



August 11, 2020

Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP
Secretary/Treasurer
Lee A. Saunders
American Federation of State,
County & Municipal Employees
Board of Directors
Kevin Allis
National Congress of American Indians
Kimberly Churches
AAUW
Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law
Alphonso B. David
Human Rights Campaign
Rory Gamble
International Union, UAW
Lily Eskelsen Garcia
National Education Association
Fatima Goss Graves
National Women's Law Center
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
David H. Inoue
Japanese American Citizens League
Derrick Johnson
NAACP
Virginia Kase
League of Women Voters of the
United States
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab
Anti-Discrimination Committee
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Debra L. Ness
National Partnership for
Women & Families
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Maria Town
American Association of
People with Disabilities
Richard L. Trumka
AFL-CIO
Toni Van Pelt
National Organization for Women
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC
Policy and Enforcement
Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Vanita Gupta

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Hon Chuck Schumer
Minority Leader
U.S. Senate
Washington, DC 20510

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

The Leadership Conference on Civil and Human Rights and nine of our member organizations write in strong opposition to S. 4317, a bill that would grant sweeping immunity to businesses for coronavirus-related lawsuits.

The so-called "Safe to Work" Act is an extreme bill that would protect businesses at the expense of working people and the public by shifting the burden of the pandemic onto those who are most vulnerable to the health and economic impacts of this crisis. This bill would put educators and other public sector workers at risk of harm, while making it easier for businesses to violate key federal civil rights and worker protection laws.

The Safe to Work Act Would Endanger the Health and Safety of Working People and the Public.

No one should be forced to choose between their health and their livelihood, but that is the choice that too many Black and Brown people have faced during this pandemic, even as they have died from COVID-19 at higher rates than the overall population. Frontline workers — including those in health care, nursing homes, and other congregate facilities; home and child care; transit; food processing and delivery; and grocery stores — have risked their safety throughout the pandemic to ensure that people across the country have access to goods and services. People of color, people with disabilities, and women are overrepresented in these essential jobs — many of which are not unionized, resulting in low wages, limited control over working conditions, and no paid leave or employer-sponsored health insurance.¹

¹ See Celine McNicholas and Margaret Poydock, *Who Are Essential Workers*, Econ. Pol'y Inst. (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>; Nat'l Women's Law Ctr., Fact Sheet, Employer Immunity from COVID-19-Related Liability Endangers Women and People of Color (June 2020), <https://nwlc-ciw49tixgw5lbbab.stackpathdns.com/wp-content/uploads/2020/06/Employer-Immunity-Factsheet-6.22.2020.pdf>; Joe Little, *The Work is Essential: Employees with Disabilities Fill Vital Roles During*

As a result, individuals in these jobs are both more vulnerable to exposure to coronavirus and less likely to have the resources to withstand a major illness. These individuals, as well as those who will be forced to return to jobs outside of their homes, are the ones who will be most harmed by giving businesses and other employers the broad immunity from accountability for hazardous working conditions proposed in S. 4317.

The Safe to Work Act would provide businesses, schools, and public employers with an unprecedented, five-year shield against liability for failing to meet their obligations to workers and the public. Among other things, the bill would:

- Ban workers, consumers, and patients from bringing COVID-related negligence claims and instead only allow gross negligence or willful intent claims;
- Provide an entirely new federal definition for “gross negligence” that is more onerous than any definition under state law, and require individuals to meet an excessively high burden of proof;
- Allow a business or public employer to escape COVID-related liability if they attempt to comply with *any* applicable government standard or guidance which — in the absence of protective and enforceable standards — encourages employers to race to the bottom and simply conform to guidelines that are the least protective of health and safety;
- Allow businesses that receive demand letters from individuals who have been injured to sue those individuals for attempting to settle a dispute, thereby preemptively deterring working people, consumers, and patients from trying to enforce their rights; and
- Require a heightened pleading standard in COVID-related cases that requires a person to detail with specificity all of the places and individuals they came in contact with over a 14-day period prior to the onset of the first coronavirus-related symptoms, and an explanation for why those individuals were not responsible for infecting them.

By shielding employers from accountability, the Safe to Work Act would essentially give employers a greenlight to ignore worker safety. With more than five million COVID-19 cases and more than 160,000 deaths, Congress must act to protect the health and lives of all our people, not incentivize a race to the bottom for workplace standards.

We have already witnessed the willingness of some business entities to sacrifice the health and lives of their employees. At a Missouri meatpacking plant, for example, workers reported inadequate time to wash their hands, inadequate access to masks and gloves, and being forced to work “shoulder-to-shoulder for

hours.”² Workers at a California fast food restaurant reported that their employer failed to implement social distancing or cleaning protocols and gave employees dog diapers to wear as masks.³ And warehouse workers in New York reported being potentially penalized for taking time to wash their hands or clean their workspaces and discouraged from taking quarantine leave — even as dozens of workers at the warehouse were testing positive for coronavirus.⁴

The public knows about these cases — and conditions have improved — because workers were able to challenge the negligent actions of these businesses in court. The Safe to Work Act, however, would make it effectively impossible to challenge unsafe working conditions that expose workers, their families, and communities to COVID-infection and death, giving many businesses a free pass to prioritize profits over people. To date, the very few coronavirus exposure cases that have been filed have involved serious workplace safety issues and working people have been able to secure changes because of them. This bill would take away this tool, further rigging the system against working people.

Similarly, at many nursing homes and other congregate facilities, workers have been denied basic protective equipment, like masks and hand sanitizer, and were initially prevented from learning whether residents have COVID-19.⁵ Both residents and staff of these facilities continue to suffer and die at tragically high rates.⁶ The Safe to Work Act would make it virtually impossible for them and their family members to hold these facilities accountable for harm or death caused by negligent care.

Further, as schools and college campuses reopen, concerns are growing about the health and safety of students, teachers, and support staff. Despite some early hopes to the contrary, it is now clear that children can both be asymptomatic carriers of coronavirus and can become seriously sickened with COVID-19,⁷ and, of course, teachers and staff are also at risk of illness and death. The Safe to Work Act, however, would remove a powerful incentive for schools to adopt and enforce policies that protect school communities.

² Smithfield Worker, *I Work at Smithfield Foods. I'm Suing Them over Putting our Lives at Risk for Your Dinner.*, Wash. Post (Apr. 24, 2020), <https://www.washingtonpost.com/outlook/2020/04/24/smithfield-foods-lawsuit-coronavirus/>.

³ *Judge: McDonald's Store to Remain Closed after Outbreak*, Associated Press (June 25, 2020), <https://apnews.com/8b0b7cfb9c685227b52913ab734d3828>.

⁴ *Amazon's Hand Washing Policy in the Spotlight*, BBC News (July 14, 2020), <https://www.bbc.com/news/technology-53402066>; Paul Bland, Public Justice, *Mitch McConnell's Deadly Plan to Immunize Corporations*, Daily Kos (July 15, 2020), <https://www.dailykos.com/stories/2020/7/15/1960946/-Mitch-McConnell-s-Deadly-Plan-to-Immunize-Corporations>.

⁵ Peter Whorisky, Debbie Cenziper et al., *Hundreds of Nursing Homes Ran Short on Staff, Protective Gear as More Than 30,000 Residents Died During Pandemic*, Wash. Post (June 4, 2020), <https://www.washingtonpost.com/business/2020/06/04/nursing-homes-coronavirus-deaths/>.

⁶ As of July 30, there were nearly 63,000 reported COVID-19 deaths in long-term care facilities, a shocking 44 percent of total COVID-19 deaths in the United States. Kaiser Family Foundation, *State Data and Policy Actions to Address Coronavirus* (Aug. 3, 2020), <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/> (last visited Aug. 4, 2020).

⁷ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Information for Pediatric Healthcare Providers* (July 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pediatric-hcp.html> (noting “multiple reports to date of children with asymptomatic SARS-CoV-2 infection,” and highlighting that in the largest study of pediatric COVID-19 patients, nearly 45% had moderate to critical illness severity).

The Safe to Work Act Would Undermine Federal Civil Rights and Worker Protection Laws.

The coronavirus pandemic is both a public health and economic crisis, but not everyone in America has been impacted the same way. Communities that have already been marginalized by structural barriers to equal opportunities — Black and Brown people, women, immigrants, seniors, people with disabilities, and other groups — have been hardest hit by the pandemic and are also particularly vulnerable to discrimination. This makes our nation’s federal civil rights and worker protection laws even more essential to safeguard fairness, safety, and dignity. Shockingly, however, the Safe to Work Act would provide employers with a pathway to immunity from these hard-fought laws and would make it easier for employers to violate workers’ rights under the following statutes:

- Occupational Safety and Health Act,
- Fair Labor Standards Act,
- Age Discrimination in Employment Act,
- Worker Adjustment and Retraining Notification Act,
- Title VII of the Civil Rights Act of 1964,
- Title II of the Genetic Information Nondiscrimination Act, and
- Title I of the Americans with Disabilities Act.

Under the Safe to Work Act, employers could avoid accountability for violating any of these laws if they can show that the violation resulted from either exposure or risk of exposure to coronavirus, or a change in working conditions caused by a law, rule, declaration, or order related to the coronavirus, and they “attempted” to comply with the law or relied on *any* applicable government standards or guidance — including guidance that only asks employers to *consider* taking safety precautions.

In addition to making it more difficult for individuals to enforce their rights, the bill would go even farther by also prohibiting federal agencies, like the Equal Employment Opportunity Commission and the Occupational Safety and Health Administration, from investigating or bringing enforcement actions on behalf of workers who have been harmed. Moreover, the Safe to Work Act does not place any temporal limits around the provisions impacting civil rights and worker protection suits.

By creating new defenses for employers who may discriminate against or violate workers’ rights, this bill would force marginalized employees — who already face significant hurdles in accessing justice and are more likely to experience discrimination during the COVID-19 pandemic⁸ — to overcome herculean barriers to enforcing their rights. The end result for workers could be devastating. For example, this bill

⁸ Social distancing, courthouse closures, COVID illness, and widespread disruption pose new barriers to individuals experiencing workplace discrimination who seek to protect or enforce their rights. At the same time, unprecedented economic disruption leaves workers more desperate to maintain a paycheck at any cost, making workers more vulnerable to abuse and discrimination. *See e.g.*, Irene Tung and Laura Padin, *Silenced by COVID-19 in the Workplace*, Econ. Pol’y Inst. (June 10, 2020), <https://www.nelp.org/publication/silenced-covid-19-workplace/> (finding that Black workers are more than twice as likely as White workers to have experienced possible retaliation by their employer and that “the disproportionate impact of COVID-19 on Black communities may be related to greater exposure of Black workers to repressive workplace environments”).

could potentially immunize an employer that denies a retail worker with a disability, who is at heightened risk of complications because of COVID-19, a reasonable accommodation under federal law, like working in the back of a store rather than in a customer-facing capacity. Warehouse workers who are not paid for the time spent putting on and taking off personal protective equipment may find that this bill could exempt their employer from federal wage and hour laws. And employers who disproportionately furlough African-American workers or give African-American workers suboptimal jobs may seek to shield themselves from liability by raising defenses provided under this bill.

The bill would also make it easier for so-called “gig companies” to misclassify workers as independent contractors. This would further restrict the ability of workers, like drivers on rideshare apps, to press these companies for safer working conditions, such as partitions for vehicles. And because they are not classified as employees, these workers are unable to access workers’ compensation if they get sick, may struggle to get state unemployment benefits or state-mandated paid sick leave, and are not explicitly protected by federal anti-discrimination laws. This bill would also allow large corporate franchises, like fast food restaurants, to disclaim responsibility for their workers if franchisees fail to abide by corporate policies and workers get sick with COVID-19 on the job, letting these corporations entirely off the hook for protecting their low-wage workers, disproportionately people of color.

The Safe to Work Act would also grant a wide range of employers an exemption from laws prohibiting discrimination in public accommodations, during *any* public health emergency period, including any future emergency period related to the coronavirus, no matter when that occurs. Any business or employer could be shielded from liability if their discriminatory actions were somehow related to coronavirus. For example, a restaurant that has reopened to indoor dining but refuses that service to Latino customers — and forces them only to use takeout services because of a belief that Latino customers are more likely to have COVID-19 — could be potentially immune from liability for discrimination if S. 4317 becomes law.

During this ongoing national health crisis, when millions of people are sick and hundreds of thousands have died, Congress must do all it can to decrease the rate of infection and death, curb the spread of the virus, and provide support and resources to people who are struggling to make ends meet, keep a roof over their heads, and survive. The Safe to Work Act does none of those things, and instead would give businesses and employers a free pass on wrongdoing, while shifting the burden of the pandemic onto those least able to bear it. We urge you to oppose the Safe to Work Act.

Please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference, at burroughs@civilrights.org with any questions.

Sincerely,

The Leadership Conference on Civil and Human Rights
AFL-CIO



American Federation of State, County and Municipal Employees (AFSCME)
NAACP
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Education Association
National Employment Law Project
National Women's Law Center
Service Employees International Union