

## **Testimony of Rebecca Dixon**

National Employment Law Project

# **Examining Liability During the COVID-19 Pandemic**

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## **Hearing before the U.S. Senate**

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## Introduction

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Good morning Chairman Graham, Ranking Member Feinstein, and members of the Committee. I am grateful for the opportunity to testify today. I am Rebecca Dixon, Executive Director of the National Employment Law Project (NELP).

NELP is a nonprofit research, policy, and capacity building organization that for more than 50 years has sought to strengthen protections and build power for workers in the U.S., including people who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural and institutional racism, and to ensure economic security for all.

At NELP, we have long known that worker health *is* public health—and this pandemic has tragically underscored that fact. Since the outset of the COVID-19 crisis, NELP has lent our expertise and advocacy to the cause of those who are out of work and need to access unemployment insurance, and those who are still at work during this dangerous and uncertain time and need the federal government to use its authority to protect their health and safety.

We work with and on behalf of workers, worker centers, unions, and other community-based organizations who are fighting every day to help workers and their families stay safe while earning a paycheck. We have heard from warehouse workers at Amazon and WalMart, poultry and meatpacking workers, Uber drivers, home care workers riding the subway and bus to work, grocery store cashiers and delivery persons, health care workers, food service workers, and people who aren't in frontline jobs, but who worry about COVID-19 spreading because of unsafe workplace conditions. My testimony is based both on NELP's policy expertise and on our direct connections to frontline workers and communities.

I am here today not only to share NELP's expertise on workers' rights and to argue against granting any sort of immunity to businesses as we look to reopen our economy: I am also here channel the voices of the millions of workers who are still on the job and can't be here to share their stories of unsafe working environments. I'm also here in solidarity with the millions of unemployed workers who want to go back to work but who are terrified of the conditions that may await them.

On their behalf, I want this Committee to know that workers' rights are human rights and that workers' right to a healthy and safe workplace must come before profits. We hear so much about the need to reopen the economy, with seemingly little acknowledgement that *people are the economy*. We cannot successfully reopen businesses and public institutions if workers and consumers aren't safe and don't have confidence in their safety. In order to achieve that safety and confidence, workers and consumers must be able to hold employers accountable for unsafe workplaces and other violations of the law. Were Congress to grant employers the immunity that some have long sought, it would create disincentives for even law-abiding employers to protect their workers—producing a race-to-the-bottom for workplace standards—and would cause a health and safety disaster, with new hot spots across sectors and spread across communities.

In this testimony, I will first discuss the ways in which we have heard about far too many employers failing to take adequate safety precautions on behalf of their workers, and how the Occupational Safety and Health Administration (OSHA) has all but abandoned its responsibility to keep workers safe and healthy in this crisis. Next, I will discuss the scarcity of remedies and avenues available to workers who are trying to hold their employers accountable for unsafe working conditions. After demonstrating why the broad immunity employers claim they need is unnecessary and unconscionable, I will conclude by discussing why it is essential that Congress instead focus on strengthening accountability for safe and healthy working conditions for workers across the country.

## **1. Worker Health Is Public Health, and the Failures of Too Many Employers Across the Country to Adequately Protect Their Workers Has Contributed to the Spread of COVID-19**

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Protecting worker health is always central to protecting public health—and prioritizing worker safety has never more important than during this pandemic. All workers, from frontline health care workers and emergency responders, to those working in supermarkets, delivery, pharmacies, factories, transportation, food processing, home care, long-term care, and hospitals, warehouses, sanitation, prisons, and all other open workplaces with direct access to consumers and goods, must be protected from disease transmission at work.

Though all workers either on the job now, or returning to work in the weeks and months to follow, are at risk of illness, Black, and Latinx workers and other workers of color, including immigrants, are more likely to be in frontline jobs and along with Indigenous people, these communities have disproportionate rates of illness and death related to COVID-19.

This stems from many of the consequences of the structural racism that pervades our society. Occupational segregation ensures that workers of color are disproportionately in jobs on the COVID-19 frontlines—and workers in these industries, undervalued as they are, are underpaid and often lack robust or any health benefits, and have few worksite protections. Additionally, due to systemic racism and policy choices that extend far beyond our workplaces, workers of color have a higher likelihood of underlying health conditions which put them at increased risk of death or serious complications should they become infected with COVID-19.

Many public officials and others are calling frontline workers “heroes,” and noting how essential their work is to all of us. Cleaning staff, transportation workers, health care workers, grocery store cashiers, and other frontline workers have always done essential work—and it is good that they are finally receiving widespread recognition. But Congress has a chance to do more—and to truly take action that puts these workers first, rather than granting irresponsible employers’ requests to get off the hook for their safety.

The steps employers should be taking to protect workers are not a mystery. We have known since early March, from the Centers for Disease Control and Prevention (CDC), that the main route of transmission of COVID-19 is through droplets in the air spread by an infected person when that person coughs or sneezes.<sup>1</sup> We have also known since early March 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 eyes.<sup>2</sup>

Soon thereafter, significant evidence began to emerge about the enormous risk of transmission from infected individuals who are pre-symptomatic and asymptomatic.<sup>3</sup> Even though these individuals may have no temperature, no sore throat or any other symptoms, they are extremely contagious and capable of “shedding” high levels of the virus. Based on all we know about transmission, the CDC has issued guidance that all employers should follow in order to protect their workers and the public with whom they interact: Ensure workers are at least six feet apart, have them wear masks, make sure they can regularly wash their hands with soap and warm water, and where that isn’t available have disinfectants on hand that are at least 60% alcohol, and regularly disinfect shared surfaces.

Despite the CDC’s recommendations that employers implement these measures to prevent COVID-19 transmission,<sup>4</sup> too many employers were slow to implement these practices. New survey data collected from about 8,000 service-sector workers between March 7 and April 9 underscores just how little service-sector employers were doing to prevent the spread of COVID-19 in their workplaces.<sup>5</sup>

- In early March, only 20 percent of service workers reported new cleaning procedures at their workplaces. That rose to nearly 60 percent by mid-March, but largely held flat through early April.<sup>6</sup>
- In early March, 20 percent of service workers reported access to gloves. That rose to over 50 percent by late March. But requirements to wear gloves were much slower to come into place, with only about 20 percent of workers required to wear gloves in early April.<sup>7</sup>
- In early March, fewer than 10 percent of service workers reported access to masks. These low levels of mask access continued and only began to rise, to a mere 40 percent of workers, by early April. But even then, just 20 percent reported *requirements* to wear masks.<sup>8</sup>
- Within industries, there are huge variations in how safety practices are being implemented.<sup>9</sup> For example, in the food service sector, 78 percent of Pizza Hut workers reported gloves were available, compared with 36 percent of Chipotle workers. Similarly, among warehouse and fulfillment workers, 90 percent of Costco workers reported gloves were available, but 35 percent of UPS and 51 percent of Amazon workers reported gloves were available.<sup>10</sup>

Today, even though the CDC recommends that the public practice social distancing and wear masks when outside the home, employers are, unbelievably, still not required by the Occupational Safety and Health Administration (OSHA) to follow these guidelines. As a result, too many employers in frontline sectors continue to refuse to offer basic protections to workers. These are not isolated incidents, but a widespread pattern across key industries, with workers reporting lack of safety practices and equipment, retaliation for speaking up about safety issues, and more blatant abuses of workers’ core rights.

According to one analysis released last week by USA Today and the Midwest Center for Investigative Reporting, at least 10,000 coronavirus cases have been linked to meat slaughtering and processing plants.<sup>11</sup> A Food & Environment Reporting Network report tracking cases in meatpacking, poultry, and food processing plants found that over 13,000

workers had tested positive for COVID-19 as of May 8, 2020.<sup>12</sup> Infections spread widely in these industries because companies failed to implement social distancing recommendations, or provide protective masks and face shields to their workers. 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.

We cannot lose sight of the fact that in addition to this being a workers' rights issue, it is also a racial justice issue. Like many frontline industries, meat and poultry is a sector where workers are disproportionately Black people, Latinx people, and immigrants,<sup>13</sup> and employers' failure to ensure workers' safety means that COVID-19 is needlessly spreading throughout communities of color at rapid rates. This is unacceptable. Pursuing racial equity measures would make the industry safer for all workers throughout the supply chain.

Beyond the obvious examples we have all heard about the health care and nursing home industries,<sup>14</sup> there are literally hundreds of examples of employers refusing to implement appropriate health and safety protections in frontline workplaces. Among them:

### **MEAT PROCESSING**

- At a Smithfield Farms pork processing plant in Sioux Falls, South Dakota, more than 1000 workers tested positive for COVID-19, two have died, and an additional 206 cases were linked to the plant. Even though the first plant worker tested positive on March 25, 2020, workers reported that they were not provided any protective gear or hand sanitizer, and that there were no social distancing measures implemented for weeks; instead, workers remained two feet apart on processing lines and were packed into crowded lunchrooms holding 500 employees at a time. Further, the plant created incentives for sick workers to come to work by rewarding those workers who came to all their shifts in April with "responsibility bonuses."<sup>15</sup> As a result, workers continued to get sick and spread the virus into the community, and the plant became the country's biggest coronavirus hotspot, ultimately forcing Smithfield to close the plant on April 15.<sup>16</sup>
- At another plant in Cudahy, Wisconsin, Smithfield Farms refused to provide workers with masks, and reprimanded workers who tried to wear their own masks, threatening them with suspension.<sup>17</sup> Workers reported that there was no hand sanitizer on the production floor, and that the plant refused to implement social distancing on the production line.<sup>18</sup> Workers weren't provided face masks until mid-April.<sup>19</sup> The company partially shuttered the plant for cleaning after at least 28 workers were infected and local news reports exposed the situation.<sup>20</sup> Public health officials later confirmed that at least 85 workers tested positive.<sup>21</sup>
- Similar stories have emerged from a JBS beef plant in Colorado where seven workers have died,<sup>22</sup> Tyson Foods and JBS USA meat processing plants in Nebraska,<sup>23</sup> a Smithfield Foods meat processing plant in Missouri,<sup>24</sup> a Tyson pork plant in Iowa where over 1000 worker are infected and three have died,<sup>25</sup> and many other meat processing facilities.

### **WAREHOUSES AND MANUFACTURING**

- After workers requested better safety and health protections at the Staten Island Amazon warehouse, at least one worker has died of COVID-19, and nearly 30 workers have fallen ill. Amazon responded to workers' complaints by firing one protesting worker.<sup>26</sup> At the Hazleton, Pennsylvania Amazon distribution center, workers estimate more than 70 cases

of employees diagnosed with COVID-19. But Amazon refuses to shut down the Hazleton distribution center for deep cleaning, arguing that it would not be effective to fully disinfect the plant. Nationwide, Amazon refuses to disclose the total number of workers who have tested positive for COVID-19.

- In Memphis, Tennessee, \$9/hour temp workers in a cosmetics and jewelry packing and shipping center were not provided hand soap in the bathroom or personal protective equipment, and the warehouse stayed open and failed to take other precautions even after employees tested positive for coronavirus.<sup>27</sup>
- Two unidentified Utah manufacturing facilities disregarded safety precautions, including by telling employees who tested positive for COVID-19 to report to work before their quarantine periods ended. As a result, at least 68 workers were infected.<sup>28</sup>

### **SANITATION**

- Temped-out New Orleans sanitation workers were fired after asking for health & safety protections, in an eerie echo of the Memphis “I Am A Man” sanitation workers strike visited by the Reverend Martin Luther King, Jr. on the eve of his assassination. The New Orleans contractor brought in prison work release sanitation workers to replace the fired workers, and is paying them less than \$2/ hour to continue the dangerous work.<sup>29</sup>

### **DRIVERS & DELIVERY**

- Uber and Lyft are not providing drivers with PPE, despite orders from the mayor of Los Angeles to do so.<sup>30</sup>
- Postmates, DoorDash, and GrubHub food delivery workers are considered “essential,” but aren’t provided with PPE by their employers, who deem them “independent contractors” and claim they are not responsible for the workers’ safety.<sup>31</sup>

### **GROCERY & RETAIL**

- Two Walmart stores in Massachusetts were shuttered and cited by local public health officials for failing to implement appropriate safety measures, including lack of social distancing and crowd control. In one store, 81 of 391 employees (21 percent) were infected. In the other, 11 employees were infected and one died.<sup>32</sup>
- Costco corporate management is reportedly visiting stores and ordering removal of cones and tape used to keep customers in socially distanced lines, along with other crowd control measures, making it extremely difficult for employees to stay socially distanced inside the store.<sup>33</sup>

## **2. OSHA Has Failed to Protect the Health and Safety of Workers During This Global Pandemic**

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I want to be extremely clear about this next point: Worker illnesses and deaths are tragedies, and many of them were and continue to be *preventable*. Contrary to the talking points of those officials who want to race to reopen businesses, the rates and incidents of illness in workplaces across the country are not all inevitable. To a significant extent, they are the result of specific corporate and policy decisions that put profits over people including:

- Decades of successful lobbying to weaken: Workers’ right to join together in unions and collectively bargain,<sup>34</sup> worker health and safety protections,<sup>35</sup> unemployment insurance,<sup>36</sup> and to fight off core labor rights and protections afforded to employees,<sup>37</sup> including paid sick days and paid leave;<sup>38</sup>

- Deliberate, racist exclusions in core workplace protections,<sup>39</sup> as well as occupational segregation,<sup>40</sup> redlining,<sup>41</sup> and other policy choices that have resulted in higher rates of illness among Black, Indigenous, and Latinx people, and other people of color.

And in this specific time, workers are dealing with:

- Corporations, such as those described above, that failed to implement basic safety practices and to provide proper equipment to keep workers safe from COVID-19;<sup>42</sup>
- Companies that refused to provide workers with paid sick leave so they can afford to stay home when they are sick and not spread the virus to other workers and consumers;<sup>43</sup>
- Employers who either provide financial incentives for sick workers to come to work anyway,<sup>44</sup> or who lobby local doctors to send sick or exposed workers back to work before they are well and past the point of contagion.<sup>45</sup>

The results are far more tragic than we could have imagined. Had we gone into this crisis with the proper policies in place to value workers and their health and safety, and had government agencies and employers acted with more speed to put in place proper protections to mitigate the spread of COVID-19, who knows how much of the rampant illness and death across the country could have been prevented.

No part of the federal government bears more responsibility for worker health and safety than the Occupational Safety and Health Administration. But unfortunately, OSHA has utterly failed in its mandate to protect workers, and by failing, has increased the spread of COVID-19 throughout workplaces across the country.

OSHA has not issued any enforceable COVID-19-specific requirements that employers must follow to protect workers. Despite calls from legislators, labor unions, advocates, and workers across the country, OSHA has failed to issue an enforceable standard with mandatory protections that employers must implement to protect workers from COVID-19. Indeed, the administration has not issued any such standard.<sup>46</sup> And it has failed to enforce any of its or the CDC's voluntary guidance.<sup>47</sup>

Though the agency claims to be actively protecting the rights of workers, and touts the guidance documents it has issued for employers, these are merely voluntary guidelines. One OSHA pamphlet outlining its guidance even includes this disclaimer: "This guidance is not a standard or regulation, and it creates no new legal obligations."<sup>48</sup> These guidelines are therefore completely advisory to employers. Employers can choose to follow them or ignore them. OSHA has made it clear it is not enforcing these guidelines.<sup>49</sup>

The guidelines themselves are written in a manner that signals employers are not required to follow them, by using such terms as employers should "consider" certain practices and follow them "if possible," or "if feasible."<sup>50</sup> Employers can therefore claim they are in compliance with the guidelines, or acting in a manner consistent with the guidelines, even if they do absolutely nothing to protect workers from COVID-19 infection.

Additionally, in a sharp departure from previous pandemics and crises, OSHA has conducted virtually no COVID-19 enforcement—even for health care workers who are at such a high risk of exposure and contagion.<sup>51</sup> OSHA even issued guidance that, for most employers, it will not enforce the requirement that employers record cases of COVID-19 as work-related—*i.e.*,



employers are now relieved of their obligation to determine whether their employees' illnesses are work-related.<sup>52</sup> Secretary of Labor Eugene Scalia has argued that enforcing this requirement would "burden employers and overwhelm OSHA."<sup>53</sup>

Indeed, just yesterday, it was reported that Secretary Scalia, whose mission should be to "foster, promote, and develop the welfare of the wage earners . . . of the United States; and assure work-related benefits and rights," may actually be assisting in efforts to give broad immunity to employers.<sup>54</sup>

This kind of dereliction of duty is unprecedented. Ten years ago, during the H1N1 crisis, OSHA made it clear that it would conduct enforcement actions during a viral outbreak.<sup>55</sup> But in March and for much of April of this year, OSHA's response to workers who contacted the agency because they fear for their health, including health care workers, was to simply send a letter or email to the employer encouraging them to follow the CDC guidance.<sup>56</sup> Though OSHA has received nearly 4,000 complaints concerning protections for workers from COVID-19 at work,<sup>57</sup> to date, OSHA has issued no citations under the General Duty Clause of the OSHA law—which is what OSHA would cite if it was enforcing the CDC guidelines.<sup>58</sup>

OSHA's response has now prompted DOL's Office of Inspector General to initiate an audit of the OSHA whistleblower complaint process.<sup>59</sup>

As workers who have been labeled "essential" continue to work, and as those labeled non-essential begin returning to workplaces, the federal government should be doing all it can to protect them from COVID-19. Federal agencies should require companies to keep workers and consumers safe from COVID-19—and, if needed, give them additional resources to ensure they can purchase adequate supplies of PPE, invest in workplace redesign measures, and take other precautions.

But the opposite is happening. OSHA continues to refuse to issue mandatory guidance for employers. And just last week the administration blocked draft CDC reopening guidance, which it deemed "too prescriptive"—because apparently this administration doesn't believe that our public health agencies should be "telling" corporations how to keep their workers safe.<sup>60</sup>

### **3. Corporate Interests Want Massive Grants of Immunity for Employers, Which Would Further Erode Worker Health and Safety**

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In light of these failures of the Trump administration and many employers to keep workers safe, one would think that what Congress would be focused on remedying the lack of protections for workers from COVID-19. Yet we are this hearing today, talking instead about corporations' demands that this Congress immunize it from any failures to implement protective measures that could prevent workers—and the public—from getting sick from this deadly virus. While I fully acknowledge that many employers are diligently doing whatever they can to protect their workers, as discussed above, there are far too many unscrupulous employers—some of them quite large and with massive workforces—who are putting profits over people and not ensuring workers' safety as they should.



We will hear today that responsible corporations and small businesses alike need immunity from violations of the law in order to reopen the economy. But let's be clear: The driving force behind these proposals are large and often irresponsible employers such as Amazon, Smithfield Foods, and Walmart, and their representatives, such as the Chamber of Commerce, who have long advocated for proposals that weaken protections for workers and accountability on the behalf of employers. They are taking advantage of this global crisis to frighten small and responsible employers who have nothing to fear—and to seek to evade the laws and regulations that save workers' lives and that protect their livelihoods.

Corporations like these and their lobbyists are here today asking Congress for a green light to put their workers in harm's way, even as thousands of people in the U.S. continue to die every single day because of this virus.

#### **4. Workers Already Face Steep Barriers to Holding Employers Accountable to Their Health and Safety**

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OSHA has abandoned its duty to workers. At the same time, decades of attacks by corporations on workers' rights to organize and collectively bargain have resulted in low union-density in the private sector,<sup>61</sup> and a lack of protections for whistleblowers and problem-solvers, among other injustices.

Workers already face extraordinary obstacles to holding their employers accountable, due to the erosion of these rights and the continued exclusion of many workers<sup>62</sup> from their protection, as well as forced arbitration requirements and coercive waivers of workers' rights to participate in class and collective actions. As I discuss below, workers cannot enforce their health and safety rights under OSHA in court, and workers' compensation bars most private rights of action. Yet we are here today because of the claim that corporations will face an onslaught of lawsuits when they reopen. This is a confusing and false notion, as workers and consumers already face incredibly high barriers to holding corporations accountable for violating their health and safety rights.

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. Unlike with many other statutes, workers have no private right of action to sue their employer if they are violating the Occupational Safety and Health Act, including when their employer retaliates against them for raising health and safety concerns.<sup>63</sup> Workers only have an administrative remedy, to file a complaint and request an OSHA inspection. And of the thousands of COVID-19-related complaints that were filed with OSHA by early April, the agency opened few, if any, inspections.<sup>64</sup>

When a worker gets injured at work, or gets ill from occupational exposures at work, or dies on the job, their exclusive remedy is workers' compensation. In 49 states and the District of Columbia, almost all private sector employers must carry some type of workers compensation insurance.<sup>65</sup> The bedrock principle upon which every state workers' compensation system was founded is the no-fault principle: Employers assume

responsibility for providing insurance to cover medical treatment, rehabilitation, partial reimbursement for lost wages, and death benefits for workers injured, made ill, or killed on the job—without regard to fault. Most importantly for the demand for immunity, workers in turn gave up their right to sue their employer for negligence.

Put simply, liability for workplace illness and injuries is already extremely limited—there is not and will not be a wave of tort litigation against employers, given the role of workers’ compensation.

Moreover, the narrow exceptions to the exclusivity of workers’ compensation when an employee proves that the employer committed an intentional tort are difficult to win. And the attorneys who consider taking these cases largely do so on a contingency basis, risking pay unless they prevail.

Given this landscape, it’s not surprising that recent attempts by workers to seek equitable relief in the courts have failed in this challenging legal environment. In one notable case, Smithfield Foods meat processing workers in Missouri sought not any monetary damages, but rather an injunction under the state’s common-law public nuisance doctrine to get their employer to provide masks, ensure social distancing, give employees an opportunity to wash their hands while on the line, provide tissues, change its leave policy to discourage individuals to show up to work when they have symptoms, and give workers access to COVID-19 testing.

They sued to enforce all the recommendations of the CDC and OSHA, but that neither agency will require or enforce. Nevertheless, just last week, the federal court dismissed that case at the outset, finding that OSHA was “better positioned to make these determinations.”<sup>66</sup> What are the workers to do? They can’t sue their employers for the gross dereliction of duty, because OSHA is best positioned to protect them, yet OSHA isn’t protecting them and has issued no binding guidance on any employer. This case demonstrates the incredibly high bar that workers face in bringing these types of lawsuits—and why corporations’ alleged fears of a “tidal wave” of such cases are simply unfounded.

It is also worth noting that even though this case was dismissed, the mere fact that it was brought has resulted in Smithfield taking many actions to better protect its workers. For example, Smithfield posted signs noting that everyone was required to wear masks and supervisors were to enforce the policy; it added an additional tent area for lunchtime and modified its clocking in and out procedures to allow for social distancing; it reduced the number of hogs being slaughtered in order to rotate teams and increase social distancing; it reinforced previously flimsy plexiglass barriers between workers on the slaughter line and adjusted them to make sure that workers faces were covered; it began allowing workers to take paid sick leave upon showing symptoms of illness, rather than requiring them to wait for a diagnosis; and eliminated a policy that would deny “responsibility bonuses” to workers who took sick leave.<sup>67</sup>

**Even where workers have a private right of action, the doors to the courthouse are too often blocked.**

When there is a private right of action, workers face broader systemic barriers to bringing lawsuits against their employers in the first place: Company-imposed forced arbitration

requirements and class and collective action waivers that keep claims out of court and in secret.

Far too few workers are aware that they have lost the important right to bring their claims before a judge and jury. But at least 56% of all private-sector non-union employees are currently subject to forced arbitration, including 64.5% of workers earning less than \$13 per hour.<sup>68</sup> Making this even worse, class/collective action waivers are routinely incorporated into forced arbitration requirements. These waivers prevent employees from banding together with their colleagues to challenge employer lawbreaking, whether in court or in arbitration. By 2024, it is projected that 80% of all private-sector non-union employees will be subject to forced arbitration requirements and class/collective action waivers.<sup>69</sup>

As if the lack of a private right of action and the exclusivity of workers' compensation as a "no fault" remedy wasn't enough to protect employers, company-imposed forced arbitration requirements and class/collective action waivers effectively prevent most private-sector workers from publicly seeking accountability for any of their employers' pandemic-related practices. For these workers, the courthouse doors have already been slammed shut—and this injustice too impacts workers of color disproportionately.<sup>70</sup>

## **5. Employers Also Want Immunity From a Wide Range of Critical Workplace Protections**

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While those testifying in this hearing may claim they are primarily focused on preventing workers and consumers who get sick from suing them, we need to be clear that the trade associations who lobby for employers, including the Chamber of Commerce, the Restaurant Association of America, and the National Federation of Independent Businesses, are pushing for legal immunity from a wide range of core worker protections.

The immunity sought by these associations and employer-side attorneys would extend to violations of workers' rights to minimum wage, overtime, and the right to not work "off the clock," protections against disability discrimination, the right to take paid sick days and paid leave under either state laws or the Families First Coronavirus Response Act, and other core rights. This would open workers up to further exploitation at the hands of their employers. The U.S. Chamber of Commerce released a blueprint which lays out, in detail, the immunity it wants for this country's employers, and it is expansive.<sup>71</sup> Among its proposals are demands for "safe harbors" for employers whose "temporary policy changes" violate federal and wage-and-hour laws, paid leave laws, workers' compensation laws, antidiscrimination laws, and more.

The proposed "safe harbor" from wage-and-hour laws is particularly offensive. The Chamber appears to be seeking the right for corporations to avoid paying employees whose work is now deemed "essential" for their work time—including time they must spend on activities for their own personal protection. This should come as no surprise, as major corporations, such as Tyson Foods, have for years sharply limited employees' ability to even take bathroom breaks.<sup>72</sup> It now appears that some corporations want the right to avoid paying their workers for time they spend washing their hands, or putting on masks and gloves, or undergoing screening to prevent the spread of the virus.

## **6. The Path Forward Is Not Immunity. Congress Should Instead Join Forces With Workers and Responsible Businesses and Focus on Creating Incentives and Enforceable Standards for Companies to Protect Workers**

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Workers are not passively accepting the dangerous conditions to which they have been subjected these past few months. Workers in poultry plants in Georgia walked off the job, protesting the lack of care for their health and safety.<sup>73</sup> Amazon workers have walked out in numerous locations to protest unsafe conditions,<sup>74</sup> as have nursing home workers,<sup>75</sup> and factory workers,<sup>76</sup> just to name a few. On May 1, workers from Amazon, Target, Instacart, and Whole Foods engaged in a massive strike, again to raise concerns over the lack of care for their health and safety.<sup>77</sup>

Recognizing how fearlessly workers are fighting to protect themselves, and how essential their health and safety is to community health and safety, now is the time for Congress to join together with workers and demand a just recovery from this pandemic that lifts up all people, particularly the Black, Indigenous, and Latinx people and others who are suffering such devastating consequences of COVID-19.

Moreover, if Congress wants to help businesses, particularly small businesses, it can best do so by demanding that OSHA do its job. Congress should pass the Every Worker Protection Act of 2020, and mandate that OSHA issue strong, clear, and enforceable standards that employers must follow to protect workers from exposure to COVID-19. This action would give workers a much-needed tool to hold employers accountable and give employers an equally needed tool to know exactly how to best protect their workers and consumers.

### **Conclusion**

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I wish to emphasize once more that workplaces are one of the major places where people have been exposed to COVID-19 and as businesses reopen, the risk of exposure can grow. Even absent this global pandemic, it is an employer's responsibility to ensure that its workplace is safe, and now that the stakes are so much higher, Congress should not take any actions that would lessen that responsibility in the least.

Irresponsible employers' failure to implement basic safety protections has led to the virus spreading faster in our communities at large, and particularly in Black, Latinx, and Indigenous communities, and other communities of color, including immigrant communities.

Congress should be leading the charge to ensure that we get through this crisis with an eye toward helping those most impacted by the devastating consequences of COVID-19, and by giving responsible employers everywhere the tools they need to protect their workers and their customers. Broad grants of immunity for unsafe conditions won't just hurt workers, but they will further hinder any meaningful economic recovery because they will fail to stop the

spread of disease and destroy consumer confidence to resume normal economic activity for fear of their own health and well-being.

Many public officials are rightfully praising the frontline workers who are doing work on which we all rely during this crisis. But to truly honor frontline workers, Congress must help ensure workers are safe from needless risk of infection, rather than giving irresponsible employers a pass to put workers in harm's way. Our interconnectedness as a society has never been clearer. That means that, as ever, if we focus on helping the most vulnerable in our country weather these dangerous times, we will lift the conditions of everyone, and create the most vibrant nation and economy possible.

## Endnotes

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