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Advocating for low-wage workers

“Essential workers” already labored under difficult conditions and faced high rates of poverty before the pandemic

By **JENNIFER A. REISCH**

As the California economy reopens and we begin to emerge from the long, dark tunnel of the pandemic, we know that the burdens and losses of the COVID-19 crisis and the recession it brought on have been borne unevenly across gender, racial, and socioeconomic lines. The disparate and devastating impact of COVID-19 on low-wage workers – who are mostly women and more likely to be people of color from Black, Latino, and Indigenous communities – showed us the deadly consequences of systemic racism, rising inequality, an inadequate social safety net, and the steady erosion of job quality, fair pay, and workers’ say in their own workplaces seen over the past few decades. While many workers, including attorneys and legal professionals, felt the squeeze and were forced to make difficult choices during the pandemic, the segments of the workforce hit hardest were those who have been on the front lines all along – packing and delivering supplies, selling and stocking groceries, caring for the sick and elderly, and keeping our streets and buildings clean.

The people working in these and other frontline, essential jobs – overwhelmingly women and people of color – already faced precarious economic situations when the pandemic hit last year. Being required to physically report to job sites where they faced elevated risks of infection meant that in the months that followed, they put their own and their families’ health and lives at risk to keep the economy going, often without adequate safety protections and without

being paid a family-sustaining living wage. Many thousands of low-wage workers fell ill, lost loved ones, or died. Others lost their jobs or had to stop working to care for family members, without job protection, paid leave, or access to unemployment insurance.

In this way, the pandemic highlighted and exacerbated some deep structural flaws and longstanding gaps in our labor and employment laws that leave low-wage workers vulnerable to exploitation, discrimination, and other abuse. Some low-paid workers rose up and took collective action to challenge the denial of basic protections against the health and economic risks they face and demanded to have more say in their own working conditions and in workplace safety standards. Workers and worker advocates also succeeded in pushing legislation at the federal and state level – including here in California – that strengthened or expanded existing laws and worker protections, particularly in areas like family leave, paid sick leave, and unemployment insurance. But some of these changes were not permanent and none go far enough. Low-wage workers still face significant barriers to economic security and access to justice. Plaintiffs’ attorneys can help break down those barriers by helping low-wage workers vindicate their rights.

Low-wage workers were hit hardest by COVID-19

“Essential workers,” as they came to be known in March of 2020, already labored under difficult conditions and faced high rates of poverty before the pandemic. Many of the positions classi-

fied as essential are disproportionately held by women and workers of color, who are less likely than their white and male counterparts to have the resources to weather a loss of income or have a safety net to fall back on if they (or their family members) get sick. Essential workers comprise nearly half (47%) of all workers in occupations with a median wage of less than \$15 an hour. In California and elsewhere, they are more likely to be immigrants and to live with others who also work in frontline jobs. Essential workers are also more likely to have children at home. Consequently, one of the more immediate effects of the pandemic was, as one author described it, “to illuminate the routine cruelties of more normal times.”

When the pandemic hit, low-wage essential workers faced even greater challenges, often having to work new and unpredictable schedules, without adequate safety measures or protective gear and no hazard pay, while scrambling to find care for children whose schools and childcare facilities were suddenly closed. Thousands fell ill and watched their co-workers get sick. Many died, leaving families to mourn the loss of a loved one (without paid bereavement leave) and figure out how to survive without a primary breadwinner. Latinos in California were especially hard hit, as they comprise a disproportionate share of the low-wage workforce and have unequal access to health care. In fact, Latinos have had the highest infection and death rates of any large demographic group in the state throughout the pandemic, both before and since COVID-19 vaccines became available.



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Low-wage working women on the front lines of the response to the COVID-19 pandemic and economic crisis also suffered tremendously. Women comprise over 60 percent of essential workers and women of color are disproportionately represented in frontline jobs, comprising more than half of the workers in critical service fields such as housekeeping, personal care services, and nursing assistance. At the same time, women bore the brunt of increased caregiving demands, contending with closed schools and child care centers and caring for sick family members. The caregiving crisis compounded the effects of the economic downturn, especially for essential and low-wage workers. The result: Between February 2020 and 2021, over two million women dropped out of the labor force, causing women's labor force participation rate to reach its lowest point in more than 30 years. (See National Women's Law Center Resource: Another 275,000 Women Left the Labor Force in January (Feb. 5, 2021), available at <https://nwlc.org/resources/january-jobs-day-2021/>).

Low-wage workers were hardest hit by the recession, with studies showing that four-fifths of job losses affecting the lowest quarter of wage earners. Within the most seriously impacted sectors of the economy, workers in the lowest average wage and lowest average hour occupations were hit the worst and remain most damaged more than a year after the recession began. Due to occupational segregation, this means that Black women, Hispanic women, and Asian Americans and Pacific Islanders (men and women) have seen disproportionate losses in industries like leisure and hospitality and public-sector educational services that saw the largest employment losses over the past year and have yet to fully bounce back.

Low-wage workers gain some protections, but many are still left behind

The COVID-19 pandemic revealed how many workers and how much work – both paid and unpaid – we have taken for granted and undervalued for far too long. Even so, it took months of vigorous advocacy to propel Congress and many state governments to act. Throughout the pandemic, many low-wage workers, especially working parents, were forced to make impossible choices between their work and family responsibilities, or between protecting their health and keeping a roof over their head. Without any mandatory federal guidelines, safety protocols, or enforcement mechanisms, coronavirus-related health and safety standards were left largely up to the discretion of employers.

Some workers responded to this crisis by coming together and organizing collective actions to demand safe working conditions and fair pay. In April 2020, nurses protested at the White House over the lack of access to protective personal equipment (PPE) and called on the Occupational Health and Safety Administration to issue a federal emergency safety standard to guarantee their access to it. As early as March, grocery-store and fast-food workers began organizing work stoppages over health concerns and started pushing for adequate sanitation measures, hazard pay, and access to paid sick leave. Warehouse workers went on strike after learning that their employers were doing little to shield them against infection even after their co-workers tested positive for the coronavirus. Collective pressure by workers became all the more important, not only for the safety of the workers, but for the well-being of their families, communities, and the general public. Many of these collective actions were effective in helping workers in essential and low-wage jobs secure protective equipment,

hazard pay and higher wages – at least temporarily.

Workers and advocates also pushed to strengthen protections and expand coverage of existing laws, particularly in areas related to family caregiving, sick leave, and workplace safety. They were particularly successful in California, where a number of policy reforms in these areas came into effect or were enacted in 2020 and 2021, including:

- **Protected family caregiving leave: Senate Bill 1383** (Jackson) amended the California Family Rights Act, the primary law providing job-protected time off for parents and caregivers (codified at Gov. Code §§ 12945, et seq.), so that it now applies to employers with five or more employees (instead of 50+) and no longer requires those employees to all work within a 75-mile radius of the worksite. The law also expanded the definition of covered “family member[s]” to include grandparents, grandchildren, siblings, domestic partners, and in-laws. Additionally, it modified the definition of “child” to include all adult children, even those who are not dependents, and children of a domestic partner. These changes took effect on January 1, 2021.
- **Sick leave: COVID-19 supplemental paid sick leave laws of 2020 and 2021** provide California employees who work at businesses with 25 or more employees with access to paid sick leave for COVID-19-related reasons, helping to fill in some of the gaps in coverage under the federal Families First Coronavirus Response Act. The law signed on March 19, 2021, provides covered employees with two weeks of fully paid, job-protected sick leave in addition to the standard three paid sick and safe days offered to all California employees under existing law (Lab. Code, § 246) and will expire on September 30, 2021. However, if a worker starts leave on or before that date, their paid leave can extend into October 2021. Advocates should be aware that while the state policy is temporary and limited to



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COVID-related leave, many cities and counties in California – including Los Angeles (city and county), Long Beach (city), and San Diego (city) – also passed local emergency paid sick leave ordinances that may provide workers with additional protections. Of course, none of these laws provide paid, job-protected leave to workers who are classified as independent contractors, as millions of gig economy workers are.

• **Worker safety: COVID-19 prevention emergency temporary standards** were originally adopted by the California Occupational Safety and Health Board (Cal-OSHA) in November 2020. While they did go further than federal rules in providing protocols and requirements for employers in non-health care settings aimed at preventing and reducing the risk of COVID-19 transmission, enforcement has been lackluster, at best. Low-wage worker advocates and unions criticized the Newsom administration for its slow roll-out of the original rules and for ineffective enforcement of the rules, even in the face of repeated outbreaks on the job on farms and in food-packing and processing facilities that employ high numbers of low-paid Latino immigrant workers. As the Sacramento Bee recently reported, the agency has issued millions in COVID-19 fines, but employers have paid almost none of them. On June 17, 2021, the agency issued revised regulations that loosen requirements in light of updated Centers for Disease Control and California Department of Public Health (CDPH) face-covering guidance, and aim to make it easier for employers to make a safe transition to more “normal” operations. Meanwhile, however, some areas of the state like Merced County, which has a high population of vulnerable low-wage immigrant workers, only recently transitioned out of the “purple” tier due to its high COVID-19 rates. And while the Biden administration finally released a new rule on worker safety in June 2021, it excludes food and farm workers from those protections.

In 2021, lawmakers introduced several bills to further expand or create new protections for workers in California. As of the time of writing, the following bills remain pending and could be enacted by the end of this legislative session:

- **AB 1041 (Wicks)** will expand the definition of “family member” under the California Family Rights Act to include a “designated person,” allowing workers covered by the law to take time off work to care for any family member with a serious illness, including chosen family and those not related by blood or legal relationship. In this way, AB 1041 recognizes the reality that many workers rely on relatives outside of the traditional nuclear family structure, as well as on chosen family, for care. This is especially true in California, which has a high percentage of people living in extended families and multigenerational households. This bill will ensure the definition of family is more inclusive and reflective of modern family dynamics and protect working caregivers, largely women, from having to choose between keeping their jobs and caring for their families as we recover from the pandemic and begin navigating a “new normal” in our communities.
- **SB 321 (Durazo)** would remove the unjust exclusion of domestic workers from California’s health and safety laws, helping to ensure basic health and safety protections for a workforce comprised mainly of immigrant women and women of color who work as nannies, housecleaners, and homecare workers. These essential workers assist people with disabilities and care for our elders, our children, and our homes, but continue to face occupational health and safety hazards, many of which were exacerbated during the COVID-19 crisis.

All California workers deserve to have their rights to safety, fair pay, and job-protected, paid leave enforced. This is especially important as the economy

re-opens and employers get back to “normal” operations – even in areas where COVID rates remain high and vaccination rates lag, as they do in much of the Central Valley. In the absence of a fully-funded and functioning state or federal agency that can ensure the most vulnerable, low-wage workers are protected, enforcement will be left up to workers and the attorneys who represent them. Fortunately, here in California, we have tools to do that, such as the Private Attorney General Act (PAGA), codified at Labor Code section 2698, et seq. As the Court of Appeal recently affirmed in *Sargent v. Board of Trustees of Cal. State University*, No. A153072, A154926 (Cal. Ct. Appeal 1st Dist. March 5, 2021), the PAGA allows employees to bring claims, and seek penalties, on behalf of themselves and other “aggrieved employees” when their employer violates its obligations under the Labor Code, including its duty to ensure workers’ health and safety on the job.

Conclusion

For the millions of Californians who hold jobs that cannot be done remotely and (still) do not pay a family-sustaining wage, the new and expanded protections are positive developments, but are not enough. One thing is certain: these important and long overdue protections offer tools that advocates for workers (plaintiffs’ lawyers) can use to defend and vindicate low-wage workers’ rights. But none are self-enforcing and many gaps remain.

Low-wage workers will need to rely on each other – through concerted activity and collective action – and on advocates for employees willing to take on their cases, push for stronger protections, and support workers’ efforts to build power. Plaintiff-side attorneys have an important role to play. We have the power to use the laws, tools, and privilege available to us as California attorneys to defend the most vulnerable among us and make sure their rights exist in reality, not just on paper. We can use our voices



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and our access to those who make and interpret the law in legislatures and the courts to advocate for those who are struggling and to make space for workers to tell their own stories, empowering them to demand what they need to work more safely and earn what they need to take care of themselves and their families. By supporting workers in taking individual and collective action to build and flex their power and gain a foothold on economic security, we can help to ensure that the lessons of the pandemic are not lost.

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