



June 3, 2021

Secretary Xavier Becerra  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201  
Via Email - [Secretary@HHS.gov](mailto:Secretary@HHS.gov)

Director Rochelle P. Walensky, MD, MPH  
Centers for Disease Control and Prevention  
1600 Clifton Road Atlanta, GA 30333  
Via Email - [CDC-INFO@cdc.gov](mailto:CDC-INFO@cdc.gov)

Dr. Marcella Nunez-Smith, Chair  
COVID-19 Health Equity Task Force  
Office of Minority Health  
U.S. Department of Health and Human Services  
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Rockville, MD 20852  
Via Email - [COVID19HETF@hhs.gov](mailto:COVID19HETF@hhs.gov)

Dear Secretary Becerra, Director Walensky, and Chairperson Nunez-Smith:

On behalf of the Lawyers' Committee for Civil Rights Under Law, and the undersigned civil, employment, and workers' rights organizations listed below, we write to express our grave concern regarding the Centers for Disease Control and Prevention's (CDC) recent [guidance](#) permitting vaccinated people to "resume activities without wearing a mask or physically distancing." The CDC's sudden shift in guidance is an abrupt reversal from the agency's previous guidance, as it permits workplaces and businesses to relax mask mandates for people who purport to be fully vaccinated. Since the beginning of the pandemic, Black, Indigenous, Latinx, and Asian frontline workers have been critical to maintaining public health and providing vital goods and services throughout the country.<sup>1</sup> This guidance will inevitably place these workers at an increased risk of contracting COVID-19.

**We therefore call upon the CDC to immediately revise its guidance to require face coverings in indoor congregate settings, such as restaurants, retail shops, grocery stores, and**

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<sup>1</sup> 36% of Black workers, 33% of Latinx workers, and 25% of Asian workers are employed in mostly low-income frontline jobs, compared to just 21% of white workers. "Frontline Workers in the U.S.: Race, Ethnicity, and Gender." *International Union for the Scientific Study of Population*, N-IUSSPP, 7 Sept. 2020, [www.niussp.org/article/frontline-workers-in-the-u-s-race-ethnicity/](http://www.niussp.org/article/frontline-workers-in-the-u-s-race-ethnicity/).

**public transit in order to ensure racial health disparities are not worsened.<sup>2</sup> Additionally, the CDC must immediately clarify that workplace mitigation measures to protect workers from COVID-19 are still needed in many workplaces. Mitigation measures must be maintained in workplaces where workers come into frequent contact with co-workers or members of the public who are both vaccinated and unvaccinated. These mitigation measures must focus on ventilation and filtration to control airborne exposures, and require physical distancing, mask wearing, and isolation of infected individuals. Further, the Biden administration must ensure that the Occupational Safety and Health Administration (OSHA) immediately issues an emergency temporary standard for COVID-19 to make sure that workplace mitigation measures are implemented and maintained to prevent exposures and infections.** Essential workers deserve to work in environments where they are protected from unnecessary exposure to this deadly virus.

Though masks, social distancing, and vaccinations have driven infection and death rates down among some groups, COVID-19 remains a very real public health risk for communities of color. [Less than a quarter](#) of Black people are fully vaccinated, compared to 33% of White people. Thus, the potential for the CDC's recent guidance to exacerbate racial health inequities is not merely hypothetical. The Washington Post [reports](#) that, as of May 2021, Black people made up 80% of new coronavirus cases in Washington D.C.—compared to just 46% late last year. Meanwhile, the infection rate among White people dropped by 10%. According to the Post, the share of new infections among Black people spiked in mid-April, even as the vaccines became more widely available. And, despite widespread efforts, vaccination rates have [fallen 20%](#), and mass vaccination sites are [closing](#) in populous areas.

As you are no doubt aware, many of the pandemic's racial health disparities—including [higher rates](#) of infection, serious illness, and death among people of color—directly correlate with essential work in public facing industries. Workers in the transit, health care, grocery, child care and social service industries are [disproportionately workers of color](#). Black and Hispanic women are especially [concentrated](#) in low-income frontline jobs compared to men,<sup>3</sup> and are [overrepresented](#) in public facing jobs in the service industry, such as cashiers, retail workers, and fast food workers. A large-scale study on the matter confirmed that, during the height of the pandemic, essential workers in Philadelphia had a [55%](#) higher chance of contracting COVID-19 than people who could work from home. Worse still, studies have shown that essential work is not only a predictor of COVID-19 illness, but severe infection and mortality too. [61%](#) of essential workers have underlying health conditions that put them at increased risk of severe COVID-19 illness should they become infected. Another study demonstrated that non-healthcare essential employees, such as food workers, farmworkers, construction laborers, and shipping clerks, faced a [40%](#) greater chance of dying from COVID-19 during the first two months of California's reopening in 2020. By February 2021, [54,000 workers at 569 plants](#) tested positive for COVID-19 and 270 have died. Amazon [reported](#) 19,816 COVID-19 infections among its workforce, as of October 2020. And, the United Food and Commercial Workers Union [reports](#) 17,400 infections

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<sup>2</sup> Where applicable, business owners and health care employers must provide accommodations for individuals with disabilities or religious observances, including permitting alternatives to N95 masks.

<sup>3</sup> 27% of Black women workers and 23% of Hispanic women workers are employed in low-income frontline jobs, compared to just 8% of white men. "Frontline Workers," *supra*.

and 109 deaths among grocery store workers, as of December 2020. The risks of essential work are glaring and the CDC's guidance will exacerbate this existing threat to the essential workforce.

Nonetheless, several governors have outright [banned](#) local governments and schools from implementing mask mandates following the CDC's guidance. Likewise, several employers of essential workers, such as Walmart, Trader Joe's, and Costco will now permit [shoppers](#) who claim to be vaccinated to enter stores without masks or other face coverings in accordance with the CDC's new guidance. None of these establishments have instituted policies to verify shoppers' vaccination status. As [conceded](#) by Dr. Anthony Fauci, business establishments "will not be able to know" whether their customers are actually vaccinated, and workers will "depend[] on people being honest enough to say whether they are vaccinated or not." Masks are necessary to protect not only the masked individual from infection but everyone around that person as well, as the CDC has [stressed](#) repeatedly. Given the enormity of the risks that essential workers have faced throughout the pandemic, abandoning source control and relying on an honor system to protect their health is unconscionable.

Though the CDC's decision was based on [scientific evidence](#) regarding vaccine efficacy, neither the CDC, nor the vast majority of states, track vaccination rates among essential workers. It is therefore impossible to determine what portion of essential workers are fully vaccinated, even though they will be forced to interact with unmasked (and potentially unvaccinated) members of the public. Even assuming essential workers are now encouraged to get vaccinated, inflexible work schedules, lack of paid time off and sick leave, as well as the lengthy process of building immunity after vaccination could mean workers remain unprotected—and vulnerable to severe illness—for several weeks. Additionally, [gaps in knowledge pertaining](#) to the vaccine, such as protection against COVID-19 variants, efficacy in immunocompromised people, and even length of vaccine protection, exacerbate the risk to workers. That risk is simply too great to bear.

The Lawyers' Committee was encouraged when, on the first day of his presidency, President Biden announced a government-wide effort to "pursue a comprehensive approach to advancing equity for all" in Executive Order 13985 entitled "[Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#)." The next day, in Executive Order 13995 "[Ensuring an Equitable Pandemic and Recovery](#)", he specifically acknowledged that "[t]he COVID-19 pandemic has exposed and exacerbated severe and pervasive health and social inequities in America." President Biden went on to note that "people of color experience systemic and structural racism in many facets of our society and are more likely to become sick and die from COVID-19." However, the CDC's latest guidance puts essential workers of color squarely in the crosshairs of the pandemic by needlessly rendering the workplace more dangerous. Guidance clarifying the need for masks in indoor congregate settings is crucial and cannot wait.

If you have any questions, please contact Pilar Whitaker, Counsel, Economic Justice Project at [pwhitaker@lawyerscommittee.org](mailto:pwhitaker@lawyerscommittee.org). We welcome the opportunity to meet and discuss this matter further. Thank you for your consideration of this critically important matter.

Signed,

The Lawyers' Committee for Civil Rights Under Law

Center for WorkLife Law, University of California, Hastings Law  
Cleveland Jobs with Justice  
Essential Ohio  
Justice for Migrant Women  
Oxfam America  
National Employment Law Project  
Public Citizen  
Sikh Coalition  
The Leadership Conference on Civil and Human Rights  
Workplace Fairness