

# SHARED CRISIS, SHARED SOLUTIONS

## State and Local Advocacy for an Immigrant-Inclusive Response to the COVID-19 Crisis

APRIL 2020

**T**he COVID-19 public health crisis has affected everyone living and working in the United States, no matter where they were born. The responses to this pandemic must address the needs of all community members, regardless of their immigration status, and it must recognize that federal, state, and local action will all play a role. Congressional action will help millions of people, but the federal laws enacted so far have left many people behind, and they have addressed only some of the ways people’s lives have been upended.

State and local advocates have urged policymakers to tackle the disproportionate harm to low-income communities of color, as the crisis exacerbates inequities based on race, gender, class, and wealth. Well-established organizations and new coalitions have demanded crucial reforms and systemic transformations. When income losses threatened the ability of individuals and families to remain in their homes, advocates worked to get eviction moratoriums and the suspension of rent collection in hard-hit cities. When evidence revealed that people in jails, prisons, and immigrant detention are particularly at risk, advocates demanded that law enforcement and public officials release people from these facilities or advocate for the federal government to do so.

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This report explores immigrant-inclusive economic justice policy opportunities for state and local advocates to pursue in their communities. So far, programs that provide financial assistance have left many immigrants without the support they need to weather this storm. Restrictive federal policies and immigration enforcement actions have thwarted the nation's ability to protect public health. Although every community's health depends on *everyone* in it being healthy, many immigrant families have been unable to obtain necessary COVID-19 testing and care. Finally, as workers, including many immigrants, continue to work during the crisis, inadequate workplace protections place many at risk of becoming sick as they provide services essential to our well-being and survival. Advocates and organizers across the country are taking leadership in building a response that is inclusive of all community members.

## — EMERGENCY FINANCIAL RELIEF —

The economic survival of entire sectors of the U.S. population has been threatened due to loss of work, the need to leave the labor market due to caregiving responsibilities for sick family members or children whose schools or child care facilities have closed, or other economic hardship as a result of the virus. For communities not only to survive but thrive during this pandemic, any relief program must include all affected community members, regardless of where they were born.

Although Congress has taken some important steps, the federal COVID-19 relief programs leave too many low-income people, including immigrants, behind by excluding them from the new unemployment insurance programs and the Economic Impact Payment (recovery rebate).<sup>1</sup> In order to protect our communities' health and well-being, states and localities will have to fill these significant gaps.

States and localities should adopt policies that at a minimum help meet the basic needs of their residents during this crisis. Policymakers have been exploring a range of options, including alternatives to unemployment or wage-replacement programs, disaster relief funds, rental assistance programs, tax credits, and expanding access to existing programs. They have also been exploring ideas for maximizing federal funding, tapping flexible funding streams, establishing public-private partnerships, or generating new revenue to meet these pressing needs. One federal program, the Earned Income Tax Credit, has bipartisan support and a strong record of effectively reducing poverty, yet immigrants who file federal tax returns using an Individual Taxpayer Identification Number (ITIN) are excluded from benefiting from it. Such injustices need to be fixed, and states can lead the way. Now is the time to create bold policies that support the social and economic well-being of every family and empower all of us to make healthy choices.

### Policies

- **Establish disaster response funds to provide financial support to people who, because of loss of work or health problems, need help immediately.** These

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<sup>1</sup> For more information on the exclusions applicable to undocumented immigrants, see *Understanding the Impact of Key Provisions of COVID-19 Relief Bills on Immigrant Communities* (NILC, Apr. 1, 2020), <https://www.nilc.org/issues/economic-support/impact-of-covid19-relief-bills-on-immigrant-communities>.

programs, which provide short-term relief to immigrants who are ineligible for federal programs, may be launched under emergency authority by elected officials, with appropriations by legislatures or local bodies. Advocates and policymakers can also work with private foundations and other nongovernmental funding sources to establish programs. Governments and private funders that have initiated these programs have typically done so in partnership with local community-based organizations that can reach affected households. States can also implement existing emergency assistance programs for this purpose. And some localities have established rental assistance programs focused specifically on helping to keep residents housed.

- Provide wage replacement or other alternatives to unemployment insurance (UI) for those who are ineligible for existing options.** Unemployment insurance provides payments to eligible workers who lose their job through no fault of their own and are looking for work.<sup>2</sup> To receive regular UI benefits, workers must be employment-authorized at the time they file for and receive benefits (the “benefits period”) and must also have been employment-authorized during the “base” period when they were connected to the work force. Undocumented workers are ineligible for these payments.<sup>3</sup> Federal law prohibits states from using their existing UI mechanisms for distributing benefits to ineligible immigrants (even with state dollars). States would need to establish a separate state-funded unemployment or wage replacement system to assist workers who are ineligible for regular UI. Some states already have separate programs, such as state disability insurance programs, that could be used to administer these funds, assuming the qualifying reasons for workers taking leave from work already include or can be amended to address pandemic-related needs for leave.<sup>4</sup> Advocates also are exploring an expansion of existing cash assistance programs that could help sustain low-income workers for a longer period of time.
- Provide free or subsidized childcare to workers in essential industries.** Given school closures and the general unavailability of child care, **health care workers**,<sup>5</sup> **farmworkers**,<sup>6</sup> and other vital workers who are parents of minor children face significant challenges securing stable and affordable child care — yet must still report to work or risk losing their employment. These workers need additional support in order to help meet the demands posed by the pandemic. The states should fund subsidized childcare and elder care for workers in these essential jobs.
- Disaster SNAP (D-SNAP) initiation during a disaster declaration.** During a declared disaster, a state can implement its **D-SNAP program**,<sup>7</sup> which allows for the state

<sup>2</sup> The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted March 27, 2020, provides important expansions to unemployment assistance. The law includes significant enhancements to unemployment insurance and creates a new program to serve independent contractors, gig workers, workers who have exhausted their benefits, and some others who are ineligible for regular UI. Workers who lack federal employment authorization remain ineligible for these programs.

<sup>3</sup> For more information, see Rebecca Smith, *Immigrant Workers’ Eligibility for Unemployment Insurance* (National Employment Law Project, Mar. 31, 2020), <https://www.nelp.org/publication/immigrant-workers-eligibility-unemployment-insurance/>.

<sup>4</sup> Given the difficulty in accessing testing and receiving a conclusive diagnosis of COVID-19, state-funded leave programs should also consider alternative forms of documentation to establish eligibility.

<sup>5</sup> <https://www.sciencedaily.com/releases/2020/04/200404155613.htm>.

<sup>6</sup> [https://lulac.org/covid19/advocacy/Covid19\\_Farmworker\\_Advocates\\_Statement.pdf](https://lulac.org/covid19/advocacy/Covid19_Farmworker_Advocates_Statement.pdf).

<sup>7</sup> <https://frac.org/wp-content/uploads/d-snap-advocates-guide-1.pdf>.

to implement plans for emergency distribution of food or funds for food without immigration status–based restrictions. State and local officials can play pivotal roles in encouraging the state to operate a broad D-SNAP program that does not exclude vulnerable residents. Lack of awareness about D-SNAP has also been an issue in past programs, so state and local officials should also work to publicize their state’s D-SNAP program and educate communities about it.

- **Request Pandemic EBT for students who would be eligible for free or reduced-price meals.** States can obtain federal funds under a new Pandemic Electronic Benefit Transfer (P-EBT) program that provides support for students whose schools are closed and who either receive free or reduced-price meals or whose school provides free meals to all students. P-EBT reimburses the value of free school breakfast and lunch meals by adding funds to an existing EBT card or providing a new **Pandemic Electronic Benefit Transfer (EBT) card** for families who do not currently have EBT cards.<sup>8</sup> However, states need to affirmatively submit plans to the U.S. Department of Agriculture with details about how they would implement P-EBT. States should submit P-EBT plans that address how they will ensure that all residents, regardless of immigration status, will not experience increased food insecurity and hunger simply because their schools are closed.
- **Create or expand state Earned Income Tax Credit (EITC) programs to support all taxpayers, including those who use an Individual Taxpayer Identification Number (ITIN).** The federal Earned Income Tax Credit program is a critical tool with strong bipartisan support and a long track record of lifting families out of poverty. Recognizing the effectiveness of the EITC, 28 states and the District of Columbia have adopted state EITC programs to bolster this support. Unfortunately, both the federal EITC and state-level EITCs exclude millions of immigrant worker taxpayers and members of mixed–immigration status households because they unfairly require that every person in the household, including each child, have a Social Security number. In order to expand the success of the EITC and remove the exclusion of ITIN taxpayers from state and federal anti-poverty and COVID-19 measures, states across the country can join the eight states in which lawmakers currently are seeking to pass immigrant-inclusive EITC bills. Implementing state EITCs that cover all residents and their family members, regardless of immigration status, will go a long way to help states recover from the economic impact of COVID-19 and help reduce poverty in the families of immigrant workers and taxpayers.

## Examples

### Alternatives to Unemployment and Disaster Relief Funds

- **California.** The governor established a **disaster relief fund** with an investment of \$75 million from the state and \$50 million in private funding organized through Grantmakers Concerned with Immigrants and Refugees. The program is designed for undocumented immigrants who are ineligible for federal unemployment and financial relief and provides a one-time cash payment of \$500 per adult, with a cap of \$1,000 per household.<sup>9</sup>

<sup>8</sup> <https://frac.org/wp-content/uploads/pandemic-ebt-040820.pdf>.

<sup>9</sup> <https://www.gov.ca.gov/2020/04/15/governor-newsom-announces-new-initiatives-to-support-california-workers-impacted-by-covid-19/>.

- **Oregon.** The Oregon **Worker Relief Fund** is seeking to replace up to 60 percent of lost wages for Oregonians who, due to their or a family member’s immigration status, are disqualified from receiving unemployment insurance or stimulus benefits.<sup>10</sup>
- **Washington.** A preexisting Disaster Cash Assistance Program has been activated to address the needs of families affected by the COVID-19 crisis. The program offers one month of assistance (in a twelve-month period) to all low-income Washington families and people without children, regardless of their status, who are not eligible for other cash programs.
- **New York City.** The **COVID-19 Immigrant Emergency Fund**,<sup>11</sup> created in partnership with a private foundation, allocates \$20 million to assist up to 20,000 undocumented workers and their families who are affected by COVID-19–related job loss and facing financial distress. The citywide network of community-based organizations and worker centers will disseminate one-time emergency relief payments to eligible New Yorkers at \$400 per person; \$800 per couple or single parent with children and \$1,000 for families with multiple adults and children; or \$1,000 for family with multiple adults and children.
- **Minneapolis.** A **\$5 million emergency response fund** will provide multiple types of relief for city residents, regardless of immigration status.<sup>12</sup> The Emergency Housing Assistance Program provides up to \$1,500 (with a possible extension to \$2,000) for rental assistance and utility payments, and forgivable loans for small businesses, including self-employed people, to cover payroll and other expenses.
- **Boston.** A \$3 million fund was established to assist city residents, regardless of their immigration status, who are at risk of losing rental housing due to COVID-19.
- **Austin.** Local government passed a **resolution** that allocates \$15 million dollars to the city’s Relief in a State Emergency (RISE) Fund.<sup>13</sup> Half the funds will go to social service providers to ensure food access, rental assistance, and other direct relief services. The other half will be distributed by organizations to Austin residents who have financial need and are ineligible for federal relief.
- **Los Angeles.** The “Angeleno Card” is a privately funded program initiated by the mayor that provides \$700-1,500 to low-income city residents regardless of immigration status who have suffered a job loss or severe loss of income due to COVID-19.
- **San Francisco.** The city is considering creating an **Emergency Family Relief Fund** that would provide \$500 to about 5,000 families or residents with children 18 and younger affected by the COVID-19 pandemic who don’t qualify for federal benefits.<sup>14</sup> The fund would be administered by community-based organizations. Various **local groups are raising funds** to provide support to undocumented workers.<sup>15</sup>

<sup>10</sup> <https://www.mrgfoundation.org/oregon-worker-relief-fund/>.

<sup>11</sup> <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.

<sup>12</sup> <http://minneapolismn.gov/coronavirus/gap-funding>.

<sup>13</sup> <https://www.austintexas.gov/edims/document.cfm?id=338266>.

<sup>14</sup> <https://www.ktvu.com/news/san-francisco-supervisors-propose-emergency-family-fund-settles-with-freelance-journalist>.

<sup>15</sup> <https://www.undocufund-sf.org/en/apply/>.

## EITC and Working Families Tax Credit Campaigns

- **New Mexico's HB 148**,<sup>16</sup> which would improve access to and the amount of the Working Families Tax Credit for New Mexico residents, including ITIN-filers, passed the state House of Representatives this year but did not advance further. Similar bills were introduced or are being considered in California, Massachusetts, New Jersey, Washington, and other states. While the ITIN provision of **Oregon's 2019 state EITC expansion** was stripped before the bill was approved,<sup>17</sup> the **original bill** included language that would have benefited all residents,<sup>18</sup> including undocumented tax-filers and Deferred Action for Childhood Arrival (DACA) recipients who've paid taxes but have lost employment authorization.

## Free or Subsidized Child Care

- **New York City.** The city is providing **free child care** for certain frontline workers,<sup>19</sup> staffed by city Department of Education staff and community-based organizations.
- **California.** The governor has issued an **executive order** that prioritizes providing care for the children of workers in essential industries.<sup>20</sup>
- **Colorado.** The governor has **created a program** to help workers in essential industries find child care and to increase pay for staff providing care during the crisis.<sup>21</sup>
- **Massachusetts.** The governor has given **priority access** to emergency child care to the children of families designated as "COVID-19 essential workforces."<sup>22</sup>

## — TESTING AND TREATMENT FOR ALL —

Everyone needs access to health care. The COVID-19 public health crisis has made it abundantly clear that our personal health and well-being are interdependent with those of our neighbors, coworkers, and the community at large. Ensuring the health of immigrants — including access to testing, treatment, and prevention of COVID-19 and other health conditions — protects everyone's health and well-being. Yet the first three COVID-19 relief bills enacted by the federal government support testing for the virus but do not directly fund treatment.

Moreover, many community members are unable to obtain testing through their states' existing health programs, like Medicaid, because these programs exclude residents based on their immigration status. Many immigrants must wait until they have been in the country for at least five years before they become eligible for Medicaid, while others are excluded from the program indefinitely. The Affordable Care Act similarly excludes DACA recipients as well

<sup>16</sup> <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=148&year=20>.

<sup>17</sup> <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB3028>.

<sup>18</sup> <https://www.ocpp.org/media/uploads/documents/2019/20190505-ITIN-one-pager-fnl.pdf>.

<sup>19</sup> <https://www.schools.nyc.gov/enrollment/enrollment-help/regional-enrichment-centers>.

<sup>20</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.4.20-EO-N-45-20.pdf>.

<sup>21</sup> <https://coloradosun.com/2020/03/18/colorado-childcare-frontline-health-care-coronavirus/>.

<sup>22</sup> [https://eeclead.force.com/apex/EEC\\_ChildCareEmergencyProcedure](https://eeclead.force.com/apex/EEC_ChildCareEmergencyProcedure).

as people who are not lawfully present in the U.S. from buying coverage in the ACA health care marketplace or qualifying for subsidies for this coverage.

In this public health crisis, eligibility is not the only hurdle. The federal government has long regarded hospitals and health care facilities as sensitive locations where most forms of immigration enforcement are prohibited,<sup>23</sup> and U.S. Immigrations and Customs Enforcement (ICE) stated recently that it “will not carry out enforcement operations at or near health care facilities” during this pandemic.<sup>24</sup> However, disturbingly, ICE continues to engage in immigration enforcement actions that erode any confidence that immigrants can leave their homes to seek medical care without fearing for their safety. The recently implemented U.S. Department of Homeland Security (DHS) and State Department “public charge” regulations have added to the fear and confusion that prevents immigrants and their family members from seeking services for which they are eligible.

The federal response to COVID-19 has largely failed immigrants. But policymakers at the state and local levels can do more — they can create programs and relief packages that include opportunities for all community members, regardless of where they were born. They can ensure that all residents can be safe if they seek to be tested or to see a doctor.

## Administrative Policy

- Define testing and treatment for symptoms of COVID-19 as emergencies within emergency Medicaid.** Federal law makes emergency Medicaid available to any resident of a state who would otherwise be eligible for comprehensive Medicaid if they had a qualifying immigration status, and states determine which specific health conditions fall within the federal definition of “emergency medical condition.”<sup>25</sup> Given the life-threatening nature of the COVID-19 virus, absence of immediate medical attention clearly meets the “placing a patient’s health in serious jeopardy” criterion or the other criteria for an emergency medical condition under the federal law.
- Use presumptive eligibility to provide testing and treatment through Medicaid.** Under presumptive eligibility, providers can initiate a Medicaid application for a person who appears to be eligible and enroll that person in Medicaid immediately, pending the submission of any documentation required to complete the application. If the documents are not submitted by the last day of the month that follows the month of

<sup>23</sup> The longstanding policy, titled “Enforcement Actions at or Focused on Sensitive Locations,” prohibits immigration enforcement at hospitals unless exigent circumstances exist or prior approval is obtained. See <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>. U.S. Immigration and Customs Enforcement (ICE) also interprets the policy to apply at “[m]edical treatment and health care facilities, such as hospitals, doctors’ offices, accredited health clinics, and emergent or urgent care facilities.” See FAQ on Sensitive Locations and Courthouse Arrests, <https://www.ice.gov/ero/enforcement/sensitive-loc>.

According to the “sensitive locations” policy, ICE may not apprehend, arrest, interview, search, and surveil a person at a sensitive location unless there’s an exigent circumstance. These circumstances are limited to instances where there is an imminent threat related to national security or terrorism, a risk to public safety, or when enforcement action would prevent destruction of evidence related to an ongoing criminal investigation.

<sup>24</sup> Updated ICE Statement on COVID-19 (U.S. Immigration and Customs Enforcement, Mar. 18, 2020), <https://www.ice.gov/news/releases/updated-ice-statement-covid-19#wcm-survey-target-id>.

<sup>25</sup> 42 USC § 1396b (v)(3). Essentially, emergency Medicaid services can be made available to those without qualifying immigration status if they meet the other Medicaid eligibility requirements.

enrollment, the person's Medicaid enrollment is terminated. This allows care to be provided when needed and helps create stability for financially fragile safety-net hospitals and community health centers by compensating them for providing testing and treatment.

- **Take steps to ensure that everyone can feel safe seeking health care to fight the pandemic.** This includes issuing statements to remind families that ICE has declared health care facilities to be safe spaces that remain enforcement-free except under very rare circumstances. States and localities should ensure that in any public facilities, service providers are aware of the “sensitive locations” policies and that staff and patients are aware of their legal rights, including through use of [know-your-rights resources](#).<sup>26</sup>

## Nongovernmental Advocacy

- **Work with all health care providers to ensure safety and accessibility for immigrant patients.** Advocates can reach out to all providers and encourage them to learn about DHS's “sensitive locations” policies and to make them aware of resources such as NILC's “[Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights](#)” to maximize privacy protections for immigrants seeking testing and treatment in their facilities and to create welcoming environments for immigrant patients.<sup>27</sup> Tips and instructions on reporting a violation of the sensitive locations policies are available in NILC's “[Filing Immigration Enforcement Civil Rights Complaints for Violations of the ‘Sensitive Locations’ Policy At or Near Your School](#),”<sup>28</sup> whose tips can apply to non-school settings. Advocates and local officials also can contact NILC about sensitive locations issues by emailing [SafeSpacesAlerts@nilc.org](mailto:SafeSpacesAlerts@nilc.org).

## Examples

- **New York.** The New York Department of Health issued a [Medicaid Update](#) clarifying that coverage of COVID-19 testing, evaluation, and treatment are included under state emergency Medicaid for those whose income is 138 percent or less of the federal poverty level.<sup>29</sup>
- **Washington.** The state's [guidance regarding emergency medical services](#) available to state residents regardless of their immigration status provides that “[t]he assessment and treatment of COVID-19 provided in any outpatient setting, such as office or clinic, telemedicine, online digital or telephonic services is considered a qualifying emergency.”<sup>30</sup>
- **California.** California has implemented the option under the federal relief bill that authorizes testing and testing-related services at 100 percent reimbursement through its Medicaid program (Medi-Cal), to create an “aid code” (eligibility category) for patients to

<sup>26</sup> <https://www.nilc.org/get-involved/community-education-resources/know-your-rights/>.

<sup>27</sup> [https://www.clasp.org/sites/default/files/publications/2018/06/2018\\_sensitivelocationsdetailed.pdf](https://www.clasp.org/sites/default/files/publications/2018/06/2018_sensitivelocationsdetailed.pdf); <https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/>.

<sup>28</sup> <https://www.nilc.org/issues/education/complaint-form-violations-of-sensitive-locations-policy-school/>.

<sup>29</sup> [https://www.health.ny.gov/health\\_care/medicaid/program/update/2020/docs/2020-03-27\\_covid-19\\_reimbursement.pdf](https://www.health.ny.gov/health_care/medicaid/program/update/2020/docs/2020-03-27_covid-19_reimbursement.pdf).

<sup>30</sup> <https://www.hca.wa.gov/assets/free-or-low-cost/aem-covid-19.pdf>.

be **enrolled presumptively**,<sup>31</sup> without regard to income, resources, or immigration status. For immigrants already enrolled in emergency Medicaid, the **state has confirmed** that COVID-19–related testing, diagnosis, and treatment will be covered.<sup>32</sup>

## Resources

- “**The Department of Homeland Security’s ‘Sensitive Locations’ Policies**” (a fact sheet published by the Protecting Immigrant Families (PIF) Campaign).<sup>33</sup>
- **Updated ICE Statement on COVID-19** (U.S. Immigration and Customs Enforcement, Mar. 18, 2020).<sup>34</sup>
- **Public Charge: Alert** (U.S. Citizenship and Immigration Services) — “USCIS encourages all those ... with symptoms that resemble Coronavirus 2019 (COVID-19) (fever, cough, shortness of breath) to seek necessary medical treatment or preventive services. Such treatment or preventive services will not negatively affect any alien as part of a future Public Charge analysis.”<sup>35</sup>

## — WORKING SAFELY DURING AND AFTER THE PANDEMIC —

During the COVID-19 public health crisis, immigrants are providing the services and products most necessary to our society’s well-being and survival, such as health care, home care, food production and distribution, retail, transportation, manufacturing, and agriculture. Current events have clearly shown how the people who work in these industries are the foundation of our economy, not only in times of extreme crisis but in “normal” times as well. They literally keep the country and its communities running.

Although health and safety laws offer protections to all workers, regardless of immigration status, and impose on employers the duty to provide safe and healthful workplaces that are free of known hazards that could harm their employees, the federal government’s chronically inadequate enforcement of these protections is having especially serious consequences now.<sup>36</sup> In addition, advocates are raising alarms that, in a sharp

<sup>31</sup> <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/COVID-19-Presumptive-Eligibility-Program.aspx>.

<sup>32</sup> <https://www.dhcs.ca.gov/Documents/COVID-19/COVID-19-Emergency-Services.pdf>.

<sup>33</sup> [https://www.clasp.org/sites/default/files/publications/2018/06/2018\\_sensitive\\_locations\\_detailed.pdf](https://www.clasp.org/sites/default/files/publications/2018/06/2018_sensitive_locations_detailed.pdf).

<sup>34</sup> <https://www.ice.gov/news/releases/updated-ice-statement-covid-19#wcm-survey-target-id>.

<sup>35</sup> <https://www.uscis.gov/greencard/public-charge>.

<sup>36</sup> Federal OSHA does not currently have standards (legal rules) that specifically address protection from COVID-19 in the workplace. It does, however, have guidance for employers regarding COVID-19. Recent guidance suggests that OSHA will investigate complaints, referrals, and employer-reported fatalities and hospitalizations to identify potentially hazardous occupational exposures and to ensure that employers take prompt actions to mitigate hazards and protect employees. In addition, the guidance states that OSHA will conduct inspections in certain very egregious cases. See OSHA “COVID-19” at <https://www.osha.gov/SLTC/covid-19/> as well as “Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)” at <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>. In approximately half of the states, the state government has its own OSHA agency; these states enforce their own safety and health laws. These 22 states are called “state-

departure from what it has done during previous pandemics and crises, the federal Occupational Safety and Health Administration (OSHA) is refusing to protect workers. They report that the agency is not conducting any COVID-19 related inspections — not even for health care workers at risk.<sup>37</sup> It is crucial, therefore, that states and localities step up and take action to protect all their workers.

Advocates can work with policymakers to maximize protections for workers in their state or locality and to advocate for federal reforms and improved practices by local employers. Any community's survival and ability to thrive depends on the ability of immigrants and others to work safely during this crisis. The pandemic has made clear that the public's health and economic well-being depends on the health and safety of all. For this reason, it is imperative to build structures that will endure beyond this crisis. As all workers, including immigrants, play a vital role in recovery, we will need inclusive and equitable systems that promote health and financial stability for all.

## Administrative Policies

- **Expand health and safety protections for all workers via executive order.** Given the inadequacy of OSHA's enforcement, where necessary, state executives should issue an executive order that prohibits discrimination against workers who communicate concerns related to COVID-19 to their employer or wear personal protective equipment they reasonably believe will protect them, their coworkers, or the public. In addition, the executive order should (1) protect workers who refuse to perform hazardous work if the employment situation presents an imminent danger, (2) designate a state agency for purposes of enforcement and the granting of remedies, and (3) cover all workers regardless of immigration status.
- **Expand health and safety protections for all workers via changes to the state's Illness and Injury Prevention Program.**<sup>38</sup> Currently, 34 U.S. states have established laws or regulations designed to require or encourage injury and illness prevention programs, including 15 states that have mandatory regulations for all or some employers. States could alter the requirements of these programs to include increased worker protections from COVID-19.
- **Vigorously enforce orders requiring nonessential businesses to close, to protect workers' health.** Many employers are refusing to shut down operations,

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plan states." Information on which states are state-plan states can be found at OSHA Frequently Asked Questions, Question 1, What is an OSHA-approved State Plan?, at <https://www.osha.gov/stateplans/faqs>.

<sup>37</sup> For more information on OSHA's inaction and action in U.S. workplaces, see Deborah Berkowitz, "Worker Health Is Public Health," *On Labor*, Mar. 30, 2020, <https://onlabor.org/worker-health-is-public-health/>; Alexia Fernández Campbell, "The Labor Department Won't Take Steps to Protect Health Care Workers from the Coronavirus" (The Center for Public Integrity, Mar. 30, 2020), <https://publicintegrity.org/health/coronavirus-and-inequality/the-labor-department-wont-take-steps-to-protect-health-care-workers-from-the-coronavirus/>; and Peter Whoriskey, Jeff Stein, and Nate Jones, "Thousands of OSHA Complaints Filed Against Companies for Virus Workplace Safety Concerns, Records Show," *Washington Post*, Apr. 16, 2020, <https://www.washingtonpost.com/business/2020/04/16/osha-coronavirus-complaints/>.

<sup>38</sup> For more information on how these programs currently function, see *Injury and Illness Prevention Programs* (OSHA, Jan. 2012), <https://www.osha.gov/dsg/topics/safetyhealth/OSHAwhite-paper-january2012sm.pdf>.

alleging that they meet the definition of an essential business that may remain open during the pandemic, even when that claim strains credulity and workers want to stay home but must come to work or risk losing their jobs. A state's governor or attorney general can establish a hotline for workers to call and seek clarification on stay-at-home orders. For the sake of workers' and their communities' health and safety, states and localities must find ways to vigorously enforce orders requiring nonessential businesses to remain closed, so workers who choose to shelter at home may do so without fear of retaliation or losing their jobs.

- **Use workers compensation and employer death benefits to cover workers who contract COVID-19.** The state's workers compensation commission can adopt emergency rules creating a presumption of COVID-19 as an occupational disease for first responders and frontline workers, and creating an accessible process for medical certification absent widely available testing.<sup>39</sup> Under current standards, to file for workers compensation successfully, in many states a worker would need to prove that they contracted COVID-19 after an exposure at work, the exposure was "peculiar" to the work, and no alternative means of exposure can be shown. This will be a difficult standard to meet, and yet many frontline workers are being infected and dying as a result of exposure to COVID-19 while working. Along the same lines, states and localities can institute or increase "line-of-duty death" benefits for the families of public employees, such as transit workers, who die of COVID-19.

## EXAMPLES

- **California.** The governor issued an [executive order on March 15](#) that establishes health care facilities and home care as priorities for workplace health and safety, and directing relevant state agencies to prioritize technical assistance and enforcement in these work sites.<sup>40</sup>
- **New Jersey.** The governor issued an [executive order on April 8](#) that mandates a series of mitigation measures for essential businesses still permitted to operate, such as the installation of physical barriers between customers and employees, requiring frequent sanitization and maintenance of six feet of distancing, and requiring workers and customers to wear cloth face coverings.<sup>41</sup>
- **New York City.** The New York City Metropolitan Transit Authority will provide a \$500,000 ["line-of-duty death" benefit](#), drawn from the MTA's operating fund, to the families of the many transit workers who have died from COVID-19.<sup>42</sup>
- **New York.** The governor issued an [executive order on April 12](#) requiring employers to provide workers in essential industries with masks.<sup>43</sup> The mayor of Los Angeles [did the](#)

<sup>39</sup> The International Association of Industrial Accident Boards and Commissions (IAIABC) has published a research brief analyzing whether or not contracting COVID-19 is compensable under workers' compensation in various states. *Compensability for COVID-19 Under Workers' Compensation Systems* (IAIABC, Apr. 14, 2020), <https://www.iaiabc.org/Document.asp?MODE=VIEW&DocID=8395>.

<sup>40</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf>.

<sup>41</sup> <https://nj.gov/governor/news/news/562020/approved/20200408e.shtml>.

<sup>42</sup> <https://twitter.com/NYCSpeakerCoJo/status/1250162295398940679?s=20>

<sup>43</sup> <https://www.politico.com/states/new-york/albany/story/2020/04/12/cuomo-orders-employers-to-provide-essential-workers-with-masks-1274925>.

same, and allowed essential businesses to refuse service to customers not wearing masks.<sup>44</sup>

## Legislative Policies

- **Enact a pandemic occupational health and safety law.** States (and, in some cases, cities) can mandate that employers follow the standards currently set out in advisory guidance from OSHA and the Centers for Disease Control regarding controls and practices to limit the spread of COVID-19 and reduce the risk of occupational exposure to the virus, with enforcement through private rights of action if no state occupational safety and health agency exists.<sup>45</sup> California also has a very good infectious disease standard to protect workers in the health care and emergency response industry, which can serve as a model in other states.<sup>46</sup> However, protections — such as social distancing requirements, masks, and more — need to be extended to all other workers required to work during this public health crisis.
- **Enact or expand state laws providing access to paid sick leave and paid family and medical leave.** States should provide universal paid sick leave of at least 14 days per year that is immediately available during the COVID-19 crisis. States must fill in the gaps left by federal pandemic relief legislation by enacting permanent paid sick and family leave mandates so workers can stay home with pay when they are sick or have been exposed to COVID-19 by coworkers or customers and need to self-quarantine. States and localities also must strictly enforce antiretaliation protections on behalf of any workers who take sick leave or who need to isolate or go into self-quarantine, including immigrant workers facing immigration-related threats from their employers.<sup>47</sup>
- **Extend labor protections to farmworkers and domestic workers.** Farmworkers and domestic workers are providing vital labor during this pandemic, but both workforces have been historically **excluded from key federal labor protections**, including the National Labor Relations Act.<sup>48</sup> States should pass bills that ensure that all workers are seen, recognized, and can work with dignity.

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<sup>44</sup> <https://www.cnsnews.com/article/national/susan-jones/los-angeles-mayor-orders-non-medical-workers-customers-wear-face>.

<sup>45</sup> OSHA's Guidance on Preparing Workplaces for COVID-19 can be found at <https://www.osha.gov/Publications/OSHA3990.pdf>. The Centers for Disease Control and Prevention's guidance for businesses and employers can be found at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>.

<sup>46</sup> California's Aerosol Transmissible Diseases standard can be found at <https://www.dir.ca.gov/title8/5199.html>.

<sup>47</sup> A Better Balance has model laws that establish a permanent right to "paid sick and safe time" and cover public health emergencies. *Model Law: Establishing a Permanent Right to Paid Sick and Safe Time that Includes Additional Leave for a Public Health Emergency* (A Better Balance, Mar. 25, 2020), <https://www.abetterbalance.org/resources/model-law-establishing-a-permanent-right-to-paid-sick-and-safe-time-that-includes-additional-leave-for-a-public-health-emergency/>.

<sup>48</sup> <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>.

## Additional Advocacy

- **Work together to demand that federal OSHA or the state health and safety agency issue a specific standard to protect workers from COVID-19.** Elected officials should call on the federal government to get federal OSHA to issue a COVID-19 standard and then vigorously enforce it. For state-plan states, elected leaders should support the creation of new guidance for employers or even the creation of a new COVID-19 standard.<sup>49</sup>
- **Provide information about workers' rights during COVID that is accessible to immigrants.** States and localities should create a centralized, one-stop website with resources for all the most commonly asked questions from workers in vital industries. Public statements should be issued in multiple languages to reiterate that all workers are protected by health and safety laws, regardless of their immigration status.

## Examples

- **California.** In 2013, the state's [Domestic Worker Bill of Rights](#) became law.<sup>50</sup>
- **New York.** In 2019, the [Farm Laborers Fair Labor Practices Act](#) became law.<sup>51</sup> The bill protects farmworkers who organize for better working conditions and creates access to overtime pay.
- [New York City MOIA Office COVID Resources](#) (in multiple languages)<sup>52</sup>
- [Cal/OSHA's COVID Resources](#) <sup>53</sup>
- [Massachusetts Attorney General Frontline Worker Resources](#) <sup>54</sup>

## Resources

- [AFL-CIO Model Language on COVID-19 Executive Order and Preamble](#) <sup>55</sup>
- [Call for Immediate Action for Workers and Communities](#) (Working Partnerships USA) — “Community and labor organizations across California are calling on state and local legislators to pursue six immediate actions to protect workers and vulnerable communities in the COVID-19 crisis.”<sup>56</sup>

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<sup>49</sup> In California, Cal/OSHA has a specific standard for protecting workers exposed to airborne infectious diseases such as the coronavirus. California is the only state with such a standard. See *Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus* (Calif. Dept. of Industrial Relations, Apr. 2020), <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>.

<sup>50</sup> <https://www.dir.ca.gov/dlse/DomesticWorkerBillOfRights.html>.

<sup>51</sup> <https://bit.ly/34YbDP6>.

<sup>52</sup> <https://www1.nyc.gov/site/immigrants/help/city-services/resources-for-immigrant-communities-during-covid-19-pandemic.page>.

<sup>53</sup> <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>.

<sup>54</sup> <https://www.frontlinema.org/>.

<sup>55</sup> To access the AFL-CIO's model language on COVID-19, advocates are encouraged to request the language from their state's labor federation.

<sup>56</sup> <https://bit.ly/3eKywtI>.

- [Frequently Asked Questions: Immigrant Workers’ Rights and COVID-19](#) (National Immigration Law Center, National Employment Law Project, and OSH Law Project) <sup>57</sup>
- [Worker Safety & Health During COVID-19 Pandemic: Rights & Resources](#) (National Employment Law Project) <sup>58</sup>
- [COVID-19 Pandemic Resources](#) (AFL-CIO) <sup>59</sup>
- [COVID-19 Policy Tracker](#) (MultiState) — “This page contains all of MultiState’s resources on the state and local government response to COVID-19/coronavirus. Scroll down to view our dashboard, maps, and other resources for tracking how states and localities are responding to the crisis.”<sup>60</sup>

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<sup>57</sup> <https://www.nilc.org/issues/workersrights/faq-immigrant-workers-rights-and-covid-19/>.

<sup>58</sup> <https://www.nelp.org/publication/worker-safety-health-during-covid-19-pandemic-rights-resources/>.

<sup>59</sup> <https://aflcio.org/covid-19>.

<sup>60</sup> <https://www.multistate.us/pages/covid-19-policy-tracker>.