

May 12, 2020

The Honorable Eugene Scalia
The Honorable John Pallasch
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Scalia and Assistant Secretary Pallasch:

We, the undersigned organizations, call on the Employment and Training Administration (ETA) to aggressively enforce the federal standards that apply to determine whether workers can maintain their eligibility to receive regular state unemployment insurance (UI) and Pandemic Unemployment Assistance (PUA) when their employers are not taking the proper health and safety precautions to protect against COVID-19, including the guidelines established by the Centers for Disease Control and Prevention (CDC). If not immediately clarified, ETA's limited and misleading statements on the issue will require countless vulnerable workers to choose between their livelihood and the threat of contracting COVID-19 or exposing their loved ones to the deadly disease.

The COVID-19 pandemic has had a devastating impact on communities of color, disproportionately claiming the lives of far more Black, Latinx, and indigenous people at rates far higher than for white people, and resulting in far more layoffs of those employed in the service sector and other jobs that cannot be done from home and do not offer paid sick leave or other benefits.

According to a recent *New York Times* survey, Black workers are twice as likely as white workers to report losing their jobs because of the crisis. (See: "Job or Health: Restarting the Economy Threatens to Worsen Economic Inequality" April 27, 2020.) And a recent Somos survey of Latinx families found that 35 percent reported losing their jobs in response to the COVID-19 pandemic, while 46 percent reported taking a pay cut. (Available on-line at <https://latinodecisions.com/wp-content/uploads/2020/04/Somos-Deck-April-14-2020.pdf>.) As a result, Black, Latinx, and indigenous workers will likely be required by their employers to return to work at higher rates than white workers, and have far less financial security in order to exercise their rights to refuse an offer of work even it poses a serious health and safety threat as a result of COVID-19.

As the National Employment Law Project detailed in its April 29th letter to ETA, the agency is charged with enforcing several critical provisions of federal UI law that apply to workers who are confronted with health and safety concerns when called back to work in the context

of COVID-19. For workers collecting regular UI, the federal “prevailing conditions of work” provision (26 U.S.C. Section 3304(a)(5)(B)) governs “work rules, including health and safety rules” and situations where there has been an intervening change in the conditions of work, which the employee objects to. (See: Unemployment Insurance Program Letter (UIPL) No. 41-98, dated September 20, 1998.) For workers collecting PUA under the CARES Act, the federal “suitable work” regulations governing the Disaster Unemployment Assistance (DUA) program apply (20 C.F.R. 625.13((b)(2)), which provide that “a position shall not be deemed to be suitable for an individual if the circumstances present any unusual risk to the health, safety, or morals of the individual, if it is impracticable for the individual to accept the position. . . .” (emphasis added).

The CDC has issued COVID-19 guidance that explains how employers should reduce the spread of the disease in the workplace. The CDC guidance should serve as the baseline on the part of ETA and the states to evaluate whether workers collecting UI and PUA will remain eligible for benefits if they leave work or refuse to return to work under unsafe working conditions. The CDC’s “Interim Guidance for Businesses and Employers to Plan and Respond to Corona Virus Disease 2019 (COVID-19)” (available on-line at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>) sets forth the basic precautions, such as social distancing and the use of protective face coverings, that all employers should follow to reduce the spread of the disease. The guidance also clarifies that certain workers, including older workers, immunocompromised workers, and workers with comorbid conditions such as diabetes, asthma, and heart disease, are at a higher risk for contracting COVID-19. They should be given the right to refuse to return to work given their heightened health risks, and still be allowed to collect UI or PUA.

ETA’s limited statements on this issue, including Q&As (See: UIPL 16-20, Change 1 https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf) and [FAQs \(See: https://www.dol.gov/coronavirus/unemployment-insurance\)](https://www.dol.gov/coronavirus/unemployment-insurance), conflict with the applicable federal UI laws, and fail to put the states, employers, and workers on notice of the critical federal protections for the following reasons:

- The statements conspicuously fail to recognize the new realities resulting from the spread of COVID-19 since the furloughs took effect in March. For example, given the massive spread of the virus, ETA erroneously maintains that the individual’s job is still suitable “barring unusual circumstances”;
- The statements fail to include any language referencing the basic precautions that employers should be taking as set forth in the CDC’s COVID-19 guidelines and other applicable health and safety standards;

- The statements concerning higher-risk workers fail to reference older workers, who by virtue of their age alone, should not be required to accept work under conditions where there is risk of contracting COVID-19; and
- The statements incorrectly require the individual to suffer from a “serious health condition” to refuse work and collect PUA. This requirement exceeds the broad range of less serious health conditions listed by the CDC’s COVID-19 employer guidelines.

Accordingly, we urge ETA to issue new guidance and FAQs that address the standards that apply under the federal UI law to determine when workers remain eligible for regular state UI or PUA if they leave work or refuse to work due to COVID-19 health and safety concerns. States should be reminded of the federal “prevailing conditions of work” mandate contained in every state law. Offers of work from employers with conditions that do not comply with the CDC guidelines for preventing virus spread are *per se* unsuitable under this federal mandate. Second, as Colorado, Texas, and other states have done, ETA should clarify that UI and PUA claimants who reside with older and immunocompromised workers should not be required return to work under the suitable work rules. ETA’s policy should similarly clarify the suitable work standards that apply to workers with disabilities. Finally, ETA should remind the states, employers, and workers that it is unlawful to terminate a worker or otherwise retaliate against workers collecting UI for exercising their protected rights under the Occupational Safety and Health Act or their rights under the National Labor Relations Act to engage in “concerted activity” with other co-workers to enforce their health and safety rights, as required by many state UI laws.

Thank you for your consideration of our recommendations on this timely issue of urgent concern to thousands of unemployed workers and their families.

Sincerely,

A Better Balance
Advocating Opportunity
AFL-CIO
AFSCME 3395
AFSCME 962 - Local #3395
AFSCME Council 962
Alabama Arise
Alianza Nacional de Campesinas
Amara Legal Center
America’s Voice
American Association of People with Disabilities
American Diabetes Association
American Federation of Musicians of the United States and Canada
American Federation of State, County and Municipal Employees (AFSCME)

Americans for Democratic Action (ADA)
Arkansas Advocates for Children and Families
Asian Pacific American Labor Alliance, AFL-CIO
Asian Pacific American Legal Resource Center
Association of People Supporting Employment First (APSE)
Association of University Centers on Disabilities
Autistic Women & Nonbinary Network
Ayuda
California IATSE Council
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Catholic Labor Network
Center for American Progress
Center for Community Progress
Center for Disability Rights
Center for Environmental Health
Center for Law and Social Policy (CLASP)
Center for Popular Democracy
Center for Public Policy Priorities
Center for Public Representation
Centro de los Derechos del Migrante, Inc. (CDM)
Centro de Trabajadores Unidos en Lucha
Chicago's Legal Aid Society
Child and Family Policy Center
Child Welfare League of America
Church World Service
Coalition of Labor Union Women
Coalition on Human Needs
Colorado Fiscal Institute
Communications Workers of America (CWA)
Community Change Action
Community Legal Services of Philadelphia
Congregation of Our Lady of the Good Shepherd, U.S. Provinces
Connecticut Legal Services, Inc.
CRLA Foundation
Day Worker Center of Mountain View
DC Fiscal Policy Institute
DC KinCare Alliance
Demos
Department for Professional Employees, AFL-CIO
Detroit Disability Power
Disability Rights Education & Defense Fund (DREDF)
Easterseals
Economic Policy Institute
Economic Progress Institute
Ella Baker Center for Human Rights
Employee Rights Center

Entertainment Union Coalition
Equal Rights Advocates
Equality California
Equality North Carolina
Fair Work Center
Fair World Project
Faith Action Network - Washington State
Family Values @ Work
Farmworker Association of Florida
Food Chain Workers Alliance
Former Chief of Cal/ OSHA
Freedom Network USA
Friends Committee on National Legislation
Futures Without Violence
Garment Worker Center
Georgetown Center on Poverty and Inequality
Georgetown Law Center
Good Jobs First
Greater Hartford Legal Aid, Inc.
Greater Syracuse Council for Occupational Safety & Health
Green For All
Hispanic Federation
Howard-Tipton Chapter AFL-CIO
Human Rights Campaign
ICNA Council for Social Justice
ICWUC
Independent Living Center of the Hudson Valley, Inc.
Institute for Women's Policy Research
International Alliance of Theatrical Stage Employees
International Brotherhood of Teamsters
International Campaign for Responsible Technology ICRT
International Children Assistance Network
International Labor Rights Forum
Iowa Federation of Labor, AFL-CIO
Iowa Policy Project
Jewish Women International
Kentucky Equal Justice Center
Kids Forward
Lambda Legal
Laundry Workers Center
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)
Legal Aid at Work
Legal Aid Society of Northeastern New York
Legal Aid Society of the District of Columbia
Legal Services NYC

Legal Voice
Los Angeles Alliance for a New Economy
Maine AFL-CIO
Maine Center for Economic Policy
Maine Equal Justice
MassCOSH - MA Coalition for Occupational Safety & Health
Michigan League for Public Policy
Mississippi Workers' Center for Human Rights
Model Alliance
MomsRising
Mon Valley Unemployed Committee
Mountain State Justice
Muslim Caucus Education Collective
NAACP
NALC
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Councils on Developmental Disabilities
National Association of Letter Carriers Branch 533
National Association of Social Workers
National Center for Law and Economic Justice
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for the Homeless
National Consumers League
National Council for Occupational Safety & Health
National Council of Churches
National Council of Jewish Women
National Council on Independent Living
National Disability Rights Network
National Domestic Workers Alliance
National Employment Law Project
National Employment Lawyers Association
National Health Law Program
National Immigration Law Center
National LGBTQ Task Force Action Fund
National Partnership for Women & Families
National WIC Association
National Women's Law Center
NC Justice Center
Nebraska Appleseed
Network for Victim Recovery of DC (NVRDC)
NETWORK Lobby for Catholic Social Justice
New Haven Legal Assistance Association, Inc
New Mexico Center on Law and Poverty
New Solutions: A Journal of Environmental and Occupational Health Policy
NJ State Industrial Union Council

Nonprofit Professional Employees Union
Nontoxic Certified / MADE SAFE
North Central Building Trades
NW Workers' Justice Project
OCA-Asian Pacific American Advocates
Occupational Health Clinical Center, Syracuse NY
Oklahoma Policy Institute
Oregon Center for Public Policy
Our Children Oregon
Oxfam America
PA ADAPT
Partnership For America's Children
Partnership for Inclusive Disaster Strategies
PathWays PA
People's Parity Project
People's Action
PFLAG National
Philadelphia Unemployment Project
Philly CLUW
Pilipino Association of Workers and Immigrants (PAWIS)
Policy Matters Ohio
Pride at Work
Progressive Leadership Alliance of Nevada
Public Advocacy for Kids (PAK)
Public Citizen
Public Justice Center
RespectAbility
Restaurant Opportunities Centers (ROC) United
SafeWork Washington
SAG-AFTRA
Santa Clara County Wage Theft Coalition
Save Us Now Inc
Service Employees International Union (SEIU)
Shriver Center on Poverty Law
Silver State Equality -Nevada
Southeast Louisiana Legal Services
Southern Poverty Law Center
Stage Directors and Choreographers Society (SDC)
Street Vendor Project
Tahirih Justice Center
TakeRoot Justice
Tennessee Immigrant and Refugee Rights Coalition
The Commonwealth Institute for Fiscal Analysis
The Forum for Youth Investment
The Fund for Community Reparations for Autistic People of Color's Interdependence,
Survival, and Empowerment

The Legal Aid Society
The R.I. Center for Justice
The United Methodist Church - General Board of Church and Society
Transport Workers of America
Tzedek DC
UC Berkeley School of Public Health
Ujima Inc.: The National Center on Violence Against Women in the Black Community
UMass Boston - Labor Resource Center
Union for Reform Judaism
UNITE HERE
United Church of Christ Justice and Witness Ministries
United Support & Memorial For Workplace Fatalities (USMWF Org. Inc.)
University of Michigan Law Workers' Rights Clinic
Volunteers of Legal Service
Washington Lawyers' Committee for Civil Rights and Urban Affairs
We All Rise
West Virginia Center on Budget and Policy
William E. Morris Institute for Justice (Arizona)
Women Employed
Women's Rights and Empowerment Network
Workers Center of Central NY
Working Partnerships USA
Working Washington
Workplace Fairness
Workplace Justice Project at Loyola Law Clinic
World Institute on Disability
Writers Guild of America, East