](#) now requires that delivery employers provide masks, gloves or hand sanitizers and physical distancing to workers. They have also enacted specific limits to how many customers may be in stores.
- The most critical guidance to follow to prevent COVID transmission in the workplace is social distancing—physical distancing of workers from the public and from one another.
- Equally important, face masks are recommended by CDC to help those who are infected with the virus and do not know it (those who are asymptomatic or pre-symptomatic) from spreading the virus to others. It is well established that there is significant risk of transmission from asymptomatic and pre-symptomatic individuals. CDC states: “It is critical to emphasize that maintaining six feet social distancing remains important to slowing the spread of the virus. CDC is additionally advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.”
- Because not all cotton face masks provide equal protection, face shields are also being provided in grocery stores and other workplaces, and should be required for all such workers. Further, as N95 respirators become more available (now being prioritized during the shortage for use among the most at-risk health care workers), states can require these for all workers interacting with the public or who work in workplaces where social distancing is not always followed. All equipment must be provided free of charge to workers.
- Note that, unfortunately, CDC weakened its guidance on when COVID-19-exposed workers should return to work. The new guidance, which allows exposed workers to return with just masks and some other precautions, is very dangerous. Many state health departments have rejected this guidance, including Minnesota and [New York](#). States must make sure employers do not follow this guidance—but instead require COVID-19 exposed workers to quarantine for 14 days.



Section 3. Whistleblower Protection

- (a) No employer or other person shall discriminate or take adverse action against any worker or other person who raises any concern about workplace health and safety practices or hazards related to COVID-19 to the employer, the employer's agent, other workers, a government agency, or to the public such as through print, online, social, or any other media.
- (b) No employer or other person shall attempt to require any worker to sign a contract or other agreement that would limit or prevent the worker from disclosing information about workplace health and safety practices or hazards related to COVID-19, or to otherwise abide by a workplace policy that would limit or prevent such disclosures. Any such agreements or policies are hereby declared void and unenforceable as contrary to the public policy of this state. An employer's attempt to impose such a contract, agreement, or policy shall constitute an adverse action enforceable under this Act.
- (c) No employer shall discriminate or take adverse action against a worker who voluntarily brings in and wears his or her own personal protective equipment, such as a mask, faceguard, or gloves, if such equipment provides a higher level of protection than the equipment provided by the employer.
- (d) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or
- Workers must feel free to speak up about threats to their health and safety from COVID-19. Their voices must be protected in order to mitigate the spread of the virus.
 - Stronger protections are urgently needed since we're seeing employers from Amazon to major hospitals punishing workers who complain about hazardous workplace conditions, or who notify co-workers or the public about threats that employers are not addressing.
 - We have also seen front line health care workers being retaliated against, and fired, for bringing in their own equipment when the employer cannot provide adequate protection.
 - Providing workers with a private right of action so that they may go to court if they are retaliated against is critical for ensuring workers are protected.
 - Similarly, many existing state whistleblower laws protect workers from retaliation only for filing formal health and safety complaints—and often don't protect them from being punished for notifying fellow workers or the public about workplace threats. It is essential that whistleblower protections be expanded to protect that full range of communication, which is essential for publicizing and addressing serious workplace threats.
 - This model also includes a rebuttable presumption that any adverse action taken against an employee or person within 90 days of protected activity is retaliatory. Such a presumption is an effective approach for protecting

attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this Act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.

whistleblowers and has been incorporated into state and local wage theft laws.



Section 4. Refusal to Work Under Dangerous Conditions

- (a) A worker shall have the right to refuse to work under conditions that the worker reasonably believes would expose him or her, other workers or the public to an unreasonable risk of illness or exposure to COVID-19.
- (b) An employer shall not discriminate or take adverse action against a worker for a good faith refusal to work if the worker has requested that the employer correct such a condition and the condition remains uncorrected.
- (c) A worker who has refused in good faith to work under such a condition and who has not been reassigned to other work by the employer shall, in addition to retaining a right to continued employment, continue to be paid by the employer for the hours that would have been worked until such time as the employer can demonstrate that the condition has been remedied.
- (d) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or

- Workers should not have to choose between their lives and their paychecks.
- While OSHA rules protect this right on paper, they are weak at best and are largely unenforced.
- It is therefore urgent that states and cities take steps to ensure that workers may refuse to work under dangerous conditions without being subject to retaliation—and that they continue to be paid so long as the dangerous workplace condition remains unremedied.
- This right to be free from retaliation should, like the whistleblower protections detailed above, include a rebuttable presumption that any adverse action taken against an employee or person within 90 days of protected activity is retaliatory.

attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this Act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.



Section 5. State Unemployment Insurance Benefits for Separating from Work Because of Dangerous Conditions

Notwithstanding any other provisions of chapter X [the state Unemployment Insurance law]:

- (a) An individual who has left his or her employment because the individual's employer failed to cure a working condition that made the work environment unsuitable for health or safety reasons has good cause for leaving employment.
- (b) In a public health emergency, an individual shall not be required to prove that a working condition that made the work environment unsuitable for health or safety reasons was unique to the individual or that the risk was not customary to the individual's occupation.
- (c) An individual shall be deemed to have exhausted reasonable alternatives to leaving if the individual or another employee notified the employer of the unsafe or unhealthy working condition and the employer did not cure

- During the COVID crisis, workers may have to quit their jobs to protect themselves or may be fired for refusing to work under dangerous conditions. It is crucial that such workers be deemed to have had “good cause” to quit or have separated from employment through no fault of their own and accordingly be eligible to receive unemployment insurance (UI).
- Such protection will be all the more important as more states and employers begin calling people back to work and given guidance by the U.S. Department of Labor indicating that workers may be disqualified from collecting federal Pandemic Unemployment Assistance if they refuse to return to their prior employment.
- Furthermore, such “good cause quits” under UI should include a worker’s need to quit to care for quarantined or sick family or household members.

it, or if the employer knew or should have had reason to know that the condition made the work environment unsuitable and did not cure it.

- (d) In a public health emergency, an individual shall have good cause for leaving employment if the individual leaves to care for a seriously ill or quarantined family or household member.
- (e) An individual shall have good cause for refusing an offer of employment or re-employment if the employer has not cured any working conditions that makes the work environment unsuitable for health or safety reasons, including but not limited to any conditions that required the workplace to close or reduce operations under COVID-19 public health emergency orders.
- (f) An individual shall have good cause for refusing an offer of employment or re-employment if the conditions of work would require the individual to violate any governmental public health guidance issued during the COVID-19 pandemic or to assume an unreasonable health risk under such guidance, and thus make such work unsuitable.
- (g) An individual shall have good cause for refusing an offer of employment or re-employment if the individual is required to care for a child whose school is closed due to the COVID-19 public health emergency, or if the individual is required to otherwise care for a family or household member due to the COVID-19 public health emergency.

- Finally, unemployed workers who are receiving UI benefits should be allowed to refuse to accept a job with dangerous working conditions—and remain eligible to continue receiving UI after refusing such risky employment.
- States should review their UI rules on these key points and, in the majority of states where they are insufficiently clear, should adopt amendments or guidance clarifying workers’ right to receive UI when they leave a job or refuse to work under such dangerous conditions. We provide model language for clarifying UI coverage under these circumstances.
- Note that all states have laws, regulations or agency decisions that address whether workers can collect unemployment insurance if they “quit” work or were fired for misconduct. Many states will recognize that there is “good cause” for quitting a job if it is clearly unsafe and the worker has made an express effort to raise and address the health and safety threat. However, in many states the burden on the employee can be very high in these cases, making it difficult to qualify for UI. Note that if the worker is fired for “misconduct” for refusing to go to work because it is unsafe, it can be more likely he or she will collect UI because it then becomes the employer’s burden to show that the worker engaged in misconduct.
- States also have decisions defining what constitutes “suitable work” such that an unemployed worker must accept an available job—or else face losing his or her UI benefits. Many states have cases recognizing that jobs posing health and safety threats are not “suitable work.” But they tend to be fairly restrictive, and so many need clarification to ensure that workers do not lose UI benefits for refusing to take dangerous jobs.
- Note also that while permanent reform of state unemployment insurance rules generally requires legislative action, in many states governors can likely adopt temporary modifications to their unemployment insurance rules under their emergency powers (governors in states such as [Michigan](#), [Kentucky](#) and [Georgia](#) have already begun to do so). Cities, however, cannot reform state unemployment insurance systems.



Section 6. Presumption of State Worker's Compensation Coverage for All Workers

For purposes of workers compensation coverage under chapter X [the state workers' compensation law], a worker who contracts COVID-19 is presumed to have an occupational disease arising out of and in the course of employment if the worker is a worker of a health care and emergency responder employer, or a front-line worker, including workers of grocery stores and pharmacies, food beverage, cannabis production and agriculture, organizations that provide charitable and social services, gas stations and businesses needed for transportation, financial institutions, hardware and supplies stores, critical trades, mail, post, shipping, logistics, delivery, and pick-up services, educational institutions, laundry services, restaurants for consumption off-premises, supplies to work from home, supplies for essential businesses and operations, transportation, home-based care and services, residential facilities and shelters, professional services, day care centers, and manufacture, distribution, and supply chain for critical products and industries, media or any other worker deemed to be essential during the COVID-19 crisis.

- Workers' compensation provides a crucial source of health care coverage and income support for sick workers. Importantly, workers' compensation coverage is broadly available to all sick workers, regardless of factors such as immigration status.
- During the COVID-19 crisis, states should ensure that COVID-19 and any associated quarantine are covered by the state workers' compensation program.
- Governors and legislatures in some states are already acting to clarify or expand workers' compensation eligibility for COVID-19 illness through orders issued under their emergency powers, while other states are doing so through legislation. Cities, however, cannot reform state workers' compensation systems.
- This model language is adapted from some of these new workers' compensation reforms that have been implemented in states across the country.
- The best language contains a presumption that all workers who continue to work outside of their homes are covered by workers' compensation if they become sick with COVID-19.
- These changes can be implemented by legislation or governors' executive orders. It would be advisable to have the orders include a requirement for

immediate payment of benefits pending resolution of individual claims (and hold harmless the claimant for benefits paid).

- Illinois' Emergency COVID-19-related workers' compensation amendment is a great model with broad coverage. It contains a rebuttable presumption that any COVID-19 illness is covered:
https://www2.illinois.gov/sites/iwcc/news/Documents/13APR20-Emergency_Amendment_Only-50IAC9030_70.pdf
- Kentucky's governor recently adopted a similar workers' compensation coverage presumption through an executive order issue pursuant to the governor's emergency powers:
https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf
- Washington State's governor took steps to ensure workers' compensation coverage during the COVID crisis for healthcare workers and first responders:
<https://www.governor.wa.gov/news-media/inslee-announces-workers-compensation-coverage-include-quarantined-health-workersfirst>
- Alaska passed new workers' compensation legislation to ensure that COVID-19 illness among health care workers and first responders is presumed to be work-related:
<http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF>
- Here is a summary of workers' compensation action by states since April 2020:
<https://www.iaiaabc.org/Document.asp?MODE=DOWNLOAD&DocID=8395>



Section 7. Enforcement

- (a) **Administrative Enforcement.** The Department shall enforce the requirements of this Act. Either on its own initiative or after receiving a complaint, it shall have the authority to inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of them, the Department shall order relief as authorized in this Section.
- (b) **Private Civil Action.** Where an employer does not comply with any requirement of this Act, an aggrieved worker or other person may bring a civil action in a court of competent jurisdiction within three years of an alleged violation and, upon prevailing, shall be awarded the relief authorized in this section. Pursuing administrative relief shall not be a prerequisite for bringing a civil action.
- (c) **Other Government Enforcement.** The attorney general, a district attorney, or a city or county attorney may also enforce the requirements of this Act, acting in the public interest, including the need to deter future violations. Such law enforcement agencies may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action as provided in Section 7(b).
- (d) **Relief.** In a civil action or administrative proceeding brought to enforce this Act, the court or the Department shall order relief as follows:
- i. For any violation of any provision of this Act:
 - Strong enforcement of these important new protections is crucial for them to be effective. This proposed policy includes key components detailed below that are essential for strong enforcement. For an even more comprehensive model bill detailing the full range of state-of-the-art protections against retaliation, see NELP, *Model Bill to Protect Workers Who Experience Wage Theft from Retaliation* (Sept. 2019) (available from NELP).
 - This proposal provides four distinct avenues for enforcement, to ensure maximum flexibility and empower a range of public and private actors to serve as watch dogs and fill the enforcement gap.
 - First, it authorizes administrative enforcement by the state or local Labor Department—the agency chiefly responsible for implementation and enforcement.
 - Second, it provides for a private right of action which is especially important to enforce worker whistleblower protections and the right to still be paid while refusing to work under dangerous conditions, together with attorney’s fees and other remedies to make it realistic for low-wage workers to hire a lawyer to help them enforce their rights. Given limited government enforcement capacity, a private right of action is crucial for ensuring meaningful enforcement—and is a key gap in OSHA’s enforcement system. Note that, depending on the state, a local government may or may not have authority to create a private right of action or impose other remedies or

- i. An injunction to order compliance with the requirements of this Act and to restrain continued violations, including through a stop-work order or business closure;
 - ii. Payment to a prevailing worker by the employer of reasonable costs, disbursements, and attorney's fees; and
 - iii. Civil penalties payable to the state or city of not less than \$100 per day per worker affected by any noncompliance with the provisions of this chapter.
- ii. For any violation of Sections 3 and 4 of this Act protecting whistleblowers and workers' right to refuse to work under dangerous conditions:
- i. Reinstatement of the worker to the same position held before any adverse personnel action, or to an equivalent position, reinstatement of full fringe benefits and seniority rights, and compensation for unpaid wages, benefits and other remuneration, or front pay in lieu of reinstatement; and
 - ii. Compensatory damages payable to the aggrieved worker equal to the greater of \$5,000 or twice the actual damages, including but not limited to unpaid wages, benefits and other remuneration, as well as punitive damages.

(e) Qui tam enforcement. The relief specified in subdivision (d)(i) of this section may be recovered through a civil action brought on behalf of the Department in a court of competent jurisdiction by a whistleblower, defined herein as a worker, contractor, or employee of a contractor of the employer, or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:

- i. The whistleblower shall give written notice to the Department of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Department within 30 days.

penalties included in this model language. Cities adopting these policies should craft them in light of the range of local enforcement tools authorized for cities in their state.

- Third, it empowers the full range of public enforcement officers, including the Labor Department, the state attorney general, district attorneys, and city and county attorneys, to bring actions to enforce the law. Public enforcement by the full range of law enforcement entities can help fill the enforcement gap left by OSHA's failure to act during the COVID crisis.
- Fourth, it authorizes "qui tam" enforcement to enlist whistleblowers in holding companies accountable, expand limited public enforcement capacity, and ensure that workers who are [blocked by forced arbitration clauses](#) from bringing private suits can play a powerful role in enforcement.
- For remedies, it authorizes the full range of necessary relief.
- Specifically, for violations of the workplace protection standards: injunctive relief, civil penalties payable to the state, and attorneys' fees to make it economically realistic for low-wage workers to find attorneys to represent them.
- For violations of the whistleblower and right-to-refuse to work under dangerous conditions provisions—the above remedies plus the following: reinstatement or "front pay" in lieu of reinstatement; unpaid wages and benefits; and compensatory damages equal to the greater of \$5,000 or twice any unpaid wages, to provide a strong deterrent against employers punishing whistleblowers during this time when public health and safety depend on workers' being able to speak up.

<ul style="list-style-type: none">ii. Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 percent to the Department for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about worker rights under this Act; and 30 percent to the whistleblower or representative organization.iii. The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.	
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