



JUNE 2020 | FACT SHEET

# Employer Immunity From COVID-19-Related Liability Endangers Women and People of Color

The COVID-19 crisis has laid bare and worsened the deep structural inequities facing working people, particularly women and people of color, who are the majority of those in jobs deemed essential and whose communities are disproportionately impacted by the pandemic. Now, a push in Congress and in the states to shield businesses from being held accountable for negligently risking the health and safety of their workers is threatening to deepen these inequities and health risks.

Many of the essential jobs at the sites of the country's most severe COVID-19 outbreaks are primarily held by women, people of color, and immigrants. These workplaces, such as meatpacking plants and nursing homes, often lack critical health and safety protections. For instance, at a South Dakota meatpacking plant with over 700 hundred reported COVID-19 infections, workers reported being deprived of protective masks and being forced to work in close proximity to one another, despite public health guidelines about social distancing.<sup>1</sup> Similarly, nursing home workers and residents have been hit hard by COVID-19 outbreaks.<sup>2</sup> Staff have been denied basic protective equipment like masks and hand sanitizer and prevented from learning whether residents they assist have COVID-19.<sup>3</sup>

No one should have to choose between their health and safety and their livelihood. Allowing businesses that negligently fail to protect workers from COVID-19 to avoid accountability would endanger the health and safety of working people and the public, and further restrict workers' already limited ability to enforce their rights. Workplace protections should be preserved and strengthened, not undermined, during this crisis and beyond.

## Shielding Businesses From Liability Would Disproportionately Harm Workers Who Are Women and People of Color

Immunizing employers from liability would disproportionately harm women and people of color who are the majority of workers in many jobs deemed essential in this crisis. For example, nearly 90 percent of nursing, psychiatric, and home care aides in the United States,<sup>4</sup> and 66 percent of grocery store cashiers/salespeople are women.<sup>5</sup> Many of the workers in essential jobs are people of color. For instance, 59 percent of women working as home health and personal care aides and 43 percent of women working as grocery store cashiers are women of color.<sup>6</sup> In the meatpacking industry, over 44 percent of workers are Latinx<sup>7</sup>, roughly one quarter are Black, and among front-line meatpacking workers, more than half are immigrants.<sup>8</sup> A majority of farmworkers are immigrants and people of color.<sup>9</sup> And in warehouses, over one-third of workers are women and nearly 60 percent are people of color.<sup>10</sup>

Business immunity would be especially harmful to essential workers because many of them receive low pay and lack basic supports like paid leave, health insurance, or affordable child care, adding to the stresses they face in trying to make a living and provide for their families during a crisis. Those working in the gig economy, like delivery workers or rideshare drivers, also lack critical supports and important legal protections. In the United States, women and people of color make up the majority of workers in low-paid jobs,<sup>11</sup> and they and their families experience additional threats to their health and economic security as a result of gender and racial wage<sup>12</sup> and wealth<sup>13</sup> gaps. This is the crisis our public policy and institutions must address.

## Immunizing Businesses From Liability Would Benefit Bad Actors and Further Undermine Workers' Access to Justice, Economic Security, and Health

Federal and state laws, as well as limits on the right to organize and act collectively, limits on employer liability in workers' compensation laws, and forced arbitration clauses<sup>14</sup> already make it extremely difficult for working people to enforce their rights. Granting businesses immunity from liability for negligent acts that expose workers to infection would create additional barriers for individuals to hold their employers accountable for workers' rights violations. What's more, COVID-19 has put workers, especially those in low-paid jobs, in an economically precarious position. Individuals who are desperately trying to stay employed during this economic downturn are less likely to challenge unfair treatment or unsafe working conditions, and are more vulnerable to abuse and coercion by employers. Essential workers on the frontlines of the COVID-19 crisis—including those at hospitals and large corporations like Amazon—have already faced retaliation for demanding basic health and safety protections.<sup>15</sup> Moreover, immigration status, language barriers, and racism make it difficult for many workers, such as those on farms or in meatpacking plants, to demand safe working conditions, even before this crisis.<sup>16</sup>

If protected by broad immunity from suit for violating workers' rights, businesses would have less incentive to comply with existing laws and standards, let alone provide the additional health and safety protections needed during this crisis. Granting businesses immunity from liability would further embolden bad actors, creating a race to the bottom for workplace standards. Under these circumstances, even employers who want to take appropriate measures to protect their workers may be tempted to take shortcuts, endangering workers who will be left without recourse. Moreover, workers who do not report to work or quit because they are afraid that their employer is not taking appropriate steps to protect their health and safety are likely to face significant obstacles in collecting unemployment insurance, leaving these workers at the mercy of unscrupulous employers.<sup>17</sup>

Business immunity would lead to more workers and their communities getting sick, particularly in communities of color, which are already disproportionately impacted by COVID-19.<sup>18</sup> The economic difficulties many of these communities are facing would be worsened, at a time when government should be providing aid to those who need it the most.

## The COVID-19 Crisis Requires Strengthening Worker Protections and Rights

In the present crisis, policymakers should be preserving and strengthening worker health and safety protections, as well as antidiscrimination and labor laws, including workers' rights to organize to demand protections.<sup>19</sup>

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