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The New “Essential”

Rethinking Social Goods in the Wake of Covid-19

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Introduction

The Covid-19 crisis has laid bare the fragility of social insurance systems in the United States and the lack of income security and basic benefits for many workers and residents. The United States has long had weaker protections for workers [compared to other liberal democracies](#), and the pandemic makes plain the health, economic, and moral consequences of these arrangements. In recent weeks, the United States has seen dramatic economic dislocation, food insecurity, and the dire effects of an inadequate health care system. There is already evidence of [racial](#) and [economic disparities](#) among those most affected by these dislocations (analyses are hampered by a paucity of demographic [data](#)). Those who were socially and economically vulnerable before the pandemic (for example due to homelessness, immigration status, or incarceration) are likely to suffer the most harm. Changes in workplace conditions as a result of the pandemic are borne disproportionately by low-income workers and workers of color. For instance, lower-income workers are more likely to be employed in jobs that increase their risk of exposure to the virus such as working in sanitation and janitorial services, food services and grocery stores, [and in delivery](#). Yet the pandemic also eschews the imagined categories of who is deemed vulnerable or not. Its effects cannot be so easily contained, extending broadly into society – affecting a wide array of [“gig”](#) and service workers, health care workers, tenants, and students – and revealing our inevitable connections to one other.

One consequence for law and policy is that addressing the effects of the pandemic might lead to profound changes in what Americans consider essential goods for a sustainable society. Most clearly, the Covid-19 pandemic exposes the [weaknesses in the United States’ health care](#)

[infrastructure](#), including the continuing problem of underinsurance, the problems raised by tethering health care to work, and the underfunding of the public health delivery system. The pandemic also reveals the limitations of a set of other structures that sustain workers and families and that allow individuals and families to access necessary benefits. Declining unionization and the rise of contract work and the “gig” economy mean that [many workers lack the ability to bargain for their work conditions](#) or sometimes even to obtain the legal status of ‘employee’. The United States also lacks social benefits that might help mitigate both the effects of sickness on individuals and families as well as the spread of infection and disease. For instance, the United States lacks guarantees for housing for those who cannot afford it (and was in the midst of [an affordable housing crisis](#) before the pandemic), lacks [federally mandated permanent paid sick and family leave](#), and lacks entitlements to key utilities such as water.

The current crisis has led to government efforts to buttress the social infrastructure. To respond to the virus, the federal government enacted, in March 2020, two significant responsive measures—the [Families First Coronavirus Response Act](#) (FFCRA) and the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES) – including for the first time [federally mandated paid sick leave](#) (the new program expires on December 31st, 2020). Some state and local jurisdictions are now requiring forms of paid family, medical, and sick leave; placing moratoriums on housing evictions and foreclosure; and, limiting the ability of service providers to cut off essential utilities such as water. As the pandemic leads to orders that Americans stay in their houses, the crisis is also broadening notions of what constitutes an essential good as regulators have pressed private companies to expand broadband, and as advocates and municipalities are advancing strategies [to expand quality broadband access](#) to underserved communities even beyond the current crisis. Some of the responsive initiatives take a universalist approach, increasing [benefits](#) and providing direct payments to a [wide swath of workers and taxpayers](#).

Whether this emergent response will be sufficient to sustain workers and families during the outbreak and in the recession that will likely follow remains to be seen. Some limitations of the response are already apparent. First, there is a patchwork of protections across levels of

government and jurisdictions, leaving many individuals uncovered. The federal government has stepped in to provide important protections such as direct payments to households, protections for renters and households in homes backed by federal mortgages, and temporary, limited sick leave protections.

Some remain unprotected by these changes. For instance, workers from companies with more than 500 employees are exempted from the obligation to provide family and medical leave, [leaving out many workers](#) whose workplaces do not provide such leave voluntarily. [States and localities differ](#) in the amount of protection and benefits provided to workers and households. Even some of the most significant provisions adopted during the pandemic operate more as a “pause”—preventing additional forms of displacement, but not affirmatively creating safe or healthy spaces for those who lacked them in the first place. For instance, state moratoria on evictions are an important intervention, even though they do not extend to providing housing for those who are homeless or in overcrowded/substandard housing. (Some important [new federal money](#) expands homelessness prevention programs and emergency shelter for the crisis.) In addition, the main providers of social services—state and local governments—are already suffering financially from the crisis and are likely to be strained for some time, even with [additional federal payments](#).

Second, many of these provisions depend on voluntary compliance by employers or housing providers, or on the ability of workers and others to understand their rights and enforce them. Lawyers, service providers, and others are [mobilizing education and advocacy efforts](#), but that infrastructure of legal service and advocacy was strained even before the crisis. In addition, the most vulnerable groups (undocumented workers, homeless populations) often lack knowledge of their rights and also face barriers in [accessing advocates](#) or other service providers. Where goods are controlled by private actors (such as lenders and broadband service providers), changes are often precatory, and municipalities have not always stepped up regulation or provided public alternatives.

Lastly, it is unclear how enduring these reforms will be. Families, tenants, workers, and others most affected are likely to endure long-term effects, and many of the new benefits adopted as a result of Covid-19 are time-limited. Advocates had encouraged provisions like paid sick leave long before the current crisis, and a [growing number of jurisdictions have required this protection](#) in recent years. These new efforts could simply be a short term bandage or they could represent a more fundamental shift in how governments, markets, and private actors understand and secure “essential” social goods. Some signs of the latter include [the New York State legislature’s decision](#) in the midst of the pandemic to require most employers to provide permanent paid sick leave.

Guide

What follows is a guide to key legal changes relevant to tenants, workers, low-income individuals, families, and those with disabilities.¹ This Part omits health which is addressed in a separate chapter of this e-book. This guide also does not cover the important category of education. Information regarding K-12 equity concerns raised by Covid-19 can be found [here](#).

Employment

Paid Sick, Medical, & Family Leave. In response to Covid-19, the federal government enacted in March 2020 the [Families First Coronavirus Response Act](#) (FFCRA) and the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act). As a result, federal law as of April 1, 2020, [provides for coverage](#) for paid sick leave related to Covid-19 for approximately 50% of US workers and extended paid family and medical leave for some parents with children who are no longer in school due to the virus. The FFCRA exempts companies employing more than 500 workers from complying with the emergency paid sick days requirement (this includes many [food service, retail](#)

¹ Compiled by Margaret Gould, CLS '21, Chizoba Ukairo, CLS '21, and Olatunde Johnson, Columbia Law School. Note that the information is not comprehensive and some of the information is evolving. Many of the links are to live, updating sources. We thank Christopher Dinkel, CLS'22, Nicandro Iannacci, CLS '20, Columbia Law Visiting Associate Clinical Professor Emily Benfer, and Columbia Law Professor Mark Barenberg for their assistance.

[and hospitality workers, grocery workers, delivery workers, and pharmacy workers](#)). The [Labor Department](#) contends that 89% of workers employed at companies with more than 500 employees may access some paid sick leave, with an average offering of eight days covered — falling short of the 14-day quarantine prescribed for those who may have the coronavirus. Coverage extends until December 31, 2020.

The Labor Department has issued [guidance](#) on the Act specifying coverage and exemptions (including important exemptions for businesses with less than 50 employees where the leave requirements would "jeopardize the viability of the business as a going concern"). Other limitations of the federal legislation include the fact that FFCRA [does not apply](#) retroactively, does not cover any employee who has been [furloughed](#), and does not cover employees whose worksites have been closed. Prior to the crisis, federal law only allowed 12 weeks of [unpaid family and medical leave](#). A set of proposals in Congress including [the PAID Leave Act](#) propose a permanent leave system that would create a system of paid sick days and 12 weeks of paid family and medical leave.

The pandemic has placed a particular focus on the lack of a uniform system of paid sick leave in the United States. Twelve states and the District of Columbia had some forms of paid sick leave before the pandemic, some of which expansively define 'employee' to [include independent contractors](#). Several [municipalities](#) also provided paid sick leave coverage. In response to the pandemic, some [states](#) and [localities](#) have begun to create emergency sick leave provisions or make clear that their existing provisions apply to independent contractors. Some [large employers](#) — including Walmart, Kroger, Home Depot, Target, UPS, Amazon, and others — have revised their policies by offering some form of paid sick leave for Covid-19-related illness or quarantine.

Anti-Discrimination & Safety. The pandemic places employees at risk of sickness or other injuries in their workplaces due to the virus or the demands placed on their conditions in the wake of the virus. Low-wage workers and those who are not unionized bear greater risks as [higher-income](#)

[workers find it more possible](#) to work remotely from home. The pandemic has also increased demand in certain industries that often lack employment safeguards or have poor conditions including the warehouse and delivery workers employed in the burgeoning delivery economy. The federal Department of Labor has issued advisory guidance on [protecting workers from contracting or spreading the virus](#) in the workplace. In addition, workers are vulnerable to discrimination in the workplace. [The federal Families First Coronavirus Response Act](#) prohibits [retaliation](#) against employees who exercise their rights to paid sick leave under the statute. The EEOC [updated its pandemic guidance](#) on how to protect employees and others from the virus while accommodating and avoiding discrimination against those with disabilities.

Unemployment Insurance/Income Security. The CARES Act expands the current federal-state Unemployment Insurance (UI) program by providing an [additional 13 weeks of unemployment insurance](#) after an individual exhausts their current UI. The Act also creates a new Pandemic Unemployment Assistance (PUA) program, in effect through December 31, 2020, for those who are not eligible for their state’s existing UI program. Significantly, the PUA covers [self-employed workers, part-time workers, freelancers, and independent contractors](#). The Act also provides another [\\$600 a week of emergency unemployment insurance](#) through July 31st, 2020, for which regular UI claimants as well as PUA claimants are eligible.

The CARES Act also provides “[recovery rebates](#)” --income assistance to low- and moderate-income families. The [amount](#) is up to \$1,200 per adult (\$2,400 for a married couple) and \$500 for each dependent child under 17. [As noted by poverty analysts](#), the Act has important new benefits but the rebate program excludes a significant number of immigrant families, and by only providing automatic payments to those who filed income tax returns in 2019 or 2018, creates administrative hurdles for some very low-income households.

Housing & Utilities

Housing. Federal, state, and local governments have initiated temporary relief efforts to protect renters and homeowners from eviction or foreclosure due to the health and economic impacts of Covid-19. The federal government has temporarily suspended foreclosure and evictions in

[federally backed housing loan programs](#) and instituted a deferral program for mortgage payments. The federal government has also provided \$4 billion in increased funding to the states for [emergency shelter and homelessness prevention programs](#). Multiple states and localities have taken actions with [respect to evictions and foreclosure](#), ranging from temporary suspension of all evictions and foreclosures to suspending them on proof that non-payment is due to Covid-19. Some jurisdictions have also provided new funding for [direct housing assistance payments](#) to low-income families and increased [funding to serve homeless persons](#) or prevent homelessness. At the time of writing, the City of Los Angeles had instituted a temporary freeze on rent increases in apartments subject to local [rent stabilization](#). Several private [banks and lenders](#) have initiated hardship or deferral programs.

Utilities: Electricity, Gas & Water. Gas and electricity companies across many states are [temporarily suspending disconnections and late fees or requiring reconnections](#). Some have been ordered by governors or regulators to do so. Many state and local governments have [issued orders forbidding water shut-offs](#) during the emergency and requiring the restoration of services. Significantly, the Governor of Michigan – the state that prominently failed to guarantee [Flint residents safe drinking water](#) – has issued an [executive order](#) to restore water service to occupied residences in the midst of COVID-19.

Broadband & Connectivity. In the wake of stay-at-home orders and the closure of schools, broadband service has become more crucial in allowing individuals to access work and schooling. There are long-standing racial, economic, and geographic [disparities in access to high-speed internet](#), with attendant impact on the ability to obtain on-line information, conduct job searches, or do homework. With the crisis the Federal Communications Commission’s Chairman has asked broadband and telephone service providers to take the [Keep Americans Connected Pledge](#). More than 50 companies have pledged to limit service termination and late fees during the pandemic and to open up additional Wi-Fi hotspots. States are [providing information](#) to the public and consumers about positive actions taken by private broadband providers as well as public wifi hotspots. Even before the crisis, dozens of municipalities had [created public hotspots](#)

[or low-cost internet access](#). However, [nineteen states](#) preempt localities from providing municipal networks.

Additional Resources

COVID-19 and Your Workplace Rights: Caring for Yourself and Your Family, A Better Balance (March 19, 2020), <https://www.abetterbalance.org/covid19/>.

Federal and State Resources for Workers, AFL-CIO (Last accessed April 23, 2020), <https://aflcio.org/covid-19/state-resources>.

COVID-19 and the American Workplace, U.S. Dept of Labor (Last accessed April 23, 2020), <https://www.dol.gov/agencies/whd/pandemic>.

Coronavirus: What You Need to Know, National Governors Association (April 23, 2020), <https://www.nga.org/coronavirus/#states>.

State Workforce Agencies Respond to Coronavirus (COVID-19), National Association of Workforce Agencies (April 22, 2020), <https://www.naswa.org/resources/coronavirus>.

Resources to Support Workers During the Coronavirus Pandemic, National Employment Law Project (Last accessed April 23, 2020), <https://www.nelp.org/resources-to-support-workers-during-the-coronavirus-pandemic/>.

Claire Cain Miller, *The Upshot: Who Qualifies for Paid Leave Under the New Coronavirus Law*, N.Y. Times (March 19, 2020), <https://www.nytimes.com/2020/03/19/upshot/coronavirus-paid-leave-guide.html?searchResultPosition=6>.

New York State's Paid Sick Leave Law, A Better Balance (April 2, 2020), <https://www.abetterbalance.org/resources/fact-sheet-new-york-states-paid-sick-leave-law/>

New Paid Leave for COVID-19, Information on Novel Coronavirus, New York State, <https://paidfamilyleave.ny.gov/covid19>.

Roselyn Miller et al., *Which Companies Still Aren't Offering Paid Sick Days? Tracking the Corporate Response to the COVID-19 Pandemic*, Better Life Lab (April 2, 2020), <https://www.newamerica.org/better-life-lab/reports/which-companies-still-arent-offering-paid-sick-days/>.

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Eviction Lab, [COVID-19 and Changing Eviction Policies Around the Nation](#) (last accessed April 24, 2020), <https://evictionlab.org/covid-eviction-policies/>

U.S. Department of Veterans' Affairs, *Special Relief for those Potentially Impacted by COVID-19* (Last accessed April 24, 2020), https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_7.pdf

Food and Water Watch, *We Need a Country-Wide Moratorium on Water Shutoffs Amid Coronavirus* (Last accessed April 24, 2020), <https://www.foodandwaterwatch.org/news/we-need-country-wide-moratorium-water-shutoffs-amid-coronavirus>.

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<https://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/>.

COVID-19: Coronavirus and Housing/Homelessness, National Low Income Housing Coalition, <https://nlihc.org/coronavirus-and-housing-homelessness>.

Rural Development COVID-19 Response, U.S. Department of Agriculture (USDA) Rural Development (April 17, 2020), <https://www.rd.usda.gov/coronavirus>.