



May 26, 2020

Dear Governor Brown, Senate President Peter Courtney, Speaker of the House Tina Kotek, Members of the Oregon State Senate and Members of the Oregon State House;

Over the last twelve weeks, we have seen workers in Oregon become ill and even fatally ill as a result of exposure to COVID-19 in the workplace. Workplace exposure is a common way Oregonians are getting sick and spreading the virus to their families and communities. Yet, we have failed to fully protect workers, often with tragic results. Not all Oregonians are being affected by this disease equally. Data shows that our Latinx and immigrant communities are being hit hardest, as well as low-wage workers and their families.<sup>1</sup>

We applaud Governor Brown's deliberate approach to reopening.. However, there is much more that needs to be done to ensure that workers will be protected and that Oregon is mitigating the role that race, immigration status and poverty have on infection rates and outcomes. As we begin reopening the economy, *all* workers and the community need to be assured that safety and health is the first priority

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<sup>1</sup> [Oregon COVID-19 Daily Update](#), Oregon Health Authority May 26, 2020; [Higher COVID-19 Incidence in Minority Communities](#), AARP May 8, 2020.

for all. It is with this in mind that we write to provide our urgent recommendations for next steps that the State of Oregon must take to protect Oregonians from the virus at work.

[Safe Jobs Oregon](#) (SJO) is a coalition of worker-safety advocates, unions, non-profits, community based organizations, lawyers, and others focused on making Oregon workplaces safe. SJO is a member of the [National Council for Occupational Safety & Health](#). The recommendations in this letter have been informed by the organizations listed on the bottom of this letter as well as by [this report](#) by national experts.

We are concerned that sufficient protections do not exist under current Oregon law for essential frontline workers, let alone for those who are being called back to work as retail establishments and other businesses reopen. We hope that you will immediately advance the following policy recommendations for those workplaces operating in Oregon for the duration of the pandemic. Implementing these recommendations will save the lives of workers, their families, members of their communities and the public. We hope you will recognize and directly respond to the way that this pandemic is disproportionately affecting Oregonians of color and immigrants that are doing the riskiest jobs. Ensuring worker safety from the virus is central to the economic recovery. *Simply put, workers cannot wait. We need you to work together to take action now.*

**Our recommendations (with more detail listed below) are:**

- 1. Oregon needs statewide, enforceable COVID-19 workplace standards to provide stringent health and safety protections for all workers. The standards must be designed with meaningful input from workers and unions. Oregon must provide the resources to enforce the standards with robust agency action and substantial fines that will deter violations.**
- 2. Oregon must establish a workers' compensation workplace presumption for *all* workers, as called for by Oregon's unions in their letter to you dated April 16, 2020.**
- 3. Oregon needs additional whistleblower protections to protect workers' ability to report hazardous conditions, specifically a presumption of retaliation if workers suffer adverse action within 90 days of reporting hazardous conditions.**
- 4. Oregon must remedy deficiencies in our unemployment insurance, sick and family leave laws. These deficiencies leave sick and immunocompromised workers no choice but to return to work in dangerous conditions to support themselves and their families.**

As we refer to workers below, we mean *all* workers. This means anyone who performs labor,

including fulltime and part-time, private, public, and non-profit sectors, permanent and temporary, independent contractors (including workers often referred to as “gig” workers), and employees of subcontractors, staffing and temporary agencies.

We also mean *all* workers regardless of their immigration status. We know that immigrants and people of color in Oregon have been filling many of the jobs that have put workers at great risk for infection. Those risks have been borne out in distressingly high rates of infection in our Latinx and low-income communities of color in the Willamette Valley and Washington County.

**On each of our four priority recommendations, here are more detailed proposals:**

**1. Oregon needs statewide, enforceable COVID-19 workplace standards to provide stringent health and safety protections for all workers. The standards must be designed with meaningful input by workers and unions. Oregon must provide the resources to enforce the standards with robust agency action and substantial fines that will deter violations.**

COVID-19 has created an unprecedented worker health and safety crisis in Oregon. Many employers are failing to provide workers needed protection to prevent exposure to the virus. In one example of many, a number of workers at National Frozen Foods in Albany were sickened with COVID-19, likely due to a failure to follow social distancing. Current federal regulations are inadequate to address these kinds of violations. For instance, the federal Occupational Safety and Health Administration (OSHA) has issued guidance that contains recommendations for safety and health standards, but it denies that they create legal requirements for employers. Similarly, the federal Centers for Disease Control has issued guidelines that provide extensive recommendations, but also denies that these are enforceable.

We applaud Oregon OSHA’s issuance of enforceable emergency regulations for agricultural workers and for its citation of National Frozen Foods (above) for failure to implement the Governor’s order to maintain social distancing. But the paltry size of one of the only COVID-related fines issued to date (\$2,000) undermines the agency’s effectiveness. We also applaud Oregon OSHA for taking swift action regarding Glamour Salon, as well as recognizing that workers there were at risk, even if misclassified as independent contractors.

However, we are concerned about Oregon OSHA’s capacity to respond to complaints. OSHA received nearly 3,700 COVID-related complaints in March and April of this year. Lack of action on many of them shows that the agency does not have the resources to adequately protect workers. This means workers are left largely to fend for themselves. We know that it’s the most vulnerable workers, immigrants and low-wage earners who are more likely to be working in jobs with potential exposure. “Essential” workers are not expendable and they should not be treated as such.

This must change before we continue to add thousands more “non-essential” workers into the workforce. **We urge the Governor to immediately issue an Executive Order to create statewide, enforceable COVID-19 health and safety standards.** Governors in states such as Minnesota, Pennsylvania and New Jersey have already taken this action.

We also urge our Governor to **create a single, multilingual, hotline number** to ensure that all workers, including those for whom English is not a first language, have a clear process for reporting dangerous conditions and receiving support and guidance.

**We urge our Legislators to pass a law codifying statewide, enforceable COVID-19 health and safety standards, setting a minimum for Oregon OSHA fines that is high enough to act as a deterrent and a punishment and vastly expanding the resources that Oregon OSHA has to enforce the standards and to serve immigrant communities in a culturally competent manner. As a precedent for an OR-OSHA standard, we urge our Legislators to examine the California Aerosol Transmissible Disease [standard](#), a state plan regulation that has been in effect since 2009 and went through a full standard development process.**

a. The standard should require that employers provide effective and stringent health and safety protections, designed with meaningful input from workers and unions. Employers should provide maximum health and safety protections, and at a minimum, meet all CDC and OSHA guidelines on social distancing, enhanced cleaning, disinfection and sanitization (using EPA-approved disinfectants and sanitizers,) and handwashing. It should require that employers provide hot water, soap, and paper towels at hand-washing stations and that employees be given ample opportunity to wash hands regularly as well as to use hand sanitizers. The standard should also require employers to provide enough hand tools (in occupations such as forest thinning and tree planting) so that workers do not have to share tools. In addition, it should require that employers provide disinfectants for cleaning tools in the event that workers do share them, as well as the time needed to disinfect them. Wherever possible, increased ventilation should be provided and physical barriers to airborne transmission should be installed, such as plexi-glass windows in front of cashiers.

b. Per CDC guidelines, the standard should require that all employers have a written plan to identify, eliminate or reduce to the extent possible worker exposure to infectious disease hazards. The plan should be developed in collaboration with workers and unions, should include an assessment of how workers might be exposed to COVID-19 and should define clear controls to prevent or reduce exposure. The plan should also outline a process for communicating with workers in their native languages about COVID-19 cases identified at the workplace. The plan should include a requirement to evaluate how well the plan is working.

i. As employers prepare plans to eliminate or reduce worker exposure to infectious disease hazards, the protections they provide must align with the “hierarchy of controls” that favors

more protective elimination, substitution and engineering controls over less protective administrative controls and personal protective equipment.

ii. To protect workers from COVID-19, administrative controls and personal protective equipment (PPE) will also be needed. Appropriate types and amounts of PPE must be made available.

iii. Health and safety training is also an integral part of any prevention plan, including topics such as basic rights on the job, proper fit-testing and donning and doffing of PPE. Training and training materials should be provided in workers' native languages.

c. The standard should require that all employers designate a COVID-19 health and safety officer whose priority is to protect the health and safety of workers.

d. The standard should include strong worker rights to refuse dangerous work when adequate safety protections are not provided, with no loss of pay and with job protection.

e. The standard should require employer documentation of COVID-19 infections among workers and investigation of the cases to assess potential sources of workplace exposure, as well as the controls that need to be implemented/improved to prevent future occurrences. It should also require that all cases of workers found to be positive for COVID-19 be reported to local boards of health and incorporated into the statewide health surveillance system for COVID-19.

f. The standard should require that all co-workers who have been in close contact with a worker known to have COVID-19 infection be informed of their possible exposure to COVID-19, while keeping the infected worker's identity confidential in accordance with the American with Disabilities Act.

g. Oregon's standard should require that all workers with close contact with an affected person be quarantined for 14-days with pay or as long as recommended by a medical professional, either paid for by the employer or by a combination of workers' compensation insurance and the employer to keep the worker whole.

h. The standard should prohibit incentives or bonuses for not using sick time, for reporting to work for a certain number of days or weeks in a row or related policies that discourage workers from taking time off of work and from utilizing sick time.

i. The standard should mandate that employers discontinue production and service quotas that prevent work from being performed in a manner that will minimize possible COVID-19 transmission. Any rule or practice that limits workers' time for proper handwashing and sanitation should be eliminated. Any production or service quotas in any contracts in which the State of Oregon is a party should waive such quotas to minimize possible COVID-19 transmission.

j. The standard should ensure that employers who fail to implement appropriate protective measures and expose workers to the risk of COVID-19 are assessed commensurate civil penalties for non-compliance.

**2. Oregon must establish a workers' compensation workplace presumption for *all* workers, as called for by Oregon's unions in their letter to you dated April 16, 2020.**

Over a month ago, many of Oregon's unions took a stand on the need to protect frontline workers. We echo and amplify that request, especially as some of us have first-hand experience supporting low-wage and immigrant workers with claims for compensation that have been unjustly denied. Vulnerable workers struggle to find legal representation, particularly if they are not native English speakers. During this health and safety crisis where workers are becoming ill from exposure at work, we must expedite these claims.

a. Workers' Compensation benefits should be approved, using a conclusive presumption, for *all* workers who are exposed to other workers or the public at the workplace and become infected with COVID-19.

b. Any worker who is diagnosed with COVID-19 who works within a health care or nursing facility where COVID-19 is present, or a morgue or mortuary that handles the bodies of COVID-19 victims, or is a first responder (including firefighters, police, EMTs, paramedics), any workers who work where there is a cluster of COVID-19 cases, and any workers who work with the public where the employer has failed to comply with relevant OSHA and CDC recommendations or requirements or with Governor's orders is entitled to a conclusive presumption that the disease is an occupational disease arising out of and in the course of employment.

c. Definition of worker should include full and part-time workers who are physically present in the workplace and workers who are independent contractors, employees of subcontractors, staffing agencies and temp agencies as long as they perform their work within the facility where COVID-19 cases have been identified.

d. Workers who are exposed to COVID-19 at work and are advised by their employer or by a health care provider to quarantine shall be eligible for workers' compensation to cover the period of quarantine during which they are away from work, irrespective of whether they have actually contracted the disease.

e. Insurers and their contractors must be required to keep and provide data regarding race, ethnicity, and native language as well as data on their claim acceptance, denial, or other resolution in order for the State to be able to review whether disparities exist in resolution of claims.

**3. Oregon needs additional whistleblower protections to protect workers' ability to report hazardous conditions, specifically a presumption of retaliation if workers suffer adverse action within 90 days of reporting hazardous conditions.**

We must take a strong stance to prevent and remedy retaliation from employers who might put economic interests over the safety of their employees and the public. This is even more important to protect for our immigrant, low-income, and other vulnerable communities who risk extreme financial hardship from job loss and/or immigration threats if they stand up to unscrupulous employers.

- a. Any adverse action taken by an employer against any employee or subcontractor or independent contractor on the premises who raises safety concerns should be presumed to be retaliatory if taken within 90 days of the worker having raised his/her concern. The employer may rebut this presumption only if there is clear and convincing evidence that the adverse action was taken for a reason unrelated to the raising of the safety concern.

**4. Oregon must remedy deficiencies in our unemployment insurance, sick and family leave laws. These deficiencies leave sick and immunocompromised workers no choice but to return to work in dangerous conditions to support themselves and their families.**

We know firsthand that all kinds of workers, at all levels of income, are struggling to understand their rights and access benefits under state and federal law. But, those hardest hit are those who speak English as a second language, those with an immigration status that precludes access to unemployment insurance, and low-wage earners who may have already been on the edge economically. We ask you to close gaps in coverage, provide direct resources to workers and assure equal access for immigrant communities and communities of color.

- a. All workers who have been exposed to, have been diagnosed with, or have symptoms of COVID-19 should have a right to quarantine with pay for as long as recommended by a medical professional. The current rights to paid sick time have substantial gaps. Oregon sick time only entitles workers up to 40 hours annually, and smaller employers (under 6 in Portland and 10 the rest of the state) do not have to pay workers while they are out sick. In addition, newer or temporary employees may not have accrued or be eligible to take leave because the current law has a 90-day waiting period. Paid leave under the Federal Family First Coronavirus Response Act does not cover workers of employers with more than 500 employees and allows smaller employers to opt out with little or no recourse for employees. In addition, independent contractors and gig workers are left out of any rights to paid leave under the temporary federal standards. Workers will come to work sick or while potentially contagious unless we ensure that their economic livelihood will not suffer while they recover or quarantine at home.

- b. [This](#) article in the New York Times this month speaks to the alarming discrepancy in infection

rates between Latinx and White workers in Oregon. The inequitable fallout does not end there. Spanish and other non-English speakers are facing barriers in applying for unemployment benefits because online applications are in English, the English application requires applicants to swear that they are the only ones filling out the forms (preventing community organizations from assisting,) and applicants cannot reach the Employment Department by telephone. New phone lines need to be added as soon as possible for non-English speaking workers to apply for Unemployment Insurance. Undocumented Oregonians cannot access these crucial benefits at all. And, while the Oregon Worker Relief fund is an excellent start, much more funding is needed to make an impact in the lives of those who currently feel they have no choice but to report to work, regardless of the conditions they will face.

c. Workers who quit their job to protect themselves from the virus or were fired for refusing to work under what they reasonably believe are dangerous conditions should be granted “a good cause quit,” and deemed eligible for unemployment insurance. The Employment Department’s rules should be clarified and strengthened in this regard.

d. The Oregon Family Leave Act thresholds for employer size and time worked by employees must be removed for COVID-related reasons, medical verification requirements must be removed and independent contractors and gig workers must be included in coverage. That way *all* workers can take up to 12 weeks of COVID-related family leave and still return to work. The new temporary federal rule allowing this time to be used for child care leave should be extended for as long as any public health crisis lasts, including this current pandemic. This time should also not overlap with or take away from other leave that someone may have access to under state or federal law or as provided by their employer or a collective bargaining agreement.

e. Oregon should expand anti-discrimination, disability and accommodation protection for workers who have recovered but have sustained health impairments, for pregnant workers, and those who are in high risk categories (older workers, workers with underlying conditions and workers with impaired immune systems).

Thank you for the opportunity to provide these recommendations which were compiled with the input of the organizations listed below. Please contact Kate Suisman of Northwest Workers’ Justice Project at 503-525-8454 or [kate@nwjp.org](mailto:kate@nwjp.org) to discuss the recommendations in this letter.

Sincerely,

Oregon AFL-CIO, Pinos y Campesinos Unidos del Noroeste (PCUN), Association of Western Pulp and Paper Workers, Portland Jobs with Justice, Voz Workers’ Rights Education Project, Lomakatsi Restoration Project, Northwest Workers’ Justice Project, Oregon Center for Public Policy, Safe Jobs Oregon, Causa, Service Employees International Union