



May 11, 2020

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

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

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

The Honorable Charles E. Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

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

MARY KAY HENRY
International President

GERRY HUDSON
International Secretary-Treasurer

NEAL BISNO
Executive Vice President

LUISA BLUE
Executive Vice President

HEATHER CONROY
Executive Vice President

LESLIE FRANE
Executive Vice President

VALARIE LONG
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I write on behalf of the two million members of the Service Employees International Union (SEIU) to oppose any effort to shield corporations from their legal responsibilities to workers during the COVID-19 pandemic. This pandemic has laid bare deep economic and racial inequities, with corporate leaders (from the comfort of their homes) forcing essential workers to choose between their safety and a paycheck.¹ While working people of all backgrounds have been placed in jeopardy, workers of color are shouldering a disproportionate share of the pandemic's risks.² Communities of color have long been denied necessary health resources, and the COVID-19 pandemic is sadly no exception.

Congress must act now to strengthen protections for all workers - Black, brown and white - by requiring, at a minimum, new COVID-19 work safety rules, premium pay, and fully paid sick and family leave. Not only are some Members of Congress resisting these crucial steps, but also some are proposing to weaken *existing* legal protections. Such measures would inflict further suffering on the workers who are keeping us safe, healthy, and fed during this crisis.

Specifically, corporations are demanding that Congress override state laws to allow them to escape legal responsibility when they engage in unsafe practices that expose workers to Coronavirus.³ These efforts are not surprising, but they should not be countenanced. For years, corporations have attempted to evade their legal responsibilities by locking workers and consumers out of court through forced arbitration and lawsuit limitations.⁴ These interests say that a shield against legal responsibility is necessary because businesses would otherwise be held responsible for COVID-19 infections they couldn't prevent or had nothing to do with. This is simply not true. First, outside of cases involving fraudulent or knowingly dangerous employer conduct, state workers' compensation regimes will *already* bar almost all lawsuits by workers for job-related illness. Second, even in the exceptional case where a worker may be able to sue, it is a central tenet of injury law that a company will only be held liable for harms that it could have reasonably foreseen. Third, the worker would have to prove that she contracted COVID-19 as a result of her employer's conduct and not some other source, which will be very difficult.

Congress should reject corporate attempts to escape responsibility and instead redirect its focus to *strengthening* protections for essential workers. Given that this Administration and corporate employers have failed to protect workers, Congress must create an independent, transparent, and coordinated system to produce and

distribute PPE. Congress must direct OSHA to issue a new COVID-19 safety standard with robust enforcement mechanisms. Also, Congress must guarantee premium pay to essential workers and provide all workers fully paid sick and family leave. The Families First Coronavirus Response Act was a first step, but, shamefully, it denied paid leave to most workers and shielded the biggest companies from the responsibility to provide paid leave.⁵ Additionally, Congress must strengthen unemployment insurance (UI) to guarantee income to workers who have lost work through no fault of their own and remove unnecessary obstacles in UI regimes designed to make it harder for workers to obtain benefits. And to help create economic stability during these unpredictable and unprecedented times, Congress must enact a paycheck guarantee, to support employers to keep workers on payroll with their healthcare and other benefits intact.

Instead of rewriting the rules for corporations to relieve them of their responsibilities to their workers, Congress should rewrite the rules for working people to ensure that they are paid fairly, have the protections they need, and have the opportunity to join a union for a seat at the table with corporations and government to bargain for better, safer jobs and a better, healthier future.

This is how a rational and compassionate government would react to the unprecedented COVID-19 public health crisis. Our essential workers deserve nothing less. And they certainly don't deserve a new lock on the courthouse door when they seek some measure of justice in the face of unsafe practices that put their lives and families in danger. Congress must strengthen worker protections and reject any attempt to shield companies from responsibility to workers. If you have any questions, please contact John Gray, SEIU's Legislative Director, at john.gray@seiu.org or (202)-412-9232.

Sincerely,


Mary Kay Henry
International President

MKH:BW:jf
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¹ See, e.g., "Virus With Your Quarter Pounder? Why McDonald's Needs to Guarantee Paid Sick Leave: NYT Opinion, N.Y. TIMES (Mar. 20, 2020) available at <https://www.youtube.com/watch?v=0oPbpE5E1gc>; "Working in Coronavirus: Why One Domino's Finally Gave its Workers P.P.E.: NYT Opinion, N.Y. TIMES (May 5, 2020) available at https://www.youtube.com/watch?v=HCDhHR_101Q; "In National Survey of Frontline Nurses, 92 percent Say Federal Government Is Not Doing Enough to Protect Healthcare Staff; 82 Percent Say They Do Not Have Enough Protective Equipment," SERVICE EMPLOYEES INTERNATIONAL UNION, available at <http://www.seiu.org/2020/04/in-national-survey-of-frontline-nurses-92-percent-say-federal-government-is-not-doing-enough-to-protect-healthcare-staff-82-percent-say-they-do-not-have-enough-protective-equipment>; Rachel Lerman & Nitasha Tiku, "Amazon, Instacart workers launch May Day strike to protest treatment during the coronavirus pandemic," WASHINGTON POST (May 1, 2020) available at <https://www.washingtonpost.com/technology/2020/05/01/amazon-instacart-workers-strike/>.

² Catherine Powell, "Color of Covid: The racial justice paradox of our new stay-at-home economy," CNN (Apr. 18, 2020) available at <https://www.cnn.com/2020/04/10/opinions/covid-19-people-of-color-labor-market-disparities-powell/index.html> ("While 37% of Asian workers and 29.9% of white workers are able to work remotely, only 19.7% of black workers, and 16.2% of Latinx workers, are able to telework, according to the Bureau of Labor Statistics. In short, they must leave their homes and show up for work during a pandemic. The duality -- people of color being overrepresented among both the unemployed and among essential workers -- is two sides of the same coin.").

³ See, e.g., “Implementing a National Return to Work Plan,” U.S. CHAMBER OF COMMERCE (Apr. 13, 2020) available at <https://www.uschamber.com/coronavirus/implementing-national-return-to-work-plan#liability>.

⁴ See, e.g., Kimberly Kindy, “House GOP quietly advances key elements of tort reform,” WASHINGTON POST (Mar. 9, 2017) available at https://www.washingtonpost.com/national/house-gop-quietly-advances-key-elements-of-tort-reform/2017/03/09/d52213b2-0414-11e7-b1e9-a05d3c21f7cf_story.html; “New U.S. Chamber of Commerce Poll Ranking States’ Liability Systems Is Part of a Disinformation Campaign to Restrict Consumer Rights”, PUBLIC CITIZEN (Mar. 8, 2005) available at <https://www.citizen.org/news/new-u-s-chamber-of-commerce-poll-ranking-states-liability-systems-is-part-of-a-disinformation-campaign-to-restrict-consumer-rights/>; Jessica Silver-Greenberg & Robert Gebeloff, “Arbitration is Everywhere, Stacking the Deck of Justice,” N.Y. TIMES (Oct. 31, 2015) available at <https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html>.

⁵ See Families First Coronavirus Response Act, Pub. L. 116-127 § 3102, § 5110(2)(B)(i)(I)(aa). Also, in some cases, the Act provides only partially paid leave. See *id.* at § 3102, §5110(5)(B)(ii).