

# Worker Safety & Health During COVID-19 Pandemic: Rights & Resources\*

*NELP is providing this toolkit for workers, their advocates and allies, and policymakers to help ensure that workers are protected. We will update this document as new resources and data become available. Please contact toolkit author Deborah Berkowitz ([dberkowitz@nelp.org](mailto:dberkowitz@nelp.org)) if you require additional assistance.*

## Introduction: Worker Health in Crisis

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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 frontline health care workers and emergency responders, to those working in supermarkets, delivery, pharmacies, factories, transportation, sanitation, and all other essential workplaces, **must be protected** from disease transmission. This in turn will protect the public.

Black and indigenous workers and people of color, including immigrants in tenuous job situations, are at increased risk. So are temp workers, workers in low-wage jobs, retail and service workers, airport workers, maintenance workers, home care workers, meat and poultry processing workers, and workers in the informal economy. Pre-existing racial health disparities only exacerbate the situation.

## How COVID-19 spreads

From the **Centers for Disease Control and Prevention (CDC)** and the relevant literature, we know that COVID-19 is generally thought to be transmitted by respiratory droplets from infected persons, especially when they cough or sneeze. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. People can transmit the virus even if they are not showing any symptoms. CDC also states that people may get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. And there is new data **about airborne transmission**, as well as fecal-oral spread.

## Failure of federal safety and health enforcement

Worker health is in crisis in this pandemic. The federal Occupational Safety and Health Administration (OSHA) is failing in its responsibility to assure that employers keep workers safe on the job during the pandemic. OSHA has not issued any *enforceable* COVID-19-specific requirements on practices and policies that employers must implement to protect workers.

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\* This publication does not provide, and is not intended to provide, legal advice. Individuals should consult a lawyer for advice on any legal matter.

Further, it is not doing any on-site inspections or enforcement when workers reach out to the agency with pleas for help to get their employer to implement procedures to keep them safe during the pandemic.

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 them or ignore them. OSHA has made it clear it is not enforcing these guidelines. Because the federal government has abandoned its role in enforcing protections to safeguard workers in this crisis, workers and their advocates should be turning to state policymakers to adapt the voluntary federal guidance (see below) into state-enforced requirements.

## Voluntary Federal Guidance for Employers to Protect Workers

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Both the [Occupational Safety and Health Administration](#) (OSHA) and the [Centers for Disease Control and Prevention](#) (CDC) have published voluntary guidance for employers on steps they can take to protect workers from COVID-19 transmission. Workers and their advocates should use these guidelines to advocate for strong enforceable protections in the workplace.

### Health care workers and first responders

Health care workers and emergency response workers are the most at risk. Hundreds have already fallen ill, some critically, and some have died. [Spain is reporting](#) that 14% of its COVID-19 cases are health care workers, many of whom were not provided adequate protection. The [University of Washington](#) just released a modeling projection of how many health care workers could die in the United States from this pandemic. The range of deaths could be as low as 21,436 or as high as 277,957.

[OSHA guidelines](#),<sup>1</sup> as well as [CDC guidelines](#),<sup>2</sup> spell out specific recommendations to protect health care workers, including the provision of respirator masks (N95 or more protective versions), gloves, gowns, and face shields, as well as protocols for dealing with infected patients to minimize transmission.

**Protective equipment shortages and weakened guidance.** Because of the [federal government's failure to take timely and effective action](#), there is a shortage of the protective equipment desperately needed to safeguard health care workers and first responders. As a result, the CDC, in an unprecedented move, has relaxed its recommendations on how to protect health care workers. It has gone so far as to recommend that doctors and nurses wear bandanas if there are no masks or respirators available, even though there is no evidence this will provide effective protection for health care workers.

The [National Nurses Union](#), the [American Federation of Teachers](#), [AFSCME](#), the [AFL-CIO](#), the National Education Association, and other labor unions have pushed back against the weakening of federal protective guidance. The weakened guidance appears to be based solely on the critically low supplies of N95s, not on science. But proper respiratory protection is essential to reducing infection. [SEIU found 39 million masks to distribute](#).

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<sup>1</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>

Eventually, it is estimated that some 300 million N95 masks will be needed. For more than a month, advocates have been calling on the Trump administration to invoke the **Defense Production Act** to get the masks produced.

**Other necessary protections.** In addition to providing protective equipment, hospitals **must also implement** the organization of patient care with an emphasis on ill patient identification, clear triage procedures, the use of engineering control and contact barriers, and the provision of rest breaks.

Here are additional key resources, in addition to the CDC and OSHA guidelines above, to use in understanding the necessary protections for health care workers and advocating for stronger and more effective protections:

- [https://www.aft.org/sites/default/files/covid19\\_response-cdc\\_resprotect\\_031320.pdf](https://www.aft.org/sites/default/files/covid19_response-cdc_resprotect_031320.pdf)
- <https://www.nationalnursesunited.org/covid-19>
- <https://www.afscme.org/covid-19/resources>
- <https://www.cdc.gov/niosh/topics/hcwcontrols/recommendedguidanceextuse.html> (extending use of respirators, disinfecting guidelines)
- <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/decontamination-reuse-respirators.html> (more guidelines on disinfecting guidelines)
- <https://www.buzzfeednews.com/article/nidhiprakash/seiu-uhw-masks-coronavirus-ppe>

Some hospitals are finally receiving respirator masks from the Strategic National Stockpile. Many of these respirator masks have expired, but some can be used. **CDC and NIOSH have issued guidance** on which ones are usable.

### Protecting other essential workers

The **CDC**<sup>3</sup> and **OSHA**<sup>4</sup> also have issued general guidance for protecting “all other” essential workers, which includes the following recommendations:

- **Increase physical distancing between people to six feet.** This is the most critical safety guideline for employers to follow to protect workers and the public.
- **Everyone should wear masks.** CDC has just announced new guidelines recommending that the public wear cloth face masks (not N95s or hospital masks—those are for health care workers) in public settings where social distancing (six feet or more) is not always possible to maintain. **CDC guidance from April 3<sup>rd</sup>** 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.”<sup>5</sup> Many workplaces, such as supermarkets where physical distancing is not always possible, are already providing workers with masks and plastic face shields. CDC has published a **guide to the type of mask that CDC recommends**.<sup>6</sup> (As more information is developed on the most effective mask in non-health-care workplaces, NELP will update this section.)
- **Flexibility in where and when to work.** Employers should explore whether they can establish policies and practices such as flexible worksites (e.g., telecommuting) and

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<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

<sup>4</sup> <https://www.osha.gov/Publications/OSHA3990.pdf>

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

flexible work hours (e.g., staggered shifts) to increase the physical distancing among employees and between employees and others.

- **Wash hands frequently.** Employers should promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- **Do not share equipment.** Workers should not use other workers' equipment or work tools.
- **Good housekeeping.** Maintain regular housekeeping practices, including routine and frequent cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.
- **Cleaning and disinfecting facilities after confirmed COVID-19 exposure.** The CDC's [recommendations](#)<sup>7</sup> state that "current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials. It is unknown how long the air inside a room occupied by someone with confirmed COVID-19 remains potentially infectious. This guidance provides recommendations on the cleaning and disinfection of rooms or areas occupied by those with suspected or with confirmed COVID-19. It is aimed at limiting the survival of SARS-CoV-2 in key environments."

### Recommended sick leave policies

CDC also [recommends](#)<sup>8</sup> the following important sick leave policies for employers to protect all workers and the public. The following is directly from CDC guidance:

- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies.
- Maintain flexible policies that permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures.
- Additional flexibilities should include giving advances on future sick leave and allowing employees to donate sick leave to each other.
- Employers who do not currently offer sick leave to some or all employees should draft non-punitive "emergency sick leave" policies.
- Employers should not require a positive COVID-19 test result or a health care provider's note for employees who are sick to validate their illness, qualify for sick leave, or return to work. Health care provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.
- Be aware that some employees may be at [higher risk for serious illness](#),<sup>9</sup> such as [older adults](#)<sup>10</sup> and those with chronic medical conditions. Consider minimizing face-to-face contact between employees or assign work tasks that allow them to maintain six feet of distance from other workers, customers, and visitors, or to telework if possible.
- Employees who have [symptoms](#)<sup>11</sup> (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home.

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<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

<sup>10</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>

- Sick employees should follow **CDC-recommended steps**.<sup>12</sup> Employees should not return to work until the criteria to **discontinue home isolation**<sup>13</sup> are met, in consultation with health care providers and state and local health departments.
- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow **CDC-recommended precautions**.<sup>14</sup>

Here is a good resource for sick leave coverage under the Families First Coronavirus response: <https://www.abetterbalance.org/resources/know-your-rights-the-families-first-coronavirus-response-act-faq/>

## Workers who have been exposed

CDC also has specific recommendations regarding workers who have been exposed at work or at home to COVID-19, and how long they should be quarantined. Here are the guidelines for **health care workers**,<sup>15</sup> and here are the guidelines **for all other workers**.<sup>16</sup>

**Notification when coworker has COVID-19:** **CDC guidelines**<sup>17</sup> state that “[i]f an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). The fellow employees should then self-monitor for **symptoms** (i.e., fever, cough, or shortness of breath).”

## Workplace Safety Rights

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**The Occupational Safety and Health Act of 1970**<sup>18</sup> gave employers the responsibility to provide a safe workplace and created the Occupational Safety and Health Administration (**OSHA**). OSHA is the federal agency in charge of assuring the safety and health of workers in the United States. OSHA **sets and enforces**<sup>19</sup> workplace safety and health standards to keep workers safe on the job. The OSHA law establishes enforceable **workers’ rights**<sup>20</sup>—chief among them is the right to a healthy and safe workplace.

**Some states**<sup>21</sup> may have their own OSHA agency. In that case, the state-run agency, not OSHA, conducts enforcement, but the state agency must provide equivalent or better protection than federal OSHA. OSHA protections cover most private-sector employees and federal workers. Local and state government officials are covered by OSHA protections only in states with state-run OSHA agencies.

## Employer obligations in absence of emergency standard

One of the reasons why worker health is in crisis during this pandemic is because OSHA has not set a specific standard to provide protection to health care workers, first responders, and

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<sup>12</sup> <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>

<sup>14</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html#precautions>

<sup>15</sup> <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/hcp-return-work.html>

<sup>16</sup> <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

<sup>17</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

<sup>18</sup> <https://www.osha.gov/laws-regs/oshact/toc>

<sup>19</sup> [https://www.osha.gov/Publications/all\\_about\\_OSHA.pdf](https://www.osha.gov/Publications/all_about_OSHA.pdf)

<sup>20</sup> <https://www.osha.gov/Publications/osh3021.pdf>. A Spanish version is available at <https://www.osha.gov/Publications/3473workers-rights-spanish.pdf>

<sup>21</sup> <https://www.osha.gov/stateplans>

all other workers from COVID-19 infection. Despite **repeated requests** to the agency from unions, worker rights and public health advocates, and congressional representatives, OSHA has not issued, on an emergency basis, a standard that would set out specific protections for workers during this pandemic. Some members of Congress tried to **pass such a requirement**, but the **American Hospital Association** and the Trump administration opposed any such standard, and the congressional effort was unsuccessful.

Although OSHA does not have a standard with specific provisions to protect workers from COVID-19, all employers covered by OSHA have an obligation to provide a workplace free of recognized hazards that are causing or can cause serious physical harm or death. Further, OSHA has other specific standards that offer some protection to workers, such as a **sanitation standard**<sup>22</sup> that requires that all restrooms be sanitary and that they include hot and cold (or tepid) running water and soap.

### **Lack of OSHA enforcement during pandemic**

In a **startling departure** from previous pandemics, OSHA is not conducting on-site enforcement during this pandemic, even for the most at-risk health care workers and first responders. Fully 10 years ago, during the H1N1 crisis, OSHA made it clear that it would **conduct enforcement**<sup>23</sup> in the health care industry, where workers were at the highest risk. But for this crisis, OSHA is nowhere to be found in terms of enforcing its guidance.

During this COVID-19 pandemic, OSHA's **response to workers** (including health care workers) who contact the agency out of fear for their health is that *it is not conducting any on-site enforcement*.

### **Filing complaints with OSHA**

Workers, however, can still file complaints with OSHA. It is best if the complaint details how the workplace is violating the OSHA and CDC guidelines listed above. The worker, or a representative of the worker (e.g., a union, worker center, legal advocate, or family member), can file a complaint **by phone or through the website**.<sup>24</sup> If OSHA considers the complaint to be valid, assuming the agency follows its **regular procedures**, it should designate the filing as an "informal complaint" and handle it through a phone call and follow-up email to the employer. That means it will contact the employer with the worker's concerns and ask for a reply. It will allow the employer up to five days to respond. The worker or the worker's representative will then receive a copy of the employer response.

OSHA makes it clear that if a worker or organization does not want the employer to know who filed the complaint, it will keep that information **confidential**. We recommend that an organization or another individual (e.g., a union, worker center, or lawyer) file the complaint on behalf of the worker and keep the worker's name confidential.

Complaints can be made by calling OSHA (from 8:30 AM to 4:30 PM EST) at 800-321-7642 or by going through its website ([https://www.osha.gov/workers/file\\_complaint.html](https://www.osha.gov/workers/file_complaint.html)). Complaints can be filed in English or Spanish. If a worker who calls OSHA primarily speaks a

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<sup>22</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>23</sup> [https://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02\\_02-075.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CPL_02_02-075.pdf)

<sup>24</sup> [https://www.osha.gov/workers/file\\_complaint.html](https://www.osha.gov/workers/file_complaint.html)

language other than English, the operator should use a telephonic interpretation service to understand what the worker is saying. It is best if the worker can call with an interpreter.

Although OSHA is not conducting on-site enforcement regarding COVID-19-related health hazards, filing a complaint can lead to changes in the workplace to keep workers safe. If your workplace is not following OSHA or CDC guidelines, you should file a complaint with OSHA.<sup>25</sup>

Workers and their representatives should also contact their local health departments if there is disease spread in their workplace—especially if the employer is not following the CDC and OSHA guidelines.

## The Right to Speak Up: Whistleblower Protections

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### Retaliation protections under OSHA

**Section 11(c)**<sup>26</sup> of the OSHA law prohibits employers from **retaliating against employees**<sup>27</sup> for exercising a variety of rights guaranteed under the OSH Act, such as filing a safety or health complaint with OSHA, raising a health and safety concern with their employers, participating in an OSHA inspection, or reporting a work-related injury or illness. If a worker is discriminated against for raising safety and health concerns, **file an immediate complaint with OSHA**.<sup>28</sup> This must be done within 30 days of the discriminatory act. NELP recommends that a lawyer or organization file the complaint on behalf of a worker.

Caution: It normally takes OSHA more than a year, and closer to two years, to process these retaliation cases, and OSHA has a poor track record of positive findings on behalf of workers. In 2018, for example, OSHA received 1,870 section 11(c) complaints. It found 20 had merit and settled 490 cases; 870 complaints were dismissed and the rest were withdrawn. More information: <http://www.oshlaw.org/wp-content/uploads/2020/02/stand-up-without-fear.pdf>

### Retaliation protections under National Labor Relations Act

Workers who engage in health and safety activities can be protected against employer retaliation under the **National Labor Relations Act**<sup>29</sup> (NLRA) if the health and safety activity is ruled to be “concerted activity.” Concerted activity under the NLRA includes activities engaged in by employees for mutual aid or protection, such as for their health and safety.

The best way to act in a “concerted” manner is to have two or more workers (the more the better!) act together. If employer retaliation occurs against workers engaged in concerted activity, workers may file an unfair-labor-practice charge with the National Labor Relations Board against the employer under **section 8(a)(3)**<sup>30</sup> of the NLRA within 180 days of when the retaliation **occurred**. Because current federal whistleblower protections are very weak, workers and their allies should advocate for policymakers to issue more protective rules.

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<sup>25</sup> If you want, you may send a note about the complaint to [dberkowitz@nelp.org](mailto:dberkowitz@nelp.org).

<sup>26</sup> <https://www.osha.gov/Publications/OSHA3812.pdf>

<sup>27</sup> [https://www.osha.gov/OshDoc/data\\_General\\_Facts/whistleblower\\_rights.pdf](https://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf)

<sup>28</sup> <https://www.osha.gov/whistleblower/WBComplaint.html>

<sup>29</sup> [https://worksafe.org/file\\_download/inline/f722f39a-e4b0-43a9-910a-17df9a9da58b](https://worksafe.org/file_download/inline/f722f39a-e4b0-43a9-910a-17df9a9da58b)

<sup>30</sup> <https://www.nlrb.gov/rights-we-protect/whats-law/employers/discriminating-against-employees-because-their-union>

## Additional Options for Policymakers

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### Coverage under workers' compensation

Advocates should ensure that COVID-19 and any associated quarantine for all workers must be covered by workers' compensation. For example, Washington State Governor Jay Inslee **recently announced** that Washington State is taking steps to ensure workers' compensation protections for health care workers and first responders who are on the front lines battling the COVID-19 pandemic. The Kentucky Employers' Mutual Insurance company also **recently announced** that it will pay wage-replacement benefits to any first responder or medical employee who is quarantined because of direct exposure to anyone diagnosed with COVID-19. Worker organizing efforts to ensure workers' compensation coverage of COVID-19 are underway in **New York** and **Minnesota**, for example.

### Changes to unemployment insurance

**States should clarify that workers** have good cause to quit (and thus be eligible for unemployment insurance) if their employer is forcing them to engage in activity that would jeopardize their health and safety. Furthermore, good cause quits should include work assignments that violate workers' health and safety, and a workers' need to care for quarantined or sick family members.

### Support for all essential personnel

All essential workers should be considered first responders during the pandemic with access to free child care while working, free health care coverage for all COVID-19 treatments, and paid leave for a broad set of reasons related to the pandemic and for caregiving. **Minnesota, Michigan, Massachusetts, and Vermont** have already designated grocery workers as "first responders" similar to health care workers and other essential personnel, which will give them access to free child care.

## Additional Resources

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OSHA has said it will enforce two current specific standards during the COVID-19 pandemic:

- OSHA's sanitation standard, requiring sanitary bathrooms, soap, hot and cold (or warm) water: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>
- OSHA's bloodborne pathogens standard, protecting against waste-contaminated body fluids: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030>

Here are resources and guidance for specific industries from allies and other agencies:

Supermarket, grocery, retail, and food processing workers:

- <https://p2a.co/y4fuVG1> (CA petition to support essential retail workers)
- <http://www.ufcw.org/coronavirus/>
- <http://www.ufcw.org/coronavirus/workers/>
- <https://www.fox5dc.com/news/grocery-stores-add-plexiglass-shields-to-help-fight-coronavirus>
- <https://wnycosh.org/wnycosh-guidance-for-cashiers-in-retail-establishments-during-covid-19-outbreak/>
- <https://sf.eater.com/2020/3/31/21202032/bay-area-shelter-in-place-may-3-coronavirus-social-distance>
- <https://nycosh.org/covid19/>

Health care, emergency response, waste treatment, death care, education, and child care workers:

- <https://www.afscme.org/downloadable-asset/Coronavirus-Industry-Specific-2.28.2020.pdf>
- <https://www.dir.ca.gov/dosh/Coronavirus/COVID-19-Infection-Prevention-in-Childcare-Programs-Guidance.pdf>

Janitorial and other workers:

- <https://www.seiu32bj.org/coronavirus-guidance/>

Warehouse workers:

- [https://actionnetwork.org/petitions/tell-amazon-close-exposed-facilities-and-give-all-workers-100-paid-leave-now?source=direct\\_link](https://actionnetwork.org/petitions/tell-amazon-close-exposed-facilities-and-give-all-workers-100-paid-leave-now?source=direct_link)