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Work and Wages/COVID-19

Keeping Ohioans safe from COVID-19 at work

Protect workers and the public with statewide workplace safety guidelines

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Introduction

All people working during the COVID-19 pandemic deserve a safe workplace, and protecting workers is a vital element of ensuring public health. The federal Occupational Safety and Health Administration (OSHA) has failed to issue workplace safety mandates specifically aimed to protect workers against COVID-19. Without federal leadership, Ohio's policymakers must act to protect workers and all Ohioans.

As of this writing, more than 116,000 Ohioans have contracted and some 4,000 have died from COVID-19.¹ New daily case counts surged from mid-June through July and only began a jagged descent following Gov. DeWine's statewide mask mandate.² New cases for the first week of August trailed April and July peaks but still averaged more than 1,000 a day. While more than 500,000 Ohioans remained displaced from their jobs through June—most because of either the health risks of COVID-19 or the recession it has caused—more than 5 million Ohioans have returned to work, or never left at all. They include health care workers (789,000 working as of July), retail workers (526,000), and many other workers in close contact with the public.³ Restoring vibrancy to the economy means protecting Ohioans' health. This means protecting workers on the job.

Coronavirus clusters are forming at some Ohio workplaces. In Clark County, 281 Dole Vegetables food workers tested COVID-positive.⁴ At least 323 cases of COVID-19 were linked to outbreaks in seven meatpacking plants in Columbiana, Holmes, Stark and Wayne counties, leading to 31 hospitalizations and three deaths.⁵ More than 90 staff and residents at a Newark nursing home were infected and 11 residents died.⁶ In Montgomery County, nearly 200 cases were linked to 13 workplaces in June.⁷ School reopenings present new risk for students and teachers: OSU confirmed positive cases among 80 students and 12 faculty when it conducted testing as part of a mandate that students and professors return for on-site classes.⁸

Frontline workers deserve respect

When Gov. DeWine issued his public health order closing many Ohio businesses this March, the only Ohioans who could stay on the job were those who could work from home or

¹ COVID-19 Dashboard, Ohio Department of Health, <https://coronavirus.ohio.gov/wps/portal/gov/COVID-19/dashboards/overview>, retrieved August 26, 2020.

² Effective beginning July 23, 2020. Micah Karr, "Ohio's mask mandate takes effect: What are the rules?" Journal-News of Butler County, <https://bit.ly/2YKlrub>, July 26, 2020.

³ "Current Employment Statistics by industry sector, July 2020, seasonally adjusted," Ohio Department of Job and Family Services Labor Market Information, retrieved August 25, 2020, <https://bit.ly/2YGto7J>.

⁴ Riley Newton, "Coronavirus: Clark County Workplace Outbreaks Start to Stabilize," Springfield News Sun, <https://bit.ly/2EqExPe>, June 26, 2020.

⁵ Alexander Thompson, "COVID Outbreaks at Ohio Meatpacking Plants Hit Immigrants Extra Hard," Columbus Dispatch, <https://bit.ly/3araOfG>, August 11, 2020.

⁶ Kelli Dugan, "Coronavirus outbreak at Ohio nursing home kills 11, infects more than 90 residents, employees," KIRO7, <https://bit.ly/2YE1C7K>, July 23, 2020.

⁷ Jen Balduf, "Nearly 200 cases linked to clusters, Public Health says," Dayton Daily News, June 18, 2020, <https://bit.ly/32Fa202>.

⁸ Nick Evans, "Ohio State finds nearly 100 coronavirus cases during back-to-school testing," WOSU, August 25, 2020, <https://radio.wosu.org/post/ohio-state-finds-nearly-100-coronavirus-cases-during-back-school-testing#stream/0>.



otherwise without contact with others, and those providing goods and services deemed “essential.” The governor’s order contained a long list of critical infrastructure tasks and gave businesses wide discretion to self-designate as “essential.”⁹ It stopped short of designating working people themselves as essential. Fellow Ohioans celebrated working people on the frontline as heroes, but many essential workers cope with poor pay and working conditions, and lack basic safeguards like paid sick leave.

Now as Ohio businesses have reopened and schools and universities begin to join them, many more workers will need workplace protections. As we move to restart the economy, we must put people ahead of profits and ensure that Ohioans resuming work can do so safely.

Workplaces are potential sites of COVID-19 transmission which have already caused outbreaks in Ohio. Ohio has implemented some guidelines, but the key shortfalls are in enforcement and economic supports that will enable workers and businesses to comply.

Mandates, enforcement and support

Protecting working people on the job entails three critical components: implementing appropriate workplace safety mandates, enforcing them, and establishing the financial supports that enable employers and workers to meet the guidelines. State policymakers have extensive power to take steps on all of these, and should call on the federal government for financial supports where they’re needed. Local governments can take enforcement and public education measures.

Ohio has some wise mandates, such as the statewide mask mandate and social distancing protocols, but improvements are needed in enforcement. Ohio’s reliance on individual owners and corporations to just “do the right thing” leaves workers exposed if their employers do not. Fair enforcement requires real capacity, and enough public supports that workers can comply without losing pay. Empowering workers can enhance state and local enforcement capacity. State lawmakers should pass paid sick leave policies to make sure workers can stay home when sick, and robust unemployment policies to protect workers at high risk.

Workplace safety mandates

OSHA has failed to implement mandates to protect workers from COVID-19 on the job, and by extension failed to protect workers’ families, business customers and the general public. On June 11, the Court of Appeals for the D.C. Circuit denied a petition by the AFL-CIO to

⁹ Ohio Department of Health, “Director’s Stay-At-Home Order,” <https://bit.ly/2EEdqig>, March 22, 2020.

compel OSHA to take action.¹⁰ In the absence of federal rules, Ohio must implement workplace safety mandates and enforcement to protect Ohioans from COVID-19.

Ohio is among 28 states in which workplace safety oversight falls under federal OSHA jurisdiction.¹¹ Federal OSHA law specifically affirms the right of state governments to implement and enforce workplace safety protections on matters in which OSHA has not established rules.¹² Because OSHA has not mandated workplace safety protections against COVID-19, Ohio is empowered to issue its own mandates, without the need for a state OSHA plan. Ohio should pass the workplace safety guidelines outlined below to protect workers against COVID-19 through legislation or executive order.

The National Employment Law Project (NELP) recommends state and local governments adopt workplace safety mandates based on industry type.¹³ Workplaces are categorized as either Health Care and Emergency Response Employers, or Employers in Other Sectors, with distinct policy recommendations for each. NELP recommends states mandate that:

- 1) Health Care and Emergency Response Employers must comply with the precautions mandated by the California OSHA Aerosol Transmissible Diseases standard.¹⁴
- 2) Employers in other sectors must comply with social distancing; use of face masks, provided free by employers; hand sanitizing, hand washing, and gloves; regular disinfection; increase ventilation; deep cleaning after confirmed cases; notification of workers who have come into contact with an infected person.

Ohio policymakers have implemented some of these guidelines as either mandates or recommendations. All should be required. Notably Ohio does not require firms to notify workers if they have been in contact with an infected person. Policymakers should correct this omission by requiring all employers to notify public health departments of known cases and tasking the departments with such notification for all workers.

The recommended standards draw on guidance issued by the Centers for Disease Control and Prevention and OSHA for employers on how to protect all other essential workers. The DeWine administration should make these standards mandatory for all employers and include enforcement mechanisms. If it does not, the General Assembly should implement these rules by statute.

Responsible Restart

The Ohio Department of Health's (ODH) "Responsible Restart" plan has established mandatory rules and recommended guidance for business reopening starting in May, when businesses closed by Gov. DeWine's stay-at-home order began to be allowed to reopen, and updated them periodically. The plan includes industry-specific guidance. It leaves gaps in workplace safety measures, but some have since been covered by other health mandates.

¹⁰ U.S. Court of Appeals for the D.C. Circuit, USCA Case #20-1158 Document #1846700, June 11, 2020, <https://bit.ly/2EN6Re4>.

¹¹ Under the 1970 Occupational Safety and Health Act which established OSHA, states would fall under federal OSHA jurisdiction by default, or could opt to establish their own Administration with approval by federal OSHA. There are 22 states with their own state plan covering all state workers, and an additional six states with plans that cover only public sector workers and leave the private sector to federal jurisdiction. See USDOL, OSHA, State Plans, <https://www.osha.gov/stateplans>.

¹² See 29 USC 667(a) of the OSHA Act.

¹³ Deborah Berkowitz and Paul Sonn, "Protecting Worker Safety and health in the COVID crisis: A state and local model policy response, April 23,2020, <https://bit.ly/2D6wOoC>.

¹⁴ California Department of Industrial Relations <https://www.dir.ca.gov/title8/5199.html>.

General workplace guidelines

Workplace protocols generally require the use of six-foot social distancing for workers and customers “where possible.” Barriers are encouraged or required if not. Masks are generally required for employees but are not mandated for customers.¹⁵ A separate order requires all Ohioans age 10-plus to wear a mask in indoor public spaces, with some exceptions including for eating or playing a sport.¹⁶ Employers are required to notify public health authorities of a known outbreak. Employees must stay home if symptomatic.

ODH should make mandatory its recommendations that employers collaborate with public health authorities in contact tracing. Public health departments should notify employees of COVID-19 cases in their workplace.

Sector-specific mandates

- **Health care providers:** Ohio’s plan for health care providers includes mandates and procedures for providers, and state commitments to support the industry by establishing a PPE stockpile, acquiring tests, and conducting contact tracing through county health departments. These commitments are good, but they are geared toward mobilizing the state’s health care network to fight the pandemic. Health care workers need and deserve specific protections too. Nationally, health care providers comprise one-fifth of known coronavirus cases and more than 900 health care providers have died of COVID-19 as of this writing.¹⁷
- **Child care centers** were allowed to return to normal staff-child ratios beginning August 9. The state has recommended that centers continue to follow the smaller ratios formerly mandated under the now-expired executive order. To comply with these guidelines, centers will need substantial public supports, since programs typically operate on thin margins. Nationally, programs need \$50 billion in funding, and Ohio should allocate \$60 million in existing COVID funding to centers.¹⁸ Without such support, Ohio could lose 204,000 child care slots, according to estimates by the Center for American Progress.¹⁹
- **Retail establishments** must create social distancing space for employees and the public, including posted signage, barriers where six-foot distancing is not possible, and reduced maximum occupancy.
- **Manufacturing, distribution and construction employers** must implement six feet of social distancing or install barriers where not possible. Guidelines recommend but do not require reductions in production if needed to comply with these guidelines. These guidelines should be strengthened to clarify that social distancing rules must take precedence over production.

¹⁵ Responsible RestartOhio, “Consumer, retail, services and entertainment,” Ohio Department of Health, <https://bit.ly/3lusaSA>.

¹⁶ Ohio Department of Health, “Governor DeWine issues statewide mask order, travel warning,” July 22, 2020, <https://bit.ly/34GaLJz>.

¹⁷ Lydia Zuraw, “Lost on the Frontline,” Kaiser Health News and The Guardian, August 10, 2020, <https://bit.ly/3ih9vb4>.

¹⁸ Will Petrik, “Bolster support for childcare to stabilize Ohio,” Policy Matters Ohio, July 9, 2020, <https://bit.ly/3eeaa0Qn>.

¹⁹ Jessen-Howard, Steven and Simon Workman, “Coronavirus Pandemic Could Lead to Permanent Loss of Nearly 4.5 Million Child Care Slots,” Center for American Progress, April 24, 2020, <https://ampr.gs/3ihm1km>.

Paid time off

To gain control of the spread of COVID-19, policymakers must enable workers to stay home when they are sick. Too often workers are forced to choose between losing pay or going to work sick. Other times employers themselves force workers to work while sick, thus exposing all their co-workers and any clients they serve to possible transmission.

Working Ohioans must have the means to stay home when sick. The federal Families First Coronavirus Response Act provides some protections, but limits use for the employee or a dependent's illness to 10 days and exempts many employers, including health care employers, corporations with over 500 workers, and small businesses that claim a hardship (though the mandate is federally funded). The exemption for large employers leaves out many of the workers most exposed and with the fewest resources to be able to forego pay if they must miss work: 98% of workers at general merchandise stores and 72% of pharmacy workers.²⁰ The federal rule expires December 31 of this year. The Ohio General Assembly should enhance and retain supports by passing an Emergency Paid Sick Days measure that requires all Ohio employers provide 14 days of paid sick leave, available immediately and at the beginning of any subsequent public health emergency.²¹ The legislature should also mandate that employees be allowed to accrue up to seven paid sick days annually for regular use.

Workers at heightened risk should not be forced back on the job

The Kaiser Family Foundation has estimated that nearly one in four US workers is at heightened risk of severe complications or death from COVID-19 due to their age or other pre-existing health conditions.²² These workers should not be forced to work in settings that might expose them COVID-19 transmission. Ohio has affirmed that a preexisting health condition is "just cause" to refuse such work without jeopardizing their unemployment compensation. This is good policy. It should be backed by steps from the Ohio General Assembly to strengthen UC availability, and a renewed federal commitment to the now-expired Pandemic Unemployment Compensation that provided displaced workers a \$600 weekly supplement to their regular state UC.

Empower workers

Ohio policymakers have dedicated far too few resources to protecting working people on the job. Ohio's staff of five wage and hour enforcement officers plus a supervisor for a pre-COVID workforce of nearly 6 million is stretched too thin. Before the pandemic, wage and hour staff

²⁰ Kathleen Romig and Kathleen Bryant, "Commentary: Policymakers should expand emergency paid leave in next coronavirus package," Center on Budget and Policy Priorities, April 20, 2020, <https://bit.ly/2D5WJg7>.

²¹ Michael Shields, "Four essential policies to sustain Ohio's working people through the pandemic," Policy Matters Ohio, May 1, 2020, <https://bit.ly/3d5q8U1>.

²² Gary Claxton, Larry Levitt, Rachel Garfield, Raban Kamal, Tricia Neuman, Jennifer Kates, Josh Michaud, Wyatt Koma and Matthew Rae, "Almost one in four adult workers is vulnerable to severe illness from COVID-19," Kaiser Family Foundation, June 15, 2020, <https://bit.ly/2ENiyWj>.

couldn't adequately enforce laws that stop employers from stealing wages from their employees.²³ During the pandemic, the small staff will be hard-pressed to protect all working Ohioans from employer negligence.

Officials in Los Angeles County are addressing the enforcement challenge by empowering workers and labor unions to act as safety monitors.²⁴ Recognizing that fear of retaliation is a key reason workers keep quiet about employer abuses in other contexts, LA County officials created formal safety-monitoring structures by allowing workers and unions to form councils that are certified by the Public Health Department. The county will prioritize certifications for councils in high-risk industries such as the garment, hospitality, janitorial and food service industries.

Ohio policymakers should pursue something similar statewide. The Cincinnati Interfaith Workers Center provides COVID-19 safety training.²⁵ Their model could be shared with other worker organizations. State officials can tap unions and worker centers as monitors.

Granting employers broad immunity puts workers and the public at risk

The Ohio legislature is considering granting civil immunity to employers when workers or others contract COVID-19 while on the job. Granting immunity to businesses eliminates legal penalties for risky behavior by employers and prioritizes the financial protection of businesses over people's health and safety. If they cannot be held liable, some employers may shirk public safety guidelines and expose their workers to unnecessary risk. Some will forego the use of PPE for themselves and refuse to give safety gear to their staff, or force workers into unsafe proximity where they are unable to social distance. Some may demand that workers come to work sick, or refuse paid sick time. Others challenge UC claims by at-risk workers who should be sheltering at home.

Some Ohio businesses have already signaled unwillingness to voluntarily comply with workplace safety measures. While Ohio remained under Gov. DeWine's since-lifted public health order limiting business activity to essential services, county health departments across the state were inundated with complaints of Ohio businesses remaining open in defiance of those orders.²⁶ By April 2, Montgomery County health officials had 216 open investigations and shut down a dozen businesses.²⁷ Cuyahoga County received 1,500 complaints by March 30.²⁸ If a business is willing to flout a governor's order when verifying the violation is so cut-and-dried, there is serious concern about employers disregarding other health and safety guidelines. Granting them immunity would greatly exacerbate this risk.

²³ Michael Shields, "Some Ohioans at greater risk of wage theft," Policy Matters Ohio, September 25, 2019,

<https://bit.ly/WageTheftDisparity>.

²⁴ Tom Tapp, "Los Angeles Coronavirus update: County Supervisors vote to empower employees, unions in creating "health councils" to report businesses in violation of COVID orders," Deadline, July 21, 2020, <https://bit.ly/2YJwdRs>.

²⁵ Brennan Grayson, "Essential workers are working in a biohazard and need proper training, May 6, 2020,

<https://bit.ly/34MZCv5>.

²⁶ Chris Stewart, "Coronavirus: 270 sites investigated for flouting health order" Dayton Daily News, April 1, 2020,

<https://bit.ly/34DnW5n>.

²⁷ Kelly Stobie, "216 businesses under review by Public Health for compliance under stay at home order," April 2, 2020,

<https://bit.ly/32BG2Sm>.

²⁸ Talia Naquin, "Cuyahoga County investigating hundreds of complaints of non-essential businesses," Fox 8, March 30, 2020,

<https://fox8.com/news/coronavirus/cuyahoga-county-investigating-hundreds-of-complaints-of-non-essential-businesses/>.

Ohio has too little capacity to enforce workplace safety. State policymakers should affirm a private right-of-action for workers whose employers put them at risk by failing to comply with health and safety guidelines to limit the spread of the coronavirus.

Recommendations & conclusion

Restoring vibrancy to Ohio's economy means keeping people safe and healthy. Workplaces are a vital component of that. Ohio policymakers must enhance workplace safety standards to protect employees and the public from contracting COVID-19 at work.

State policymakers should:

Create and retain adequate workplace safety mandates.

- Implement mandatory enforceable workplace safety guidelines including use of face masks provided by employers, social distancing, hand sanitizing, regular cleaning and in case of an infection, deep cleaning.
- Require businesses to limit contact between workers and members of the public through all feasible methods, including enabling offsite work, staggering shifts, implementing adequate physical space and/or barriers, and reducing operations as necessary to meet these guidelines.
- Implement added safety guidelines for health care workers and first responders modeled on the California OSHA Aerosol Transmissible Diseases standard.

Enforce mandates and empower workers.

- Enforce existing public health and workplace safety laws.
- Certify workers and unions as workplace safety monitors and implement anti-retaliation protocols so workers feel safe coming forward with workplace health violations to authorities.
- Provide a private right-of-action for workers whose employers have violated these standards, along with causes of action specifically for whistleblowers.
- Refuse to grant broadened immunity to employers who allow their workplaces to become transmission sites for COVID-19.

Provide financial means for high-risk and sick workers to stay home.

- Implement emergency paid sick leave and permanent earned sick time.
- Maintain guidelines that being high-risk for severe complications is just cause to quit work that puts the worker at high risk of contracting COVID-19.

Local governments should:

Enforce mandates.

- Enforce existing public health and safety laws using county health departments.
- Prioritize investigations of high-risk industries.
- File public nuisance lawsuits against employers that endanger public health.
- Consider revoking licenses or government contracts from persistent violators.
- Disclose information about public health order violators to customers.



Partner and educate.

- Use soft powers, including educating workers, employers and the public about COVID safety measures and laws; informally mediating between workers and employers; convening stakeholder meetings to strategize around COVID safety; and partnering with worker organizations and unions.

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