

# Exhibit A

## Model Policy Language & Commentary

Policy Language	Commentary
<p><b>Section 1. Definitions</b></p> <p>(a) “Worker” means any person whom an employer suffers or permits to work, and shall include independent contractors, and persons performing work for an employer through a temporary services or staffing agency.</p> <p>(b) “Employer” means an individual or entity that suffers or permits a person to work, and shall include contracting for the services of a person. More than one entity may be the “employer.”</p> <p>(c) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60% alcohol.</p> <p>(d) “Department” means the Department of Labor, or other state or local agency responsible for enforcing this Act.</p>	<ul style="list-style-type: none"> <li>• In order to protect workers and the public during the COVID-19 crisis, it is essential that worker health and safety protections, and related protections for whistleblowers, apply broadly to all workers who regardless of how they are classified – or in many cases misclassified.</li> <li>• This policy therefore uses a broad definition of “worker” that includes employees (using the broad “suffer or permit” to work employment standard found in the federal Fair Labor Standards Act), but also independent contractors and employees performing work through temporary services or staffing agencies.</li> <li>• It also recognizes a Department chiefly charged with enforcement of the policy – which could be either the state Department of Labor or, for a municipal policy, a city or county labor or health agency.</li> <li>• As discussed below in the enforcement section, it also empowers a full range of law enforcement entities, including the attorney general, district attorneys, and city and county attorneys to enforce the law, recognizing that limited enforcement capacity is a major obstacle to ensuring safe workplaces.</li> <li>• And crucially, it authorizes workers and other whistleblowers to enforce the law through a private right of action and “qui tam” enforcement, supplementing limited government enforcement resources.</li> </ul>
<p><b>Section 2. Protecting Workers From COVID-19</b></p> <p>(b) <b>Employers</b></p>	<ul style="list-style-type: none"> <li>• Since OSHA has failed to adopt a COVID-19 standard, or any infectious disease standard, to protect workers, states and even cities, can act to adopt such standards.</li> </ul>

Employers must comply with the following measures:

- (1) Social Distancing: The employer shall maintain 6 feet between workers, and between workers and customers, by using one or more of the following measures: Implementing flexible worksites (e.g., telework); Implementing flexible work hours (e.g., staggered shifts); Increasing physical space between workers at the worksite to six feet; Increasing physical space between workers and customers (e.g., drive-through, partitions, and limits to the number of customers in grocery stores , for example); Implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events); Delivering services remotely (e.g. phone, video, or web); or Delivering products through curbside pick-up or delivery. Further, this should include reconfiguring spaces where workers congregate including lunch and break rooms, locker rooms and time clocks.
- (2) Face Masks and Plastic Face Shields: All workers shall be provided (free of charge) cotton face masks (double layer cotton) by their employer. All customers in grocery stores and pharmacies shall be required to wear face masks. Face shields shall also be made available by employers to workers.
- (3) Hand Sanitizing, Hand Washing and Gloves: Employers must provide hand sanitizers that are readily available in multiple locations in the workplace. Workers must have the ability to wash their hands with soap and water regularly. Gloves shall be provided by employers to workers who request them.
- (4) Regular Disinfection: Employers must clean and disinfect regularly all frequently touched surfaces in the workplace, such as workstations, touchscreens, telephones, handrails, and doorknobs.
- (5) Increase ventilation rates. Increase the percentage of outdoor air that circulates in the system.
- (6) Notification of Workers: If a worker is confirmed to have COVID-19 infection, the employer must inform fellow workers of their possible exposure to COVID-19 in the workplace while keeping the infected worker's identity confidential as required by the Americans with Disabilities Act (ADA).

- This section outlines standards that states should adopt to protect workers. The model includes basic protections in six areas: (1) Social distancing; (2) Face masks and plastic face shields; (3) Hand sanitizing, hand washing and gloves; (4) Regular disinfection; (5) Ventilation (6) Notification of workers of illness in the workplace; and (7) Deep cleaning after confirmed cases.
- This proposed standard is drawn in large part from voluntary, non-binding guidance that CDC and OSHA have issued for employers on how to protect all other essential workers. That guidance is gathered and linked to below the proposed standard.
- Already states are beginning to step in to mandate some of these protections for workers during the COVID crisis – though none have yet mandated the full range of needed protections. In addition to California, New York Governor Andrew Cuomo recently issued an [Executive Order that requires all employers to provide essential workers with masks free of charge when interacting with the public.](#)
- Cities are also now stepping in to require employers to protect workers. [Los Angeles now requires that delivery employers provide masks, gloves or hand sanitizers and physical distancing to workers. They have also enacted specific limits to how many customers can be in stores.](#)
- The most critical guidance to follow to prevent COVID transmission in the workplace, is social distancing —physical distancing of workers from the public and from one another.
- Equally important, face masks are recommended by CDC to help those who are infected with the virus and do not know it (those who are asymptomatic or pre-symptomatic) from spreading the virus to others. It is well established that there is significant risk of transmission from asymptomatic and presymptomatic individuals. CDC states: “It is critical to emphasize that maintaining six feet social distancing remains important to slowing the spread of the virus. CDC is additionally advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.”
- Because not all cotton face masks provide equal protection, face shields are also being provided

<p>(7) Deep Cleaning after Confirmed Cases: If a worker is suspected or confirmed to have COVID-19, the employer shall close off workplace areas visited by the ill person. Open outside doors and windows and use ventilating fans to increase circulation in the area. Wait 24 hours or as long as practical, and then conduct cleaning and disinfection as directed by CDC Cleaning and Disinfection for Community Facilities guidelines.</p> <p>References:  <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html">https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html</a>;  <a href="https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html">https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html</a> (employers must provide masks that are at least as protective as the more protective masks made from two layers of cotton sheet);  <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html">https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html</a>;  <a href="https://www.osha.gov/Publications/OSHA3990.pdf">https://www.osha.gov/Publications/OSHA3990.pdf</a></p>	<p>in grocery stores and other workplace, and should be required for all such workers. Further, as N95 respirators become more available (now being prioritized during the shortage for use among the most at risk health care workers) states can require these for all workers interacting with the public or who work in workplaces where social distancing is not always followed. All equipment must be provided free of charge to workers.</p> <ul style="list-style-type: none"> <li>Note that unfortunately CDC weakened its guidance on when COVID-19 exposed workers should return to work. The new guidance, which allows exposed workers to return with just masks and some other precautions is very dangerous. Many state health departments have rejected this guidance- including Minnesota and <u>New York. States must make sure employers do not follow this guidance— but instead require COVID-19 exposed workers to quarantine for 14 days.</u></li> </ul>
<p><b>Section 3. Whistleblower Protection</b></p> <p>(a) No employer or other person shall discriminate or take adverse action against any worker or other person who raises any concern about infection control related to COVID-19 to the employer, the employer’s agent, other workers, a government agency, or to the public such as through print, online, social, or any other media.</p> <p>(b) No employer shall discriminate or take adverse action against a worker who voluntarily brings in and wears his or her own personal protective equipment, such as a mask, faceguard, or gloves, if such equipment is not provided by the employer.</p> <p>(c) If an employer or other person takes an adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.</p>	<ul style="list-style-type: none"> <li>Workers must feel free to speak up about threats to their health and safety from COVID-19. Their voice must be protected in order to mitigate the spread of the virus.</li> <li>We have also seen front line health care works being retaliated against, and fired, for bringing in their own equipment when the employer cannot provide adequate protection.</li> <li>Providing workers with a private right of action so that they may go to court if they are retaliated against is critical for ensuring workers are protected.</li> <li>Similarly, most existing state whistleblower protections only narrowly protect workers from retaliation for filing formal complaints – and don't protect them from being punished for complaining informally to employers, or notifying fellow workers or the public about workplace threats. It is essential that whistleblower protections be expanded to protect that full range of communication, which is essential for publicizing and addressing serious workplace threats.</li> </ul>

	<ul style="list-style-type: none"> <li>• This model also includes a rebuttable presumption that any adverse action taken against an employee or person within 90 days of protected activity is retaliatory. Such a presumption is an effective approach for protecting whistleblowers and has been incorporated into state and local wage theft laws.</li> </ul>
<p><b>Section 4. Refusal to Work Under Dangerous Conditions</b></p> <p>(a) A worker shall have the right to refuse to work under conditions that the worker reasonably believes would expose him or her, other workers or the public to an unreasonable risk of illness or exposure to COVID-19.</p> <p>(b) An employer shall not discriminate or take adverse action against a worker for a good faith refusal to work if the worker has requested that the employer correct such a condition and the condition remains uncorrected.</p> <p>(c) A worker who has refused in good faith to work under such a condition and who has not been reassigned to other work by the employer shall, in addition to retaining a right to continued employment, shall continue to be paid by the employer for the hours that would have been worked until such time as the employer can demonstrate that the condition has been remedied.</p> <p>(d) If an employer or other person takes an adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.</p>	<ul style="list-style-type: none"> <li>• Workers should not have to choose between their lives and their paycheck.</li> <li>• While OSHA rules protect this right on paper, they are weak at best and are largely unenforced.</li> <li>• It is therefore urgent that states and cities step to ensure that workers may refuse to work under dangerous conditions without being subject to retaliation – and that they continue to be paid so long as the dangerous workplace condition remains unremedied.</li> <li>• This right to be free from retaliation should, like the whistleblower protections detailed above, include a rebuttable presumption that any adverse action taken against an employee or person within 90 days of protected activity is retaliatory.</li> </ul>
<p><b>Section 5. State Unemployment Insurance Benefits for Separating from Work Because of Dangerous Conditions</b></p> <p>Notwithstanding any other provisions of chapter X [the state Unemployment Insurance law]:</p>	<ul style="list-style-type: none"> <li>• State unemployment insurance laws should be amended to clarify that workers have good cause to quit -- and therefore should be eligible for unemployment insurance benefits -- if their</li> </ul>

<p>(a) A claimant who has left his or her employment, or had their hours reduced after they refused to work because their employer maintained and failed to cure a health or safety condition that made the environment unsuitable, or because the claimant needed to care for a sick or quarantined family member, shall be deemed constructively discharged and eligible for benefits.</p> <p>(b) In a public health emergency, no claimant shall be required to prove that an unreasonable condition created a risk unique to them. Nor shall a claimant be required to prove that the risk was not customary to their occupation.</p> <p>(c) The claimant shall not be subject to traditional exhaustion requirements, but shall be deemed to have exhausted alternatives if he or she notified the employer and the employer refused to cure, if another employee notified the employer and the employer refused to cure, or if the employer had or should have had reason to know that the condition made the work environment unsuitable and did not cure it.</p> <p>(d) In a public health emergency, when processing a claim for benefits for a worker who has quit for a health/safety-related reason, the worker shall be entitled to a presumption that he or she left their job for good cause, and the agency shall interpret any other existing statutory or regulatory requirement accordingly.</p>	<p>employer requires them to work under conditions that they believe would threaten their health and safety. Furthermore, good cause quits should include work assignments that violate workers' health and safety, and a workers' need to care for quarantined or sick family members.</p> <ul style="list-style-type: none"> <li>• While permanent reform of state unemployment insurance rules generally requires legislative action, in many states governors can – and in <a href="#">Michigan, Kentucky and Georgia are beginning to – adopt modifications to their unemployment insurance rules under their emergency powers. In many states, governors likely could adopt this crucial reform temporarily using those powers. Cities, however, cannot reform state unemployment insurance systems.</a></li> </ul>
<p><b>Section 6. Presumption of State Worker's Compensation Coverage for All Workers</b></p> <p>For purposes of workers compensation coverage under chapter X [the state workers' compensation law], a worker who contracts COVID-19 is presumed to have an occupational disease arising out of and in the course of employment if the worker is a worker of a health care and emergency responder employer, or a front-line worker, including workers of grocery stores and pharmacies, food beverage, cannabis production and agriculture, organizations that provide charitable and social services, gas stations and businesses needed for transportation, financial institutions, hardware and supplies stores, critical trades, mail, post, shipping, logistics, delivery, and pick-up services, educational institutions, laundry</p>	<ul style="list-style-type: none"> <li>• Workers' compensation provides a crucial source of healthcare coverage and income support for sick workers. Importantly, workers' compensation coverage is broadly available to all sick workers, regardless of factors such as immigration status.</li> <li>• During the COVID-19 crisis, states should ensure that COVID-19 and any associated quarantine are covered by the state workers' compensation program.</li> <li>• Governors and legislatures in some states are already acting to clarify or expand workers' compensation eligibility for COVID-19 illness through orders issued under their emergency</li> </ul>

services, restaurants for consumption off-premises, supplies to work from home, supplies for essential businesses and operations, transportation, home-based care and services, residential facilities and shelters, professional services, day care centers, and manufacture, distribution, and supply chain for critical products and industries, media or any other worker deemed to be essential during the COVID-19 crisis.

powers, while other states are doing so through legislation. Cities, however, cannot reform state workers' compensation systems.

- This model language is adapted from some of these new workers' compensation reforms that have been implemented in states across the country.
- The best language contains a presumption that all workers who continue to work outside of their homes are covered by workers' compensation if they become sick with COVID-19.
- These changes can be implemented by legislation or governors' executive orders. It would be advisable to have the orders include a requirement for immediate payment of benefits pending resolution of individual claims (and hold harmless the claimant for benefits paid).
- Illinois' Emergency COVID-19 related workers' compensation amendment is a great model with broad coverage. It contains a rebuttable presumption that any COVID-19 illness is covered.

[https://www2.illinois.gov/sites/iwcc/news/Documents/13APR20-Emergency-Amendment-Only-50IAC9030\\_70.pdf](https://www2.illinois.gov/sites/iwcc/news/Documents/13APR20-Emergency-Amendment-Only-50IAC9030_70.pdf)

- Kentucky's governor recently adopted a similar workers' compensation coverage presumption through an executive order issue pursuant to the governor's emergency powers:

<https://governor.ky.gov/attachments/20200409-Executive-Order-2020-277-Workers-Compensation.pdf>

- Washington State's governor took steps to ensure workers compensation coverage during the COVID crisis for healthcare workers and first responders:

<https://www.governor.wa.gov/news-media/inslee-announces-workers-compensation-coverage-include-quarantined-health-workersfirst>

- [Alaska passed new legislation to ensure that COVID-19 illness among health care workers and first responders is presumed to be work-related:](http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF)

<http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF>

- Here is a summary of workers' compensation action by states since April 2020:

<https://www.iaiaabc.org/Document.asp?MODE=DOWNLOAD&DocID=8395>

<p><b>Section 7. Enforcement</b></p> <p>a. <b>Administrative Enforcement.</b> The Department shall enforce the requirements of this Act and shall have the authority to inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of them, the Department shall order relief as authorized in this Section.</p> <p>b. <b>Private Civil Action.</b> Where an employer does not comply with any requirement of this Act, an aggrieved worker or other person, may bring a civil action in a court of competent jurisdiction within three years of an alleged violation and, upon prevailing, shall be awarded the relief authorized in this section. Pursuing administrative relief shall not be a prerequisite for bringing a civil action.</p> <p>c. <b>Other Government Enforcement.</b> The attorney general, a district attorney, or a city or county attorney may also enforce the requirements of this Act, acting in the public interest, including the need to deter future violations. Such law enforcement agencies may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action as provided in Section 7(b).</p> <p>d. <b>Relief.</b> In a civil action or administrative proceeding brought to enforce this Act, the court or the Department shall order relief as follows:</p> <ol style="list-style-type: none"> <li>i. For any violation of any provision of this Act: <ol style="list-style-type: none"> <li>i. An injunction to order compliance with the requirements of this Act and to restrain continued violations, including through a stop-work order or business closure;</li> <li>ii. Payment to a prevailing worker by the employer of reasonable costs, disbursements, and attorney's fees; and</li> <li>iii. Civil penalties payable to the state or city of not less than \$100 per day per worker affected by any noncompliance with the provisions of this chapter.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• Strong enforcement of these important new protections is crucial in order for them to be effective. This proposed policy includes key components detailed below that are essential for strong enforcement. For an even more comprehensive model bill detailing the full range of state-of-the-art protections against retaliation, see NELP, Model Bill to Protect Workers Who Experience Wage Theft from Retaliation (Sept. 2019).</li> <li>• This proposal provides four distinct avenues for enforcement, to ensure maximum flexibility and empower a range of public and private actors to serve as watch dogs and fill the enforcement gap.</li> <li>• First, it authorizes administrative enforcement by the state or local Labor Department – the agency chiefly responsible for implementation and enforcement.</li> <li>• Second, it provides for a private right of action which is especially important to enforce worker whistleblower protections and the right to still be paid while refusing to work under dangerous conditions, together with attorney’s fees and other remedies to make it realistic for low-wage workers to hire lawyer to help them enforce their rights. Given limited government enforcement capacity, a private right of action is crucial for ensuring meaningful enforcement – and is a key gap in OSHA’s enforcement system.</li> <li>• Third, it empowers the full range of public enforcement officers, including the Labor Department, the state attorney general, district attorneys, and city and county attorneys to bring actions to enforce the law. Public enforcement by the full range of law enforcement entities can help fill the enforcement gap left by OSHA’s failure to act during the COVID crisis.</li> <li>• Fourth, it authorizes "qui tam" enforcement to enlist whistleblowers in holding companies accountable, expand limited public enforcement capacity, and ensure that workers who are <a href="#"><u>blocked by forced arbitration clauses from bringing private suits can play a powerful role in enforcement.</u></a></li> </ul>
--	--

<p>ii. For any violation of Sections 3 and 4 of this Act protecting whistleblowers and workers' right to refuse to work under dangerous conditions:</p> <ul style="list-style-type: none"> <li>i. Reinstatement of the worker to the same position held before any adverse personnel action, or to an equivalent position, reinstatement of full fringe benefits and seniority rights, and compensation for unpaid wages, benefits and other remuneration, or front pay in lieu of reinstatement; and</li> <li>ii. Compensatory damages payable to the aggrieved worker equal to the greater of \$5,000 or twice the actual damages, including but not limited to unpaid wages, benefits and other remuneration.</li> </ul> <p>e. Qui tam enforcement. The relief specified in subdivision (d)(i) of this section may be recovered through a civil action brought on behalf of the Department in a court of competent jurisdiction by a whistleblower, defined herein as a worker, contractor, or employee of a contractor of the employer, or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:</p> <ul style="list-style-type: none"> <li>i. The whistleblower shall give written notice to the Department of the specific provisions of this Act alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Department within 30 days.</li> <li>ii. Civil penalties recovered pursuant to this subsection shall be distributed as follows: 70 percent to the Department for enforcement of this act, with 25 percent of that amount reserved for grants to community organizations for outreach and education about worker rights under this Act; and 30 percent to the whistleblower or representative organization.</li> <li>iii. The right to bring an action under this section shall not be impaired by any private contract. A public enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• For remedies, it authorizes the full range of necessary relief.</li> <li>• For violations of the workplace protection standards: injunctive relief, civil penalties payable to the state, and attorneys' fees to make it economically realistic for low-wage workers to find attorneys to represent them.</li> <li>• For violations of the whistleblower and right-to-refuse to work under dangerous conditions provisions: the above plus reinstatement or "front pay" in lieu of reinstatement, unpaid wages and benefits, and compensatory damages equal to the greater of \$5,000 or twice any unpaid wages, to provide a strong deterrent against employers punishing whistleblowers during this time when public health and safety depend on workers' being able to speak up.</li> </ul>
--	---



action shall be tried promptly, without regard to concurrent adjudication of private claims.	
--	--