

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 29<sup>th</sup> 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](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