



June XX, 2020

**RE: Oppose Business Immunity for Coronavirus-Related Claims**

Dear Senator:

The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, together with the undersigned XX organizations dedicated to advancing economic security, health, and civil rights, write to oppose any legislation that would immunize businesses from liability from coronavirus-related claims.

No one should have to choose between their health and safety and their livelihood. Even as our nation's policymakers pivot to discussions about "reopening" our economy, our country leads the world both in coronavirus infections and in COVID-19 deaths. At the same time, first responders and other front line workers in health care, nursing homes and other congregate settings, home and child care, transit, grocery stores, pharmacies, and the food chain from processing to delivery have been deemed "essential" and are risking their own health and financial security every day. People of color and women are overrepresented in many of the jobs deemed essential and, because of years of discrimination and structural barriers to economic opportunity, have fewer resources to withstand a health or economic emergency. The economy was never "closed" for essential workers.

Granting employers legal immunity from accountability to their workers would make it less likely that employers take the steps necessary to protect working people's health and, thus, would further endanger and disadvantage the health and economic security of people of color, women, and low income people who are working in essential jobs or returning to the workforce. Immunity from liability would eliminate these workers' already limited ability to seek justice in the courts and remove a powerful incentive for businesses to maintain a safe working environment, putting our communities at increased risk of illness and death.

Legal immunity would also further threaten the health and safety of seniors and people with disabilities. Residents and staff of nursing homes, assisted living, and other congregate care facilities continue to be at particular risk of illness and death during this pandemic. Removing the ability of residents and their families to hold these facilities accountable for harm they cause may put even more lives in jeopardy and result in an increase in resident deaths. In addition to congregate care facilities, older people and people with disabilities—both as workers and as consumers—are made more vulnerable if grocery stores, pharmacies, and other essential businesses fail to take proper health and safety precautions.

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### ***Immunitizing Corporations Would Harm Working People of Color and Women Workers***

The current public health crisis has laid bare our nation's deep structural racism and its entrenched barriers to opportunity for many communities. Our nation's policy choices have left too many Black and Brown people without adequate health care, without access to healthy and affordable foods, without clean air and water, without unions, and without meaningful access to the tools to build financial security. These policies have left Black and Brown people and other marginalized groups more vulnerable to illness and death from COVID-19, even as they have been deemed essential and asked to put their lives at risk to ensure that the rest of the country has food on the table, clean hospitals, and access to transportation. It is these essential workers, and other vulnerable workers who must return to work and are unable to avail themselves of teleworking, who would be most harmed by giving businesses immunity from liability for COVID-related claims.

Many of the jobs at the sites of large COVID-19 outbreaks, such as at nursing homes, other congregate living facilities, and meatpacking plants, are held primarily by women and people of color, including recent immigrants. Nearly 90 percent of nursing, psychiatric, and home care aides in the United States are women.<sup>1</sup> Specifically, Black women are over-represented in the long-term care workforce,<sup>2</sup> and overall, the majority of women working as home health and personal care aides are women of color.<sup>3</sup> Food processing employs a large number of Black and Latino workers<sup>4</sup> and relies heavily on the labor of immigrants,<sup>5</sup> many of whom face additional obstacles to demanding safe workplaces, including language barriers and fears concerning their immigration status. In addition, many other essential workers and other returning workers are in low-wage industries in which women and people of color make up the majority of the workforce, often working without critical support like paid sick leave, employer-sponsored health insurance, or affordable childcare.<sup>6</sup>

These workers, many of whom have already been marginalized by structural barriers to equal economic opportunities, have fewer resources to recover from the economic costs of contracting COVID-19. Going to work should not put people in unnecessary danger. Business immunity, however, makes these vulnerable groups less safe, causing further harm to those who have had to bear the brunt of this public health crisis.

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<sup>1</sup> AARP Public Pol'y Inst., *Women and Long-Term Care*, [https://assets.aarp.org/rgcenter/il/fs77r\\_ltc.pdf](https://assets.aarp.org/rgcenter/il/fs77r_ltc.pdf).

<sup>2</sup> Timothy Bates et al., *Racial/Ethnic Diversity in the Long-term Care Workforce*, Univ. of Cal. San Francisco Health Workforce Research Ctr. on Long-Term Care (Apr. 18, 2018), [https://healthworkforce.ucsf.edu/sites/healthworkforce.ucsf.edu/files/REPORT-2018.HWRC\\_diversity\\_4-18.pdf](https://healthworkforce.ucsf.edu/sites/healthworkforce.ucsf.edu/files/REPORT-2018.HWRC_diversity_4-18.pdf)

<sup>3</sup> Maya Raghu & Jasmine Tucker, *The Wage Gap Has Made Things Worse for Women on the Front Lines of COVID-19*, Nat'l Women's Law Ctr. (Mar. 30, 2020), <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>.

<sup>4</sup> U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey* (last modified Jan. 22, 2020), available at <https://www.bls.gov/cps/cpsaat18.htm>.

<sup>5</sup> Claire Fitch et al., *Public Health, Immigration Reform and Food System Change*, Johns Hopkins Ctr. for a Livable Future (2017), <https://clf.jhsph.edu/sites/default/files/2019-04/health-immigration-reform-and-food-system-change-report.pdf>.

<sup>6</sup> See Jasmine Tucker & Julie Vogtman, *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, Nat'l Women's Law Ctr. (April 2020), <https://nwlc.org/resources/when-hard-work-is-not-enough-women-in-low-paid-jobs/>.

The risk of harm to working people of color and women workers is acute. A recent survey of service-sector employers found that many businesses were slow to implement guidance from the Centers for Disease Control and Prevention (CDC) to protect essential workers.<sup>7</sup> Only a little more than half of employees, for example, reported that their employers had made gloves available to workers by April 2020, and only 19 percent reported that masks were available. Fewer employees reported that gloves or masks were required. Implementation of health and safety measures also varied widely across workplaces. Less than 5 percent of fast food workers, for example, reported access to masks. These conditions are dangerous to both working people and consumers.

Although conditions may have improved at some workplaces, there is still no enforceable workplace safety standard to protect working people from exposure to COVID-19, and despite receiving over 5,000 COVID-19 related complaints,<sup>8</sup> the Occupational Safety and Health Administration (OSHA) has issued virtually no citations.<sup>9</sup> But even these large number of complaints may vastly undercount workplace issues, as many working people may be hesitant to report concerns or file complaints for fear of retaliation.<sup>10</sup> So far, Black workers have been more than twice as likely as white workers to report that they or someone at their job had been punished or fired for raising COVID-related concerns.<sup>11</sup> Immunizing businesses would further silence these workers, incentivize unsafe and unhealthy working conditions, and make it difficult if not impossible for working people—and in particular people of color and women—to hold businesses accountable for failing to protect their health and safety.

### ***Immunizing Businesses Would Further Erode Access to Justice for Working People***

Granting businesses immunity from liability erects a further substantial barrier to accessing justice and effectively forecloses workers' ability to hold their employers accountable. Immunity from liability creates a race to the bottom for workplace standards. Under these circumstances, even employers who want to act reasonably may be tempted to take shortcuts with protective measures to compete with unscrupulous employers, endangering working people and leaving them with few and limited options for seeking justice.

Working people in the United States—and in particular low-wage workers, Black workers, and women workers—already face a rigged system that imposes significant hurdles when they seek to protect their

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<sup>7</sup> Daniel Schneider & Kristen Harknett, *Essential and Unprotected: COVID-19-Related Health and Safety Procedures for Service-Sector Workers* (May 2020), <https://shift.berkeley.edu/files/2020/05/Essential-and-Unprotected-COVID-19-Health-Safety.pdf>.

<sup>8</sup> U.S. Dep't of Labor, Occupational Safety and Health Admin., COVID-19 Response Summary (last updated June 24, 2020), available at <https://www.osha.gov/enforcement/covid-19-data>.

<sup>9</sup> Mark Bocchetti, *Democrats Press OSHA Head Over COVID-19 Enforcement*, Roll Call (May 28, 2020), <https://www.rollcall.com/2020/05/28/democrats-press-osha-head-over-covid-19-enforcement/>.

<sup>10</sup> Christian Davenport et al., *As Coronavirus Spreads, So Do Reports of Companies Mistreating Workers*, The Washington Post (Mar. 31, 2020), <https://www.washingtonpost.com/business/2020/03/31/worker-retaliation-mistreatment-coronavirus/>.

<sup>11</sup> Irene Tung & Laura Padin, *Silenced by COVID-19 in the Workplace* (June 2020), <https://www.nelp.org/publication/silenced-covid-19-workplace/>.

rights through the courts.<sup>12</sup> Recovery limits imposed under workers compensation laws, limits on collective bargaining, forced arbitration requirements, and forced class/collective action waivers make it exceedingly difficult for working people to hold an employer accountable. Legislation that would grant immunity to businesses that fail to take reasonable actions to make workplaces safe and healthy would wipe away any hope that working people can be treated fairly and made whole when harmed by their employer's actions or inactions in response to the coronavirus. Let us not further rig the system in favor of the Goliaths against the Davids.

### ***Immunizing Businesses Harms Seniors and People with Disabilities***

COVID-19 is raging through nursing homes, group homes, developmental centers, and other congregate living, long-term care facilities across the country and has caused the deaths of more than 40,000 seniors and people with disabilities, accounting for about 40 percent of all deaths in the United States—and the death count rises each day.<sup>13</sup> Though staff and residents of all congregate care facilities are vulnerable, racial disparities continue to exist even for these settings. Nursing homes with large numbers of Black and Latino residents, for example, are twice as likely to have positive COVID-19 cases than nursing homes where the population is overwhelmingly white. A study by the New York Times conducted this May, found that the race and ethnicity of nursing home residents—regardless of a facility's size, location, or government rating—was a larger predictor of whether a nursing home had been hit by COVID-19.<sup>14</sup>

Longstanding problems including living spaces that make distancing impossible, understaffing, poor infection control procedures, inadequate planning, and substandard care, along with more recent problems such as a lack of personal protective equipment, have contributed to the devastation we are witnessing, with people of color continuing to be much more vulnerable. Data has consistently shown that nursing homes are highly segregated by race and ethnicity with widespread disparities in quality of care,<sup>15</sup> reflecting larger structural inequality and institutional racism. There is grave concern that in many facilities across the country, these problems rage on unabated and there remain many facilities for which we have very little if any data. Moreover, in most of these facilities, little is being done to reduce the number of residents, making social distancing impossible given the close, confined quarters in these facilities. Stripping residents and their family members of any ability to hold facilities accountable for the harm they have suffered under these circumstances is unconscionable.

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<sup>12</sup> Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration*, Econ. Pol'y Inst. (Apr. 6, 2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.

<sup>13</sup> Marisa Kwietkowski et al., *A National Disgrace: 40,600 Deaths Tied to U.S. Nursing Homes*, USA Today (June 1, 2020), <https://www.usatoday.com/story/news/investigations/2020/06/01/coronavirus-nursing-home-deaths-top-40-600/5273075002/>.

<sup>14</sup> Robert Gebeloff, et al., *The Striking Racial Divide in How Covid-19 Has Hit Nursing Home*, N.Y. Times (May 21, 2020), <https://www.nytimes.com/article/coronavirus-nursing-homes-racial-disparity.html>.

<sup>15</sup> Lauren J. Campbell et al., *Racial/Ethnic Disparities in Nursing Home Quality of Life Deficiencies, 2001 to 2011*, *Gerontology and Geriatric Medicine* Vol. 2 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5066711/>; Yue Li et al., *Deficiencies In Care At Nursing Homes And Racial/Ethnic Disparities Across Homes Fell, 2006–11*, *Vulnerable Populations* (Jul. 2015), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0094>.

Moreover, immunizing the business entities that operate nursing homes and other long-term care facilities will not only leave residents and their families with no recourse for serious harm or death, but will put more residents at risk and inevitably result in additional preventable resident deaths. The ability to hold companies liable for wrongdoing continues to serve as an important safeguard for the seniors and people with disabilities who live in skilled nursing homes, assisted living facilities, and other long-term care institutions by incentivizing these entities to provide quality care. Ensuring that residents and their family members can hold facilities accountable is even more important today because the individuals and agencies that typically provided some level of oversight (e.g., family members, ombudsmen, protection and advocacy organizations) no longer have easy access to residents and the facilities. To immunize institutions under these circumstances would be to abandon seniors and people with disabilities and to allow these institutions to neglect residents with impunity.

Seniors and people with disabilities, including those with significant risk factors such as compromised immune systems, diabetes, high blood pressure, and breathing difficulties, are also at additional risk of serious harm from poor infection control by local businesses, including grocery stores and other essential services. CDC data shows that seniors, and even persons age 50 and above, are at elevated risk of hospitalization and even death from contracting COVID-19. Not only are older workers and working people with disabilities vulnerable to exposure, but seniors and people with disabilities living in the community often must go in person to businesses, such as grocery stores and pharmacies, due to limited delivery options and restrictions on use of SNAP/WIC benefits for deliveries. This community is therefore at extra risk of harm if businesses are not properly incentivized to take precautions.

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Congress should not create additional barriers to ensuring safe workplaces. Granting immunity from liability to businesses for coronavirus-related claims would harm people of color and women who make up a large share of essential and returning workers doing their part to sustain our communities and promote our nation's recovery, even as Black and Brown communities have been made more vulnerable to coronavirus infection and death. Immunity also puts seniors and people with disabilities, who are dying at alarming rates, at increased risk of harm. We urge you to oppose any legislation that grants businesses immunity from accountability and to focus instead on meeting the immediate and long-term needs of the people who have been hardest hit by this pandemic.

Please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference, at [burroughs@civilrights.org](mailto:burroughs@civilrights.org) with any questions.

Sincerely,  
The Leadership Conference on Civil and Human Rights  
American Association for Justice  
National Employment Law Project  
National Partnership for Women & Families  
National Women's Law Center  
Public Citizen