

COVID-19 Widens Disparities for Workers of Color

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Introduction

The coronavirus (COVID-19) is a massive threat to the safety of U.S. workers.¹ Black, Indigenous, and other workers of color are particularly vulnerable, as they are overrepresented in jobs with high exposure rates, and structural racism has led to disproportionate rates of COVID-19 infection and death.²

COVID-19 will likely lead to a prolonged period of economic disparity and unemployment.³ This will fundamentally harm Black, Indigenous, and other workers of color, who risk exposure to COVID-19 in jobs with insufficient benefits and limited bargaining power. While states grapple with plans to mitigate the spread of COVID-19, advocates should build upon the momentum of the current racial justice movement to advocate for change in the workplace.

I. Unemployment

As economic activity contracted sharply in response to the novel coronavirus, the Black unemployment rate rapidly reached historic highs in early 2020. Even as it has slowly declined from those peaks, it continues to be roughly twice the white unemployment rate.⁴ Current

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1. SHARON BLOCK & BENJAMIN SACHS, HARV. L. SCH. LABOR & WORKLIFE PROGRAM, CLEAN SLATE FOR WORKER POWER: WORKER POWER AND VOICE IN THE PANDEMIC RESPONSE 1 (2020), https://assets.website-files.com/5ddc262b91f2a95f326520bd/5ef2396d689c3880ec008db2_Clean%20Slate_Worker%20Power%20and%20Voice%20in%20the%20Pandemic%20Response.pdf.

2. CHRIS GEARY, VINCENT PALACIOS & LAURA TATUM, GEO. CTR. ON POVERTY & INEQUALITY, BRIEF: WHO ARE ESSENTIAL WORKERS? THE U.S. ECONOMY DEPENDS ON WOMEN, PEOPLE OF COLOR, & IMMIGRANT WORKERS 2 (2020), <https://www.georgetownpoverty.org/wp-content/uploads/2020/07/GCPI-ESOI-Essential-Workers-July2020.pdf>.

3. Steve Inskip, Scott Horsley & Jim Zarroli, *Fed's Jerome Powell: Jobless Rate Better Than Expected; Recovery to Take a Long Time*, NAT'L PUB. RADIO (Sept. 4, 2020, 3:25 PM), <https://www.npr.org/2020/09/04/909627932/feds-jerome-powell-jobless-rate-better-than-expected-recovery-to-take-a-long-tim>.

4. U.S. BUREAU OF LAB. STATS., CHARTING THE LABOR MARKET: DATA FROM THE CURRENT POPULATION SURVEY (CPS) 19 (2020). This disparity is consistent with historical trends. Olugbenga Ajilore, *On the Persistence of the Black-White Unemployment Gap*, CTR. FOR AM. PROGRESS (Feb. 24, 2020, 9:01 AM), <https://www.americanprogress.org/issues/economy/reports/2020/02/24/480743/persistence-black-white-unemployment-gap>. In 2019, the unemployment rate of African Americans in the United States stood at 6.1%. This

unemployment measures also underestimate the full extent of harm by failing to account for furloughs or reduced hours, wages, or benefits many workers are experiencing due to the virus.⁵ And pandemic-specific nonresponse bias in surveys are likely leading to understated unemployment rates among marginalized groups.⁶

An estimated one-third of U.S. job losses are vulnerable to becoming permanent due to the pandemic and policymakers' response to it.⁷ Roughly 86% of those jobs are low-wage.⁸ Leisure, hospitality, and other service-sector workers, with lower wages and with worse benefits, are the most likely to be unemployed due to COVID-19.⁹ This affects more Black Americans, particularly Black women, who are overrepresented within the low-wage workforce and among essential workers.¹⁰

As states reopen, the rate of unemployment has decreased, but not for Black Americans. While the unemployment rate for white Americans was nearly halved from 14.2% to 7.3% in August 2020, the unemployment rate for Black Americans, at 13.0%, had fallen only 3.8 percentage points from its peak.¹¹

Current policies meant to tackle the economic impact of COVID-19 fail to accommodate for the disproportionate impact on Black Americans. The Paycheck Protection Program (PPP), which provides funds for businesses to keep employees on the payroll during closures, has

number was over 1.6 times the national average of 3.7%. See *Unemployment Rate 3.6 Percent in April 2019, Lowest Since December 1969*, U.S. BUREAU OF LAB. STATS. (May 8, 2019), <https://www.bls.gov/opub/ted/2019/unemployment-rate-3-point-6-percent-in-april-2019-lowest-since-december-1969.htm>.

5. Press Release U.S. Bureau of Lab. Stats., *Effects of COVID-19 Pandemic and Response on the Employment Situation* (Aug. 2020), <https://www.bls.gov/covid19/effects-of-covid-19-pandemic-and-response-on-the-employment-situation-news-release.htm>.

6. Jonathan Rothbaum & Adam Bee, *Coronavirus Infects Surveys, Too: Nonresponse Bias During the Pandemic in the CPS ASEC* (U.S. Census Bureau Working Paper No. SEHSD WP2020-10, 2020), <https://www.census.gov/library/working-papers/2020/demo/SEHSD-WP2020-10.html>.

7. Olivia Rockeman & Jill Ward, *One-Third of U.S. Job Losses Are at Risk of Becoming Permanent*, BLOOMBERG L. (June 14, 2020, 6:00 AM), <https://news.bloomberglaw.com/daily-labor-report/one-third-of-u-s-job-losses-are-at-risk-of-becoming-permanent>.

8. Susan Lund, Kweilin Ellingrud, Bryan Hancock, James Manyika & André Dua, *Lives and Livelihoods: Assessing the Near-Term Impact of COVID-19 on US Workers*, MCKINSEY (Apr. 20, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/lives-and-livelihoods-assessing-the-near-term-impact-of-covid-19-on-us-workers#>.

9. *Labor Force Characteristics by Race and Ethnicity, 2018*, U.S. BUREAU OF LAB. STATS. (Oct. 2019), <https://www.bls.gov/opub/reports/race-and-ethnicity/2018/home.htm>.

10. Marcela Escobari, Ian Seyal & Michael Meaney, *Realism About Reskilling: Upgrading the Career Prospects of America's Low Wage Workers*, BROOKINGS INST. (Dec. 2019), <https://www.brookings.edu/wp-content/uploads/2019/11/Realism-About-Reskilling-Final-Report.pdf>; Ryan Nunn, Jimmy O'Donnell & Jay Shambaugh, *Examining Options to Boost Essential Worker Wages During the Pandemic*, HAMILTON PROJECT (June 4, 2020), https://www.hamiltonproject.org/blog/examining_options_to_boost_essential_worker_wages_during_the_pandemic; GEARY, PALACIOS & TATUM, *supra* note 2, at 2.

11. Michelle Cheng, *US Unemployment Fell in May—But Not for Black People*, QUARTZ (June 5, 2020), <https://qz.com/1865348/us-unemployment-fell-in-may-but-not-for-black-people>.

funded medium and large corporations rather than small businesses.¹² Many Black-owned small businesses had trouble accessing the government's emergency PPP loans and are unable to get federal aid to stay afloat.¹³

On March 18, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided additional flexibility for state unemployment insurance agencies and additional administrative funding to respond to the pandemic.¹⁴ But the federally funded \$600 a week in enhanced unemployment benefits, which was also part of the CARES Act, expired in late July 2020.¹⁵ President Trump signed an executive order calling for new relief provisions of \$300 a week in unemployment benefits for several weeks, but the order likely excluded roughly one million people who qualified under the CARES act, nearly three-quarters of them women.¹⁶

Stronger state worker protections can drive down the impact of COVID-19 on vulnerable workers.¹⁷ Prior to the wide-scale spread of COVID-19, hospitality and retail workers in Nevada successfully negotiated stronger union protections that preserved health care benefits, secured recall rights to laid-off workers, and advocated for safe and equitable reopening procedures.¹⁸ The United States can also provide effective relief for Black workers through paycheck guarantee programs where the state or federal government steps in to pay workers

12. *Paycheck Protection Program*, U.S. SMALL BUS. ASS'N, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> (last visited Oct. 23, 2020).

13. Press Release, Nat'l Cmty. Reinvestment Coalition, *Despite Gaping Holes in Government Data, Tests Show PPP Borrowers Faced Discrimination* (July 15, 2020), <https://ncrc.org/despite-gaping-holes-in-government-data-tests-show-ppp-borrowers-faced-discrimination>.

14. Pub. L. No. 116-136, 134 Stat. 281 (2020).

15. *Id.* § 2104(e)(2), 134 Stat. at 319.

16. Ben Casselman & Emily Cochrane, *\$400 Unemployment Supplement Is Really \$300, and Won't Arrive Soon*, N.Y. TIMES (Sept. 15, 2020), <https://www.nytimes.com/2020/08/13/business/economy/unemployment-benefits-coronavirus.html>.

17. Marcela Escobari, Natalie Geismar & Dhruv Gandhi, *Visualizing Vulnerable Jobs Across America: A Tool to Understand Your Local Economy and Inform Its Recovery*, BROOKINGS INST. (July 28, 2020), <https://www.brookings.edu/blog/up-front/2020/07/28/visualizing-vulnerable-jobs-across-america-a-tool-to-understand-your-local-economy-and-inform-its-recovery>.

18. *Id.*; Peter Valencia, *Culinary Union: Health Care Plan Extended for Laid off Workers; Negotiations Underway*, NBC NEWS LAS VEGAS (Mar. 14, 2020), <https://news3lv.com/news/local/culinary-union-health-care-plan-extended-for-laid-off-workers-negotiations-underway>; Jackie Valley, *Despite Casinos Reopening and Tourism Activity Resuming, Many Workers Remain Left Behind*, NEV. INDEP. (June 14, 2020, 2:00AM), <https://thenevadaindependent.com/article/despite-casinos-reopen-and-tourism-activity-resuming-many-workers-remain-left-behind>; David Fuchs, *As Casinos Reopen in Las Vegas, Stakes Are High and Union Calls for Transparency*, NAT'L PUB. RADIO (June 3, 2020, 9:20 AM), <https://www.npr.org/2020/06/03/868349911/as-casinos-reopen-in-las-vegas-stakes-are-high-and-union-calls-for-transparency>; Jacob Leibenluft, *The Pandemic Hurts Countries That Don't Value Workers*, FOREIGN AFFS. (Aug. 19, 2020), <https://www.foreignaffairs.com/articles/united-states/2020-08-19/pandemic-hurts-countries-dont-value-workers>.

directly while requiring employers to keep them on the payroll and maintain their benefits.¹⁹

II. Insufficient Benefits

Black, Indigenous, and other workers of color have insufficient access to healthcare and other job benefits compared to white workers. Early in the pandemic, a significant number of U.S. workers were able to move to full time telework. In reality, the types of jobs and benefits with teleworking capabilities varies depending on a worker's compensation, race, and ethnicity.²⁰ Only 17% of Latinx and 20% of Black workers have positions with teleworking capabilities, compared to 30% of whites and almost 40% of Asian Americans.²¹ Lower-wage workers in specific industries, particularly hospitality and leisure, are unable to telework and have a disproportionate number of Black, Indigenous, and other workers of color.²²

Black, Indigenous, and other workers of color are also more likely to be in positions without paid sick days or health insurance.²³ Low-wage workers are far less likely to have access to paid sick days or paid family and medical leave.²⁴ Even though Black workers are more likely to have preexisting health conditions associated with greater risk of COVID-19 mortality, Black workers are 60% more likely to be uninsured than white workers.²⁵ Roughly 20% of Latino and Native American workers are uninsured.²⁶ As a result, many Black, Indigenous, and other workers of color may delay or forgo medical treatment due to increased costs.²⁷ And an even greater number of these workers

19. Darrick Hamilton, *How to Rescue the Economy and Help Black Workers at the Same Time*, POLITICO (Aug. 13, 2020, 9:43 AM), <https://www.politico.com/news/agenda/2020/08/13/rescue-economy-help-black-workers-unemployment-394664>.

20. EliseGould&HeidiShierholz,*NotEverybodyCanWorkfromHome*, ECON. POL'Y INST. (Mar. 19, 2020, 1:15 PM), <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home>.

21. *Id.*

22. *Id.*

23. Elise Gould, *Amid COVID-19 Outbreak, the Workers Who Need Paid Sick Days the Most Have the Least*, ECON. POL'Y INST. (Mar. 9, 2020, 2:41 PM), <https://www.epi.org/blog/amid-covid-19-outbreak-the-workers-who-need-paid-sick-days-the-most-have-the-least>.

24. *Id.*

25. *Too Many Black Americans Are Dying from COVID-19*, SCI. AM. (Aug. 1, 2020), <https://www.scientificamerican.com/article/too-many-black-americans-are-dying-from-covid-19>; ELISE GOULD & VALERIE WILSON, ECON. POL'Y INST., BLACK WORKERS FACE TWO OF THE MOST LETHAL PREEXISTING CONDITIONS FOR CORONAVIRUS—RACISM AND ECONOMIC INEQUALITY 9, 27 (2020), <https://files.epi.org/pdf/193246.pdf>.

26. Jennifer Tolbert et al., *Key Facts about the Uninsured Population*, KAISER FAM. FOUND. (Dec. 13, 2019), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population>.

27. Lydia Saad, *More Americans Delaying Medical Treatment Due to Cost*, GALLUP (Dec. 9, 2019), <https://news.gallup.com/poll/269138/americans-delaying-medical-treatment-due-cost.aspx>.

have become uninsured as a result of COVID-19 job losses: between February and May 2020, over five million workers became uninsured.²⁸

The CARES Act did little to protect the health of essential workers, focusing on economic relief versus medical care or benefits. For example, the CARES Act mandates that insurance providers cover COVID-19 testing, but not treatment.²⁹ Some workers of color in possession of a tax ID number but not a social security number were deprived of supplemental benefits under the CARES Act.³⁰ This denial impacted workers' dependents, as they were also excluded, even though they may have been in possession of a social security number.³¹ While the Families First Coronavirus Response Act (FFCRA) expanded access to testing, emergency paid sick leave, and emergency food assistance, it only guaranteed paid sick leave for approximately 20% of American workers, and exempted private employers with over 500 employees, excluding coverage for many low wage workers.³² There is also no guarantee that insurance providers will provide COVID-19 vaccinations once viable options are available.³³

Disparities in coverage can be reduced by expanding Medicaid, which insures about seventy-five million low-income Americans in non-expanded Medicaid states; increasing total federal-state funding of Medicaid; and maintaining enhanced funding during this ongoing period of high unemployment.³⁴ Congress must also ensure that the ACA Marketplace has special or time-limited emergency enrollment

28. Stan Dorn, *The Covid-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance Losses in American History*, FAMS. USA (July 13, 2020), <https://www.familiesusa.org/resources/the-covid-19-pandemic-and-resulting-economic-crash-have-caused-the-greatest-health-insurance-losses-in-american-history>.

29. Rachel Fehr, Cynthia Cox, Karen Pollitz, Jennifer Tolbert, Juliette Cubanski & Robin Rudowitz, *Five Things to Know About the Cost of COVID-19 Testing and Treatment*, KAISER FAM. FOUND. (May 26, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/five-things-to-know-about-the-cost-of-covid-19-testing-and-treatment>; Robbie Whelan, *Who Pays for Covid-19 Medical Care? That Depends on How (or If) You Are Insured*, WALL ST. J. (Sept. 14, 2020), <https://www.wsj.com/articles/who-pays-for-covid-19-medical-care-that-depends-on-how-or-if-you-are-insured-11600075801>.

30. Chuck Marr, Samantha Jacoby, Chye-Ching Huang, Stephanie Hingten, Arloc Sherman & Jennifer Beltrán, *Future Stimulus Should Include Immigrants and Dependents Previously Left out, Mandate Automatic Payments*, CTR. ON BUDGET & POL'Y PRIORITIES (May 6, 2020), <https://www.cbpp.org/research/economy/future-stimulus-should-include-immigrants-and-dependents-previously-left-out>.

31. *Id.*

32. Pub. L. No. 116-127, 134 Stat. 178 (2020); *There's a Giant Hole in Pelosi's Coronavirus Bill*, N.Y. TIMES (Mar. 14, 2020, 12:52 PM), <https://www.nytimes.com/2020/03/14/opinion/coronavirus-pelosi-sick-leave.html>.

33. Nicole Wetsman, *Health Secretary Alex Azar Won't Promise that a Coronavirus Vaccine Would Be Affordable*, VERGE (Feb. 27, 2020, 11:35 AM), <https://www.theverge.com/2020/2/27/21155879/alex-azar-coronavirus-vaccine-affordable-insurance>.

34. Jesse Cross-Call & Matt Broaddus, *States That Have Expanded Medicaid Are Better Positioned to Address COVID-19 and Recession*, CTR. ON BUDGET & POL'Y PRIORITIES (July 14, 2020), <https://www.cbpp.org/research/health/states-that-have-expanded-medicaid-are-better-positioned-to-address-covid-19-and>.

periods for people who have recently lost their jobs, even if they were not previously enrolled in health coverage.³⁵

Conclusion

The current movement for racial justice can strengthen collective power and workplace change. Black and Brown workers have long used collective power as part of the larger racial justice movement.³⁶ Although traditional labor activism can be effective, Black, Indigenous, and other workers of color are cognizant of how systemic racism influences organizing strategies, both at work and in their communities.

Advocates should not only demand changes to unsafe working conditions, but changes to broader community problems, such as unemployment and access to care, impacting a swath of industries and disproportionately affecting Black, Indigenous, and other workers of color during the COVID-19 crisis. Workers can “bargain for the common good,” organizing across various industries in order to demand broader social, racial, and economic justice.³⁷

For example, during the 1968 Dodge Revolutionary Union Movement (DRUM), Detroit’s Black activist community organized a 4,000 worker wildcat strike, the first led entirely by Black workers.³⁸ While DRUM leaders advocated for all workers, white workers already benefited from existing systems that provided them with higher wages, safer working conditions, and stronger union representation.³⁹ DRUM instead organized outside the traditional union, relying on links within the broader Detroit Black community to advocate for better working conditions and wages for Black workers and the end to racist hiring practices.⁴⁰

From early on in the pandemic, warehouse workers, restaurant workers, and farmworkers across the country have protested the lack of personal protective equipment (PPE) and demanded safer working conditions and increased hazard pay.⁴¹ While some companies have made proactive changes to accommodate workplace safety, many

35. *Id.*

36. Aaron Morrison, *Unions Threaten Work Stoppages Amid Calls for Racial Justice*, ASSOC. PRESS (Sept. 5, 2020), <https://apnews.com/02da00cb921ec61a69d8a30c9ff56244>.

37. Joseph A. McCartin, *Bargaining for the Common Good*, DISSENT, Spring 2016, at 128, <https://www.dissentmagazine.org/article/bargaining-common-good-community-union-alignment>.

38. Robin D.G. Kelley, *Building Bridges: The Challenge of Organized Labor in Communities of Color*, 5 NEW LAB. F. 42, 51 (1999).

39. *Id.*

40. *Id.* at 50–52.

41. Rachel Lerman & Nitasha Tiku, *Amazon, Instacart Workers Launch May Day Strike to Protest Treatment During the Coronavirus Pandemic*, WASH. POST (May 1, 2020), <https://www.washingtonpost.com/technology/2020/05/01/amazon-instacart-workers-strike/>; Amelia Lucas, *Advocates Push for More Farmworker Protections as Coronavirus Cases Surge*, CNBC (July 26, 2020, 10:00 AM), <https://www.cnbc.com/2020/07/26/advocates-push-for-farmworker-protections-as-coronavirus-cases-surge.html>.

employers only reacted once labor activists organized massive strikes and walkouts. As the pandemic continues to ravage low-wage and essential workers, national support for unionization is on the rise.⁴²

Workers who do not have union representation can also organize under the National Labor Relations Act (NLRA). Under section 7 of the NLRA, most workers have the right to act together to address work-related issues.⁴³ Under the NLRA, employers cannot discharge, discipline, or threaten workers for—or coercively question workers about—any “protected concerted” activity.⁴⁴ A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action.⁴⁵

Unfortunately, immense roadblocks to organizing still exist. It is difficult to form unions in many workplaces due to employer resistance, and workers who lead unionization efforts may become the subject of retaliation and termination.⁴⁶ Workers without the benefit of unions also lack protection, particularly now, when the pandemic has left National Labor Relations Board (NLRB) regional offices closed and the NLRB slow to process complaints.⁴⁷

Collective bargaining ultimately benefits all workers of color, as it strengthens movements and forces those in power to address systemic issues. In the current crisis, essential workers in a variety of industries, including hospitality, retail, and healthcare, can organize together to fight for common benefits, such as hazard pay, healthcare coverage, and PPE.⁴⁸ This engagement may also uplift gig economy workers, who are often Black, Indigenous, and other workers of color and vulnerable to exposure.⁴⁹

42. Eliza Berkon, *The Pandemic Is Inspiring a Wave of Unionization Efforts. Will It Lead to Greater Protections?*, WAMU (May 13, 2020), <https://wamu.org/story/20/05/13/the-pandemic-is-inspiring-a-wave-of-unionization-efforts-will-it-lead-to-greater-protections>.

43. *Interfering with Employee Rights (Section 7 & 8(a)(1))*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1#:~:text=Section%207%20of%20the%20National,of%20collective%20bargaining%20or%20other> (last visited Oct. 23, 2020).

44. *Id.*

45. *Id.*

46. Monica Campbell, *Farmworkers Are Getting Coronavirus. They Face Retaliation for Demanding Safe Conditions*, WORLD (July 29, 2020, 3:45 PM), <https://www.pri.org/stories/2020-07-29/sick-covid-19-farmworkers-face-retaliation-demanding-safe-conditions>.

47. *Labor Board Closes Three Regional Offices for Coronavirus Tests*, BLOOMBERG L. (Mar. 16, 2020), <https://news.bloomberglaw.com/daily-labor-report/labor-board-closes-three-regional-offices-for-coronavirus-tests>.

48. Joseph A. McCartin, *Will the Teachers Take Control?*, DISSENT (Aug. 3, 2020), https://www.dissentmagazine.org/online_articles/will-the-teachers-take-control.

49. W. Kamau Bell, *Why the Gig Economy Is a Scam*, CNN (Aug. 9, 2020, 7:46 AM), <https://www.cnn.com/2020/08/09/opinions/united-shades-of-america-gig-economy-kamau-bell/index.html>.