



June 12, 2020

United States House of Representatives
Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515

Dear Members of the Committee on Education and Labor:

I appreciate the opportunity to submit this letter in follow up to the Committee on Education and Labor's hearings on the Future of Work. As we consider how to create a future where everyone can succeed, policymakers must confront long-standing racism and inequality in our social and economic systems. Hundreds of thousands of Americans are marching for justice across the country to demand reform of our policing system and challenge systemic racism against Black Americans. At the same time, the COVID-19 crisis has exacerbated inequality by disproportionately affecting Black Americans, Native Americans, and Latinx workers who have experienced disproportionately high rates of death¹ and economic hardship. This has been compounded by the impact of preexisting structural discrimination that has historically limited access to health and wealth in these communities.² The COVID-19 crisis has also ignited racism against Asian Americans who have faced increased xenophobia, harassment, and hate crimes, which has driven business closures and a surge in unemployment.³ Women have been disproportionately hit by unemployment as well as a growing child care crisis. Older workers and many people with disabilities are also facing increased health risks and growing economic insecurity. These multilayered crises have been a mirror for our society, reflecting the systemic inequalities and weaknesses undergirding many of our workplace systems and safety net structures.

Our nation is stronger when all Americans have an opportunity to achieve their full potential. The pandemic has magnified the divide in how people live and work – especially those who can work from home and those who cannot. As we rebuild, our aim should not be to simply resume business as usual; we must create a stronger, more inclusive economy and democracy. To do this will require investing in the hard work of tackling systemic discrimination and persistent occupational segregation. In addition, as technology evolves, we need to provide guardrails for algorithmic hiring screens and employee health monitoring to ensure that new technology does not reinforce bias. To achieve America's ideals of opportunity and equality, we must reimagine a future where our most vulnerable workers, including independent contractors and temporary workers, do not have to choose between their health and their livelihood. As we work to revitalize our workplace protections and advance economic justice, I offer three areas of focus: (1) removing long-standing and emerging barriers to opportunity that contribute to persistent occupational segregation, (2) ensuring that employers' use of algorithmic hiring screens and worker monitoring have sufficient safeguards, and (3) expanding workplace protections and safety net supports for workers in nontraditional jobs who have been hit hard by the pandemic.

Tackling Occupational Segregation and Removing Barriers to Equal Employment Opportunity

Millions of Americans are working on the front lines of the COVID-19 crisis, from health and home care workers to warehouse and grocery store workers. The pandemic has highlighted the impact of widespread occupational

¹ "The Color of Coronavirus: Covid-19 Deaths By Race and Ethnicity in the U.S.," *APM Research Labs*, June 10, 2020, <https://www.apmresearchlab.org/covid/deaths-by-race#indigenous>.

² Maria Godoy and Daniel Wood, "What Do Coronavirus Racial Disparities Look Like State By State?" *Health Shots*, NPR, May 30, 2020, <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

³ Shannon Liao, "Unemployment Claims from Asian Americans Have Spiked 6,900% in New York. Here's Why," *CNN Business*, May 1, 2020, <https://www.cnn.com/2020/05/01/economy/unemployment-benefits-new-york-asian-americans/index.html>.

segregation. Communities of color and women have faced disproportionately higher unemployment rates as well as an overrepresentation in hazardous and low-paid jobs. Although all communities have been hit hard by historic unemployment rates, white Americans have experienced the lowest rate of unemployment with white men at 9.7 percent.⁴ Women of all races have experienced higher unemployment rates than men. Latina women face the highest unemployment rate at 19 percent, followed by Black women (17.2 percent), Asian American women (16.7 percent), and white women (11.9 percent).⁵ Native Americans have experienced unemployment rates on some reservations of 50 percent or higher even before the crisis, and unemployment has soared as many tribally owned businesses, including casinos, have been forced to shut down during the pandemic.⁶ In addition, working from home has been a privilege largely for those with secure incomes and white-collar jobs. Black and Hispanic workers are the least likely to be able to work from home,⁷ likely because of their overrepresentation in essential industries.⁸ Part of the solution is improving the quality of frontline jobs by providing higher pay, benefits, and meaningful health and safety protections. Another critical part of the solution is dismantling the systemic barriers that lead to occupational segregation to expand the diversity of those in higher-paying and stable jobs, including those that enable remote work.

As we prepare for the future of work, increased access to high-quality education and job training is essential, but we must also ensure employers create fair and inclusive workplace cultures. Structural racism, gender norms, and stereotypes are imbedded in many employment practices that lead to discrimination in hiring and barriers to advancement and fair pay. Occupational segregation has been a major driver of inequality in our nation. Its origins stem from slavery and Jim Crow laws, as well as a devaluing of work performed by immigrants and women in such industries as agriculture and domestic work.⁹ It has persisted for decades not only because of differences in education, geographic location, and access to transportation but also because of segregated job recruiting and referral networks, persistent hiring discrimination, and barriers to advancement.¹⁰ It is one of the main causes of the substantial pay gap by race, ethnicity, and gender.¹¹

Stereotypical views about race, ethnicity, and gender can lead employers to exclude a large segment of the workforce from consideration because of inaccurate assumptions based on historical patterns rather than talent and abilities. Notably, Black and white Americans report stark differences in their understanding of these issues. For example, 72 percent of Black people working in science, technology, engineering, and mathematics say a major reason Black and Latinx workers are underrepresented in these jobs is because they face discrimination in recruiting, hiring, and promotions: only 27 percent of white people say the same.¹² Similarly, while nearly two-thirds of Black professionals believe they need to work harder than their colleagues to advance in their careers,

⁴ Rakesh Kochhar, “Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession,” *FactTank* (blog), Pew Research Center, June 11, 2020, <https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/>.

⁵ Kochhar, “Unemployment Rose Higher.”

⁶ Simon Romero and Jack Healy, “Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos,” May 11, 2020, <https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html>.

⁷ Elise Gould and Heidi Shierholz, “Not Everybody Can Work from Home: Black and Hispanic Workers Are Much Less Likely to Be Able to Telework,” *Working Economics* (blog), Economic Policy Institute, March 19, 2020, <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>.

⁸ Steven Brown, “How COVID-19 Is Affecting Black and Latino Families’ Employment and Financial Well-Being,” *Urban Wire* (blog), Urban Institute, May 6, 2020, <https://www.urban.org/urban-wire/how-covid-19-affecting-black-and-latino-families-employment-and-financial-well-being>.

⁹ Shelly Steward, “Imagining a Workplace Safety Net Rooted in Equity,” *Aspen Institute* (blog), June 12, 2020, <https://www.aspeninstitute.org/blog-posts/imagining-a-workplace-safety-net-rooted-in-equity>.

¹⁰ Brown, “How COVID-19 Is Affecting Black and Latino Families’ Employment and Financial Well-Being.”

¹¹ Kim A. Weeden, “Occupational Segregation,” Pathways, *The Poverty And Inequality Report*, (2019) https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2019_OccupSegregation.pdf.

¹² Cary Funk, and Kim Parker, Women and Men in STEM Often at Odds over Workplace Equity (Washington, DC: Pew Research Center, 2018), chapter 4, <https://www.pewsocialtrends.org/2018/01/09/blacks-in-stem-jobs-are-especially-concerned-about-diversity-and-discrimination-in-the-workplace/>.

only 16 percent of white professionals agree with that statement.¹³ Survey data shows that Latinx, Asian Americans, and Native Americans all report substantial and significant personal experiences of discrimination in pay, promotions, hire, and racial or ethnic slurs.¹⁴ Workplace climates, such as a tolerance for harassment, double standards, a lack of mentoring, and inflexibility for caregivers, inhibit career growth and lead to greater inequity in both health and wealth. These patterns reinforce occupational segregation and result in a loss of talent from underrepresented groups who would otherwise be in a position to advance into higher-paid jobs and leadership roles.

Occupational segregation harms us all by undermining not only our nation's economic productivity but also our social fabric. The workplace provides one of the few places where people from different backgrounds and experiences come together to work for a common goal. Creating sustained interaction across difference can increase cross-cultural understanding and reduce bias and discrimination. As we confront an increasing divide by race, gender, ethnicity, and religion, building diverse and inclusive workplaces is even more essential. It is not enough to aim to create a society where people simply have a sufficient income to meet basic needs. We must create good quality jobs with diversity at all levels. Our corporate and public-sector institutions make critical decisions that shape access to resources, opportunity, and justice, such as the development of technology, access to health care, and the operation of our criminal justice system. It is essential that people from a diverse range of backgrounds contribute to these decisions and our collective ability to solve our most challenging problems in ways that serve all communities.

In this time of large-scale workforce disruption, we have a chance to address long-standing barriers to opportunity as well as new and emerging concerns. For example, the pandemic has upended an already fragile child care system. The closing of schools and child care centers threatens to have a lasting impact on women in the workforce, who disproportionately bear the weight of child care responsibilities. The crisis has also destabilized the lives of child care workers as they have lost jobs and income on top of already low wages — an average of just \$10.82 an hour.¹⁵ Over 92% of child care workers are female,¹⁶ and although their services are essential to our economy, many workers lack health insurance and paid sick leave leaving them especially vulnerable in a crisis.¹⁷ Some estimate that as many as one-third to one-half of child care centers are at risk of closing permanently.¹⁸ Many schools are likely to have uncertain schedules for an extended period, meaning parents will face unprecedented needs for school-age child care. These realities present serious challenges to women, who both disproportionately work in child care jobs and also tend to bear the burden in finding care options so they can work outside the home. Employers may be reluctant to bring back workers with child care responsibilities for these reasons, limiting future employment opportunities for women. The pandemic also has highlighted the child care challenges facing many essential workers, such as those in health care, retail, or delivery, who work at all hours, as well as those who confront fluctuating and unpredictable work hours. Even before the pandemic, limited child care options were available to parents working nonstandard schedules.¹⁹ It is critical to our economy and women's participation in

¹³ Pooja Jain-Link and Julia Taylor Kennedy, "Being Black in Corporate America," Center for Talent Innovation, (2019) https://www.talentinnovation.org/_private/assets/BeingBlack-KeyFindings-CTI.pdf.

¹⁴ "Discrimination in America: Experiences and Views on Affects of Discrimination Across Major Population Groups in the United States," NPR/Harvard T. H. Chan School of Public Health/Robert Wood Johnson Foundation poll, October 24, 2017, <https://www.rwjf.org/en/library/research/2017/10/discrimination-in-america--experiences-and-views.html>.

¹⁵ Anna North, "We are on our own: How the coronavirus pandemic is hurting child care workers," April 6, 2020, <https://www.vox.com/2020/4/4/21203464/coronavirus-child-care-workers-pandemic-unemployment-cares-act>.

¹⁶ DataUSA. (2018), "Childcare workers," <https://datausa.io/profile/soc/childcare-workers#:~:text=Race%20%26%20Ethnicity&text=68.9%25%20of%20Childcare%20workers%20are,or%20ethnicity%20in%20the%20occupation>.

¹⁷ DataUSA. "Childcare workers."

¹⁸ Amanda Becker, "The Pandemic Upended Child Care. It Could Be Devastating for Women," *Washington Post*, May 20, 2020, <https://www.washingtonpost.com/politics/2020/05/20/pandemic-upended-child-care-it-could-be-devastating-working-women/>.

¹⁹ Gina Adams and Julia Henly, "Child Care Investments Through the Lens of the COVID-19 Pandemic," Health Affairs blog, May 6, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200504.473858/full/>.

the labor force that the government invest in strengthening our federal child care subsidy system to rebuild and sustain the child care and early education sector and ensure that the system we build meet the needs of child care workers and the working families that depend on them.²⁰

The long and difficult economic recovery ahead means that many workers face increased vulnerability and discrimination because of labor market instability. Researchers have found that when the economy declines, racial disparities typically expand, suggesting that economic scarcity may promote racial discrimination.²¹ Further, the “last in, first out” phenomenon appears to be a central factor contributing to greater joblessness, with Black workers experiencing layoffs in numbers disproportionate to their presence in the labor force.²² As workers across industries become increasingly vulnerable to job loss, they may be less likely to raise concerns or file complaints. The government has an important role to play in proactively enforcing our antidiscrimination laws, rather than waiting for vulnerable workers to come forward to file charges of discrimination. This includes analyzing data such as the Employer Information Report EEO-1, through which employers provide demographic information on their workforce to the Equal Employment Opportunity Commission (EEOC). For the first time in its history, the EEOC now has employer data on pay by race, gender, and ethnicity, and it is vital that the EEOC use all resources available to root out discrimination. Another important strategy for proactive enforcement is for the government to engage actively with unions, worker centers and other community-based non-profit organizations as well as high-road employers, to help educate workers on their rights and provide an effective method of identifying employers engaged in unlawful practices.²³ This would enable the EEOC to initiate Commissioner charges and directed investigations²⁴ to address significant discrimination issues even where workers fear retaliation and are hesitant to file a charge of discrimination.

As businesses make powerful statements in support of Black Lives Matter and racial justice, this is a pivotal moment to ensure these words are translated into action. Currently, among Fortune 500 companies, less than 1% of CEOs are black²⁵ and 5.8% are female.²⁶ Black professionals hold just 3.3% of all executive or senior leadership roles, defined as within two reporting levels of the CEO, despite representing approximately 13% of the US population.²⁷ Of all Russell 3000 companies, only 19% of board of director seats were held by women and 10% were held by people of color as of 2019, well below their representation in the U.S. population of approximately 40 percent.²⁸ Diverse leadership is vital to the creation of more equitable and inclusive organizations since leaders set the tone for the organization and make key strategic and operational decisions. Since American companies are not required to disclose the race and ethnicity of their C-suites and boards, it has been difficult to track progress and create accountability. A federal mandate for public disclosure of board demographics and senior leadership can serve as a powerful driver and measure of change.²⁹

²⁰ Adams and Henly, “Child Care Investments.”

²¹ David M. Amodio, Amy R. Krosch, and Tom R. Tyler, “Race and Recession: Effects of Economic Scarcity on Racial Discrimination,” *Journal of Personality and Social Psychology* 113, no. 6 (December 2017): 892–909.

²² William A. Darity, “Employment Discrimination, Segregation, and Health,” *American Journal of Public Health* 93, no. 2 (February 2003): 226–31.

²³ Fine, Janice (2018) “New Approaches to Enforcing Labor Standards: How Co-enforcement Partnerships between Government and Civil Society Are Showing the Way Forward,” *University of Chicago Legal Forum*: Vol. 2017, Article 7. <https://chicagounbound.uchicago.edu/uclf/vol2017/iss1/7>

²⁴ Equal Employment Opportunity Commission, “Commissioner Charges and Directed Investigations,” <https://www.eeoc.gov/commissioner-charges-and-directed-investigations>.

²⁵ Jeanne Sahadi, “After years of talking about diversity, the number of black leaders at US companies is still dismal,” *CNN Business*, June 2, 2020, <https://edition.cnn.com/2020/06/02/success/diversity-and-black-leadership-in-corporate-america/index.html>.

²⁶ Catalyst, “Pyramid: Women in S&P 500 Companies” (January 15, 2020), <https://www.catalyst.org/research/women-in-sp-500-companies>.

²⁷ Catalyst, Pyramid: Women in S&P 500 Companies.

²⁸ Subodh Mishra, “U.S. Board Diversity Trends in 2019,” *Harvard Law School Forum on Corporate Governance* (blog), June 18, 2019, <https://corpgov.law.harvard.edu/2019/06/18/u-s-board-diversity-trends-in-2019/>.

²⁹ Gurkin, Chelsa, “Board Diversity: Strategies to Increase Representation of Women and Minorities” Testimony Before US House of Representatives, Committee on Financial Services, Washington, DC, June 20, 2019,

Members of Congress as well as employers across the country have an important role to play in ensuring the diversity of their own senior leadership. Requiring diverse hiring slates has been demonstrated to be an effective method of increasing diversity in leadership.³⁰ It requires a hiring manager to conduct an in-person interview with a diverse slate of candidates before making a final decision. This policy has been referred to as the “Rooney Rule” after a policy established by the National Football League, which has recently acted to strengthen its process by agreeing to interview at least two diverse candidates.³¹ A diverse slate policy has been adopted as a best practice by a number of multi-national corporations as a tool to identify strong talent from all communities and increase opportunity for women and people of color.³²

Ensuring Sufficient Safeguards for New Workplace Technology

The pandemic has created a demand for new forms of socially distanced hiring procedures, which may lead more companies to explore algorithmic hiring screens. This creates an even greater urgency for clear standards of accountability, as I discussed in my testimony before this committee at the hearing “The Future of Work: Protecting Workers’ Civil Rights in the Digital Age.”³³ Although algorithmic hiring screens claim to reduce subjectivity and bias in hiring, employers must understand how these systems operate, disclose sufficient information to workers, and audit systems for bias. Technology is heightening the risk that employment discrimination may be masked through ineffective accountability structures and information asymmetry. Opaque systems may make decisions on potentially inaccurate or biased data, and these decisions are often unreviewable. Because technology provides a sense of objectivity and scientific analysis, discriminatory decisions can become magnified and rapidly expanded.

COVID-19 has presented new civil rights concerns for workers concerning how employers acquire and use health-related information from employees, such as contact tracing, measuring employee temperatures, taking antibody tests, or providing “immunity certificates.”³⁴ As we re-open our economy, the development of sweeping new surveillance efforts requires that our public policy keep up by requiring meaningful transparency and accountability safeguards for workers. Government officials and business leaders, both in the US and globally, are considering immunity certificates as a way to restart the economy by allowing people to provide evidence that they have minimal risk of contracting and transmitting the coronavirus.³⁵ The certificates, presented digitally or by a form of ID, would indicate that a person has recovered from the infection, has antibodies that prevent transmission, or has recently tested negative for the virus.³⁶ These proposed certificates raise substantial concerns.

<https://corpgov.law.harvard.edu/2019/06/27/strategies-to-increase-representation-of-women-and-minorities-testimony-before-the-committee-on-financial-services-house-of-representatives/>.

³⁰ Cynthia DuBois, “What The NFL Can Teach Congress About Hiring More Diverse Staffs,” *FiveThirtyEight* (blog), March 15, 2017, <https://fivethirtyeight.com/features/what-the-nfl-can-teach-congress-about-hiring-more-diverse-staffs/>.

³¹ Sprung, Sholomo, “NFL Exec Explains Why Rooney Rule Additions Will Finally Effect Change,” June 3, 2020, <https://www.forbes.com/sites/shlomospung/2020/06/03/rooney-rule-nfl-racial-diversity-equality-troy-vincent/#2e876e5417dd>.

³² Diversity best Practices. 2016. *Member Poll: Diverse Candidate Slates*. New York City, NY: Diversity Best Practices, https://www.diversitybestpractices.com/sites/diversitybestpractices.com/files/import/embedded/anchors/files/_attachments_articles/diverse_slate_member_poll_report.pdf

³³ Jenny R. Yang, “Ensuring A Future That Advances Equity In Algorithmic Employment Decisions,” testimony before the US House of Representatives Subcommittee on Civil Rights and Human Services, Committee on Education and Labor, Washington, DC, February 5, 2020.

³⁴ Stephen R. Brown, Michael F. Linden, Emma J. Sullivan, and Joseph J. Torres, “May an Employer Require Its Employees to Use a Contact Tracing App?” (Chicago: Jenner & Block, 2020), <https://jenner.com/system/assets/publications/19870/original/May%20an%20Employer%20Require%20Its%20Employees%20to%20Use%20a%20Contact%20Tracing%20App.pdf?1588010124>.

³⁵ Dinah Wisenberg Brin, “Immunity Certificates: An Idea Whose Time Hasn’t Arrived,” Society for Human Resource Management, May 15, 2020, <https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/coronavirus-immunity-certificates.aspx>.

³⁶ Dakota Gruener, *Immunity Certificates: If We Must Have Them, We Must Do It Right* (Cambridge, MA: Harvard University, Edmond J. Safra Center for Ethics, 2020), <https://ethics.harvard.edu/files/center-for-ethics/files/12immunitycertificates.pdf>.

First, according to the World Health Organization, there is insufficient evidence about antibody immunity to validate the use of immunity certificates because tests sometimes provide false positives and false negatives.³⁷ In addition, employers may disadvantage those without these certificates, which may disproportionately include older workers, people with disabilities, and workers of color. For example, because Black workers have higher rates of underlying conditions that are linked to COVID-19, implementation of these certificates could further disadvantage Black workers.³⁸ Further, immunity certificates could provide incentives for workers, particularly young workers or those with less economic security, to intentionally contract the virus to secure employment.

Employers are also considering apps that will help them trace employee contacts if an employee is diagnosed with the virus.³⁹ Contact tracing apps allow employers to use GPS technology to determine where infected workers have been in the workplace and other workers with whom they have been in contact. Although these efforts are designed to promote public health in an emergency, we must also consider the long-term impacts of tracking workers both for privacy concerns and the risks surveillance presents in chilling worker organizing efforts. Important questions include whether workers will be tracked only while in the workplace and for what purposes the data be used. In addition, clear safeguards are needed to ensure employers protect the health data they collect by managing who has access, how it will be used, and employee consent.⁴⁰ Worker protections are also needed to ensure data is not used for unintended purposes, including those that could lead to discrimination. As the COVID-19 crisis opens the door to increased worker monitoring, adequate worker protections are critical to address the power disparities and information asymmetry between workers and employers.

Rebuilding Our Systems to Work for All Workers

The COVID-19 crisis has drawn much-needed attention to the gaps in workplace protections and safety net systems, particularly for millions of Americans in nontraditional jobs such as independent contractors and temporary workers, many of whom are essential during this pandemic. As employers have increasingly shifted risk to workers, a growing number of Americans are working outside the traditional employer-employee relationship upon which many legal protections rest. Internal Revenue Service data show that low-income earners represent the fastest-growing population of independent contractors.⁴¹ Many people working in low-wage jobs—in home care settings, nail salons, construction, cleaning, and landscaping—are disproportionately immigrants, women, and people of color.⁴² Many of these workers are misclassified as independent contractors rather than employees as employers cut costs and attempt to shield themselves from responsibility for workplace protections. Online platform companies have accelerated the shift toward precarious work by classifying their workers as independent contractors and not employees. This means many companies do not contribute to unemployment insurance, workers' compensation, or health insurance and disclaim responsibility for ensuring minimum wage, antidiscrimination protections, or health and safety protections provided to employees. For example, although workplace safety is of utmost concern for workers during the pandemic, employers are mandated to provide

³⁷ Wisenberg Brin, "Immunity Certificates."

³⁸ Godoy and Wood, "What Do Coronavirus Racial Disparities?"

³⁹ Vin Guerrieri, "Privacy Risks Lurk in Tech-Heavy Return-to-Work Plans," Law360, accessed June 12, 2020, https://www.law360.com/employment/articles/1279715/privacy-risks-lurk-in-tech-heavy-return-to-work-plans?nl_pk=6183ffc3-3e4b-4203-a07b-50055fdb6320&utm_source=newsletter&utm_medium=email&utm_campaign=employment.

⁴⁰ Justine M. Phillips, Jessica R. Gross, Morgan Forsey, and Alexandra M. Gross, "Up Close and Personal: Contact-Tracing Apps and Employee Privacy," Labor and Employment Law blog, *National Law Review*, June 4, 2020, <https://www.natlawreview.com/article/close-personal-contact-tracing-apps-employee-privacy>.

⁴¹ Katherine Lim, Alicia Miller, Max Risch, and Eleanor Wilking, *Independent Contractors in the U.S.: New Trends from 15 years of Administrative Tax Data* (Washington, DC: Internal Revenue Service, 2019), <https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf>.

⁴² Jenny R. Yang and Steven Brown, "Will the Pandemic Encourage Policymakers to Implement Stronger Workplace Protections for Independent Contractors?" *Urban Wire* (blog), Urban Institute, April 3, 2020, <https://www.urban.org/urban-wire/will-pandemic-encourage-policymakers-implement-stronger-workplace-protections-independent-contractors>.

protections to employees only under the Occupational Safety and Health Act of 1970.⁴³ The pandemic has magnified the need to rebuild our workplace systems to provide benefits to workers across occupations and work arrangements and extend workplace protections to all workers.⁴⁴

During this pandemic, staffing agencies are deploying temporary workers to fill essential jobs in such industries as health care, food processing, and manufacturing, often placing workers at significant risk of injury and illness.⁴⁵ Unlike most developed nations, the United States does not regulate temporary work.⁴⁶ Although staffing agencies classify temporary workers as employees, temporary workers performing similar work earn 41 percent less than traditional employees, and only a small share of temporary workers receive benefits such as paid leave or health insurance.⁴⁷ Temporary workers are disproportionately people of color: Black workers account for approximately 13 percent of the overall workforce but nearly 26 percent of the temporary workforce. Latinx workers make up nearly 17 percent of all workers but 25 percent of temporary workers.⁴⁸ The attenuated responsibility structure in temporary staffing fosters widespread discriminatory steering, often referring applicants based on client preferences for employees of a certain race, color, sex, national origin, age, or absence of disability. Another significant concern is that broad no-hire provisions in contracts between staffing agencies and host employers often prohibit host employers from hiring temp workers directly or require fees as high as 40% of annual salary.⁴⁹ These kinds of practices close pathways to better jobs and keep temp wages low, exacerbating income inequality and occupational segregation for people of color.⁵⁰ As we build an equitable future, strengthening protections for temp workers will be a fundamental part of creating pathways for stable good jobs.

To ensure a future of work that advances equality, it is incumbent on us as a nation to revitalize our employment laws and practices to address our nation's longstanding economic inequality, occupational segregation, and systemic barriers to opportunity.

Sincerely yours,

/s / Jenny R. Yang

Jenny R. Yang
Senior Fellow, Urban Institute*
Former Chair and Commissioner, US Equal Employment Opportunity Commission

**The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.*

⁴³ Occupational Safety and Health Administration (OSHA), "Workers' Rights" (Washington, DC: OSHA, n.d.), <https://www.osha.gov/Publications/OSHA3021.pdf>; standard no. 1904.31, 29 CFR 1904.31, accessed June 10, 2020, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.31>.

⁴⁴ Steward, "Imagining a Workplace Safety Net Rooted in Equity," Aspen Institute blog.

⁴⁵ Jane Flanagan and Laura Padin, "Temp Workers Face Greater Risk and Insecurity in COVID-19 Crisis," *OnLabor* (blog), April 13, 2020, <https://www.onlabor.org/temp-workers-face-greater-risk-and-insecurity-in-COVID-19-crisis/>.

⁴⁶ Flanagan and Padin, "Temp Workers Face Greater Risk."

⁴⁷ Laura Padin, "Lasting Solutions For America's Temporary Workers" (New York: National Employment Law Project, 2019), <https://www.nelp.org/publication/lasting-solutions-americas-temporary-workers/>.

⁴⁸ Padin, "Lasting Solutions For America's Temporary Workers."

⁴⁹ Padin, "Lasting Solutions For America's Temporary Workers."

⁵⁰ Flanagan, Jane, and Laura Padin, "Temp Workers Face Greater Risk and Insecurity in COVID-19 Crisis," *OnLabor* (blog), April 13, 2020, <https://www.onlabor.org/temp-workers-face-greater-risk-and-insecurity-in-COVID-19-crisis/>.