

COVID-19 AND IMMIGRANT WORKERS

The AFL-CIO is committed to protecting all workers, regardless of immigration status, and ensuring we are all safe and can access needed testing, treatment and benefits amid the coronavirus crisis and recovery. Despite our best efforts, many gaps in coverage remain, elevating the risks for our entire workforce. This fact sheet provides a brief summary of where things stand for immigrant workers across a range of issue areas with the federal COVID-19 response, and identifies priority issues to address in ongoing state and federal negotiations.

This document is meant to inform our advocacy and representation as best as is possible in this moment, but we emphasize this is a quickly changing situation. For example, the Department of Labor is expected to release regulations on paid sick leave and expanded family medical leave that may significantly alter our understanding of those benefits. Therefore, care should be taken before relying on specific details, as programs and requirements are changing on a daily basis.

Access to Testing and Treatment

For those who have health insurance coverage under an employment-based plan, testing and any future vaccine will be covered at no cost to the worker. For the uninsured, the best options will be Community Health Centers or Medicaid. Federal packages increased Medicaid funds to states to conduct free testing, and allocated funds to CHCs to offer testing on a sliding-scale basis. Other providers may provide the testing for free and seek reimbursement from the National Disaster Medical System, but the criteria are unclear, and there's nothing to prevent providers from billing patients.

Gaps/notes:

- An issue for everyone is that there is no protection from out-of-pocket costs for treatment of COVID-19. Inpatient costs are likely to run \$10,000 to \$20,000, and the average deductible for an insured worker with single coverage is a prohibitive \$1,400.

- Twenty percent of the foreign-born population and more than half of the undocumented population are uninsured, and many will have no guarantee of free or low-cost testing, treatment or vaccines, other than through CHCs.
- Medicaid provisions continue to restrict eligibility to “qualified” immigrants, and exclude Deferred Action for Childhood Arrivals and Temporary Protected Status holders, other undocumented individuals and most of those who have had green cards for less than five years.

Paid Sick Leave and Family Medical Leave

The federal package provides up to 80 hours of paid sick leave at full salary for COVID-19 illness, self-quarantine or while seeking a medical diagnosis; up to 80 hours of paid sick leave at two-thirds of salary to care for another person with COVID-19 illness or in self-quarantine; or a combined 12 weeks of paid sick leave and expanded family leave at two-thirds of salary for employees who must care for a child whose school or child care is closed for a COVID-19-related reason.

Gaps/notes:

- Paid leave provisions do not apply to private businesses with 500 or more employees, including many union shops and immigrant-dense industries.
- The Department of Labor may exempt businesses with less than 50 employees from the paid sick leave requirement related to caring for a child whose school or child care is closed and from the expanded family leave requirement. More than half of noncitizens whose income is below 150% of the poverty level are estimated to work in small firms.
- There are no explicit immigrant exceptions to these provisions, but they only help those working in the formal economy and in a traditional employment relationship.
- Unions are preparing now to prevent reverification and other forms of retaliation at the point of rehire or return to work. Please alert the national AFL-CIO to any immigration status-related retaliation cases your members encounter.

Unemployment Insurance

The package provides \$1 billion in emergency grants to states to provide and process unemployment insurance, and a \$600/week increase to state UI benefits for up to four months. It also creates new Pandemic Unemployment Assistance, which covers certain workers who are ineligible for regular UI (part-time workers, those who are self-employed, independent contractors, those with a limited recent work history, and others) and pays at one-half of state average benefits plus \$600/week. Individuals who have the ability to telework with pay, or who are receiving sick leave or other paid leave benefits, are excluded. The package provides up to 39 weeks of benefits.

Gaps/notes:

- To be eligible for UI, individuals must be work authorized to be considered “ready and available to work.” This should cover DACA and TPS holders who are still in status, but will leave out the majority of the undocumented population.

- States have limited potential to experiment with UI programs due to restrictions that come with federal funding for plan administration.

One-Time Cash Payment

The package provides a \$1,200 payment per adult and \$500 per minor child, provided that all adults in the household have a work-eligible Social Security number (the income cap for eligibility is \$75,000 for individuals, \$112,500 for head of households and \$150,000 for joint filers). Taxable income is not required to claim this benefit.

Gaps/notes:

- Taxpayers who file with an Individual Tax Identification number will not be eligible, nor will any other member of their household, including U.S. citizen children.
- The reality of these restrictions increases the importance of broad-based and status-blind relief options, such as food banks and eviction bans. Some \$450 million was allocated for food banks, and unions are mapping where and how emergency food assistance will be available in our communities. Eviction protections also were included in the federal packages, but they leave many renters vulnerable.

Nutrition Assistance

All employment and training requirements for the Supplemental Nutrition Assistance Program are lifted until a month after the COVID-19 emergency declaration is lifted. In states that have declared an emergency or disaster, the U.S. Department of Agriculture must provide emergency allotments to SNAP households.

Gaps/notes:

- SNAP assistance is denied to “not qualified” immigrants, including DACA and TPS holders, other undocumented individuals and most of those who have had green cards for less than five years.
- The public charge rule has not been suspended, so acceptance of SNAP benefits would be treated as a negative factor in future status adjustment or family sponsorship applications for household members.

Public Charge

In February, a punitive new rule went into effect, greatly expanding the criteria under which people can be denied entry or permanence based on the premise they are or will become dependent on public benefits. This rule already has had a chilling effect on immigrant families accessing needed services and programs for which they are eligible. In this time of elevated need and uncertainty, it is important for workers to understand which programs will be considered in a future public charge determination for themselves and their families, and which will not.

Factor in Public Charge

- Cash Assistance (TANF)
- Nutrition Assistance (SNAP)
- Housing Subsidies
- Medicaid

NOT a Factor in Public Charge

- Unemployment Insurance
- COVID Testing
- One-Time Cash Payments
- CHC or Emergency Room Care

TPS and DACA

There are more than 1 million workers with DACA and TPS who should be eligible for paid leave, UI and stimulus checks, but who will remain ineligible for Medicaid, SNAP or other public benefits. The courts have stopped hearing cases, but still are issuing decisions, so the injunctions blocking the termination of these vital programs could be lifted any day. Indeed, the Supreme Court has signaled it likely will issue decisions in all pending cases earlier than usual—perhaps by the end of April—rather than wait until the end of June this year, accelerating the timeline in which 800,000 DACA-mented workers (including more than 25,000 health care professionals) could lose their status and work permits.

Gaps/notes:

- Given the closure of U.S. Citizenship and Immigration Services offices, there has been a call to auto-extend any DACA or TPS work permits that would expire in the coming year. These provisions were introduced in the House, but did not survive the Senate negotiations.
- Unions are ready to issue statements decrying bad court decisions and committing to continue to stand with and fight for all workers. The AFL-CIO and the Working Families United coalition will circulate resource materials to help unions interpret the decisions and support workers who will risk losing status.

Visa Issuance and Travel Restrictions

In the context of border closures and worldwide travel restrictions, nearly all processing of family and humanitarian visas has ground to a halt. USCIS is, however, granting temporary work visas to returning H-2A and H-2B migrants on the basis that they are essential workers. No enhanced safety or health coverage protocols have been established to protect these essential workers, and untold thousands of migrants in a range of occupations and visa categories currently are trapped in U.S. communities with no work, no paycheck and no ability to return home.

Gaps/notes:

- The Departments of Homeland Security, Labor and State need to clarify whether temporary work visa issuance will continue amid the crisis, and what protocols will be put in place to protect work visa holders and those who work alongside them.
- Unions facing layoffs should review the job orders posted on seasonaljobs.dol.gov to identify potential work opportunities in their sector or region.
- Given campus and business shutdowns, international student workers risk losing their status, and their unions are pushing for extensions.

Immigration Enforcement

Immigration and Customs Enforcement has made some announcements suggesting it will suspend normal enforcement activity, but the signals have been mixed and raids were taking place as late as March 18. Customs and Border Protection has broad powers to detain in a national emergency, but efforts to secure funding for such purposes in the federal response package were rebuffed. The bill also prevents Department of Defense funds from being diverted for border wall construction on the southern border. Guatemala has reported the first COVID-19 diagnosis among a recent deportee and is attempting to stop accepting deportation flights, but has received immense pressure from the U.S. government to continue to allow removals. The first COVID-19 cases also have been confirmed in detention facilities, where immigrants, including children, face clear health risks and have inadequate protections.

Immigration Courts

The Executive Office for Immigration Review has postponed initial “master calendar” hearings and individual case “merits” hearings, but asylum seekers in the so-called Migrant Protection Protocols program still are being asked to appear at the designated port of entry on their previously scheduled date, and the vast majority of immigration courts are open for hearing detained cases. The number of courts that are open continually changes, as EOIR closes courts where the presence of an individual with COVID-19 is confirmed and then reopens them, sometimes a day later. The immigration judges’ union is calling on EOIR and the Department of Justice to close hearings at immigration courts and allow bond hearings and priority proceedings to be conducted remotely. EOIR has instructed judges to prioritize, expedite and close cases of unaccompanied children in 60 days. In addition, DOJ has proposed rulemaking that dramatically increases filing fees for appealing immigration court decisions or filing to reopen decisions.

Summary

Taken together, these agency actions and gaps in response coverage leave millions of working families behind and create unacceptable risks in all of our communities and industries. The following measures are needed to protect all those whose labor helps our country to prosper:

- All workers, regardless of status, must have adequate worksite protections and access to necessary testing, treatment and vaccines.
- All taxpayers must be eligible for benefits, including cash payments, unemployment insurance and nutrition assistance, among others.
- All practices and policies that elevate risk must be suspended, including the public charge rule, in-person immigration court proceedings, and immigration enforcement, detention and deportation.
- Essential workers with DACA and TPS must have their work permits auto-extended during this crisis.