

# Health Justice Strategies To Combat COVID-19: Protecting Vulnerable Communities During A Pandemic

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Federal, state and local governments are struggling to identify best practices for controlling the spread of COVID-19 while minimizing the negative effects of sweeping public health interventions, especially for poor and marginalized communities, which [may be hardest hit](#). [Social distancing](#) and sheltering in place have emerged as a key strategies for [flattening the curve](#) of the epidemic and mitigating impacts on already-[stressed health care systems](#). Measures to keep people at least six feet apart as much as possible—by closing schools, limiting the operations of [nonessential businesses](#), and urging or requiring people to [work from home](#) and [avoid gatherings](#)—mean that many people will be [sheltering in place](#) for weeks or months. As authorities implement restrictions on personal liberty in some of the areas hit particularly hard by COVID-19, the potential for discriminatory enforcement and police escalation may endanger the safety and civil rights of at-risk and traditionally marginalized populations.

Although widely discussed in terms of the steps *individuals* should take, social distancing also demands commitment from federal, state, and local governments to support and protect particularly vulnerable populations. This is especially urgent for low-income and marginalized communities who are negatively affected by multiple [social determinants of health](#), including people with disabilities; workers who do not have the option of staying home; people experiencing homelessness and who lack access to affordable, safe, and healthy housing; people of color; immigrants, asylees, and refugees; and others who face increased risk of neglect or mistreatment by government authorities. Fortunately, there are actions state and local governments can take immediately to support the ability of low-income and marginalized communities to safely shelter in place.

## Poverty, Health, Employment, And Housing

According to [the most recent data from the Census Bureau](#), 38.1 million people, or 11.8 percent of the U.S. population, were living in poverty in 2018. The census report shows the risk of poverty is concentrated in communities of color and low-income neighborhoods, and among people with disabilities and the elderly (who are at greatest risk for COVID-19 morbidity and mortality). The lower a person's socioeconomic status, the more limited their resources and

ability to access essential goods and services, and the greater their chance of suffering from chronic disease, including conditions like [heart disease](#), [lung disease](#), and [diabetes](#) that [may increase the mortality risk of COVID-19](#). Individuals and families in poverty have less control over their environment and few to no alternatives to substandard housing. These effects are exacerbated for people of color who are subjected to the consequences of [discrimination and segregation in housing](#), on top of affordability challenges.

Many low-income individuals and families face significant challenges that prevent them from protecting themselves and others from COVID-19. Many lack the disposable income, flexible work schedules, and [ability to do paid work from home](#). Nor do they have paid leave required to take care of children whose schools are closed and whose educational attainment and social development may be set back for months. Others may be able to stay home, but their housing security may be at risk because they've [lost their jobs](#) or had hours cut back as a result of the pandemic. Being forced to choose between paying for food, health care, utilities, or other necessities and keeping up with rent will almost always result in eviction, and eviction always results in a downward move to worse conditions, including homelessness, and [corollary poor health outcomes](#).

At the same time, being largely confined to their homes could pose its own health risks for many low-income individuals and families. Low-income people are more likely to live in homes with [poor air quality, mold, asbestos, lead, pest infestations, and inadequate space](#) to separate the sick from the well. Thirty-five million, or 40 percent of, homes in US metropolitan areas have [one or more health and safety hazard](#), and rental properties in these areas have a greater prevalence of health-harming conditions than owner-occupied units. Two million people in the United States live in [severely inadequate homes](#) that lack heat, hot water, or electricity, or have structural defects or other severe problems, which have all been [linked to poorer health](#) outcomes. As a result, tenants in rental housing disproportionately suffer the negative health effects--including asthma, respiratory distress, carbon monoxide poisoning, high blood pressure, heart disease, lead poisoning, mental health impairment, and cancer, among others--that result from environmental hazards in substandard housing.

## **A Health Justice Approach**

Health justice is an emerging framework for using law and policy to eliminate unjust health disparities. It offers a powerful toolkit for the leaders charged with protecting our communities in the face of the COVID-19 crisis. We have [written elsewhere about](#) its [key commitments](#), which include providing for the health of low-income and marginalized communities in all policies. Health justice demands [affordable and equitable access to health care](#), including testing and treatment for COVID-19 as well as accommodations and supports for more routine, but equally life-threatening, physical, mental, and [behavioral health](#) needs. Prioritizing the health and safety of people in custody is also consistent with a health justice approach. Here, our focus is on support for social distancing and sheltering in place to control the spread of COVID-19.

In this context, a health justice approach would be guided by three overarching principles. First, legal and policy responses must address the [social determinants](#) that threaten to exacerbate the health, financial, and social impacts of a public health emergency on low-income communities,

[communities of color](#), and other socially subordinated groups. Second, interventions mandating healthy behaviors—such as social distancing—must be accompanied by immediate legal, social, and financial protections and supports to facilitate those behaviors. Third, because emergencies typically exacerbate long-standing and interconnected crises in socioeconomically disadvantaged communities, legal and policy responses must address root problems in addition to immediate needs.

It is widely acknowledged that people experiencing poverty and other marginalized groups have historically borne the brunt of infectious disease epidemics and government responses to them. But with a proactive approach rooted in a commitment to health justice, public officials could ensure that things are different with COVID-19.

## **Federal Support**

The federal government must provide financial support to state and local governments as well as the businesses and property owners who will be required to shoulder the ancillary costs of responding to the COVID-19 pandemic in low-income communities. The administration and Congress have taken some important steps in this regard. The U.S. House of Representatives passed the Families First Coronavirus Response Act ([H.R. 6201](#)), which provides a [number of appropriations](#), including free coronavirus testing, limited paid emergency leave and unemployment insurance, food security initiatives, and increased federal Medicaid funding to states. Notably, the bill did not address housing or homelessness. As negotiations moved to the Senate, direct cash payments and housing payment assistance, which would provide much-needed relief of short-term needs, are [reportedly under discussion](#).

Several federal agencies have also taken action. In addition to the many [measures](#) adopted by the Department of Health and Human Services, the Department of Labor [announced new guidance](#) for state unemployment insurance programs. Under the guidance, states are permitted significant flexibility to provide unemployment benefits in multiple scenarios related to COVID-19. Secretary of Agriculture Sonny Perdue used authority triggered by the January 30 national public health emergency declaration to allow use of summer meal programs during school closures and to [waive restrictions](#) requiring meals to be offered in a group setting. However, Perdue had [no plans](#) to delay a rule change that would terminate nutrition assistance for nearly 700,000 Americans, planned for April 1. Fortunately, the United States District Court for the District of Columbia issued a preliminary injunction to halt the change, citing the exigencies created by COVID-19. The Federal Housing Finance Agency [suspended foreclosures and evictions](#) on mortgages backed by Fannie Mae and Freddie Mac for at least 60 days.

More must be done. As states and local governments respond to the COVID-19 pandemic and in its aftermath, additional federal financial support and guidance will be critical to reducing long-term impacts.

In the early days of what is likely to be a long-term crisis the U.S. Department of Housing and Urban Development (HUD) has offered little in the way of [COVID-10 Guidance](#). HUD has authority to issue additional guidance on protections for elderly, pregnant, and disabled tenants and people experiencing homelessness, allocate emergency funds for rent abatement, place a

moratorium on evictions, and address substandard housing conditions that could prevent program participants from safely sheltering in place.

The emergency declarations issued by Secretary Azar on January 31 and President Trump on March 13 provide some support and regulatory flexibility. But an additional declaration of the COVID-19 pandemic as a [major disaster](#) under the Stafford Act may be needed to address short and long-term needs. The president has invited governors and tribal leaders to request such a declaration, which may be possible under the statute's open-ended description of a [natural catastrophe](#). Disaster relief, which includes extensive provisions [for housing](#) and other essential needs, would better equip state and local governments to address the housing and economic crisis that is only just beginning to unfold.

Without further federal support and emergency actions to protect the health and well-being of federal program participants, state and local governments will be stretched too thin to effectively control the pandemic.

### **State And Local Leadership**

State and local leaders are taking immediate steps to support low-income and marginalized communities by deploying their emergency powers in novel ways and repurposing routine authorities to rise to new challenges. At a minimum, authorities can immediately expand [paid leave](#) and other employment protections for workers, freeze evictions and utility shut-offs, provide safe and healthy housing, protect people who are experiencing homelessness, and increase nutritional supports in low-income communities.

[Emergency and disaster declarations](#) across the country have triggered new authorities, access to resources, and regulatory flexibilities that allow the executive branch to act in the absence of legislation. The laws that govern emergency powers vary from state to state. Some are narrowly drafted, while others use broad language that gives officials considerable flexibility to adapt to the circumstances of the COVID-19 pandemic.

To support emergency responses, states can also leverage other routine and broad sovereign powers left to the states via the Tenth Amendment, the police power, *parens patriae* power, and state constitutional powers to protect the welfare, safety, and health of the public. States can immediately exercise authority over employment practices, landlord-tenant relationships, utilities, and nutrition assistance programs to combat COVID-19, especially in low-income communities. In the implementation of emergency assistance, decision makers must [protect against discrimination](#), which is all too common in parallel [disaster recovery programs](#). Authorities must also guard against the potential for [structural racism](#) and allowing other forms of [racial and ethnic bias](#) to influence which community needs are prioritized in the face of competing demands for time and resources.

### **Protect Workers**

Thirty-four million workers, including fifty-four percent of Latinx and thirty-eight percent of Black workers, have [no paid sick leave](#). Working people without sick leave are 1.5 times more

likely to go to work with a contagious disease and three times more likely to go without medical care compared to those with paid sick days. Because paid sick leave reduces costly spending on emergency health care, reduces the rate of influenza contagion, and saves the U.S. economy \$214 billion annually in increased productivity and reduced turnover, it is a common sense policy even in the absence of a novel pandemic. [Numerous state laws](#) already provide employment protections to employees who require paid sick leave or are placed under mandatory isolation or quarantine. Additional states recently adopted emergency rules, like [Colorado](#), and introduced pending legislation, such as in [California](#) and [Kentucky](#), that provide for paid sick leave due to COVID-19 infection or exposure.

However, paid sick leave and unemployment benefits will not provide protection for those who self-isolate, are affected by mandatory social distancing [requirements](#), are required to care for a sick child, relative or friend, have yet to present with symptoms, or who lack access to childcare during school closures. Direct financial support and expanded employment protections, including prohibitions against retaliation for taking leave and the provision of reasonable accommodations, will still be needed to mitigate the impact of COVID-19 on low-income families. Companies may be forced to initiate wide-spread lay-offs if there is prolonged recession; federal, state, and local governments should engage in forward looking planning to alleviate the severe and long-lasting burden on low-income and marginalized communities.

Workers who are providing essential services, including [three million migrant and seasonal farmworkers](#), will require additional public health protections. The majority of farmworker camps provide communal living accommodations that make social distancing impossible. The need for education and sanitation measures, as well as plans for health services, for farmworkers is urgent.

## **Place A Moratorium On Evictions**

[Emergency declarations](#) typically empower governors, mayors, and other officials to [direct executive-branch agencies and departments](#) to assist with response and recovery efforts. However, because eviction typically falls under the purview of municipal courts within the judicial branch, local government executives do not have the power to issue a moratorium on evictions. Legislative bodies can enact measures to stymie evictions. Similarly, governors, mayors and other leaders can freeze the execution of evictions and provide rental assistance and urge the Chief Judge or Justice to institute a freeze on evictions and eviction filings.

On March 12, 2020, 24 state [senators signed a letter to Chief Judge Janet DiFiore](#), asking that the “New York Courts institute an immediate moratorium on evictions” throughout the state. They cited previous moratoriums during crises, including after the attacks of September 11, 2001, and superstorm Sandy in 2012. The New York State unified court system [complied with the request](#), joining the dozens of states, counties, cities and public housing authorities that are temporarily freezing evictions in response to COVID-19. Some of the freezes are scheduled to last for as little as one week, or are limited to cases of nonpayment of rent due solely to COVID-19 expenses. Most judicial orders do not include a moratorium on eviction filings and, to date, no rental property owner, public housing authority, or state has provided rent forgiveness or abatement. The ideal intervention should involve long-term, unconditional eviction and eviction

filing freezes, as well as financial resources and rental debt forgiveness to prevent future harm to low-income tenants and to ensure property owners can make mortgage payments once COVID-19 is controlled and moratoriums are lifted.

### **Protect People Who are Homeless And Increase Affordable Housing**

More than [560,000 individuals were homeless](#) in the U.S. on a given night in 2019. People without consistent housing often lack access to soap and water, live in communal-style shelter, and have a [high rate](#) of untreated infectious and chronic disease and disabilities. At the same time, half of the adult homeless population is [over age fifty](#), increasing the risk of health complications. For many people who are homeless, COVID-19 could be life-threatening and difficult to contain.

In California, where the homeless population exceeds 100,000 people and [mandatory shelter in place orders](#) are in effect in six counties, people experiencing homelessness are exempt but strongly urged to seek shelter. Governor Gavin Newsom said, “We will overwhelm ourselves if we don’t move with real urgency in this space.” States and local governments can include homeless shelters as “essential services” that receive access to emergency funds to reduce exposure to the virus for individuals experiencing or at high risk of homelessness. The City of San Francisco created a [\\$5 million fund](#) to reduce exposure to COVID-19 among marginally housed seniors, people with underlying health conditions, and individuals experiencing homelessness, living in shelters, single-room occupancy hotels (SROs), and Permanent Supportive Housing. The funding provides trailers for people experiencing homelessness or who cannot otherwise quarantine safely. In Oakland, the city is leasing hotels and converting the rooms into temporary living quarters for people currently residing in homeless encampments. In Seattle, the mayor authorized the creation of over 100 [additional shelter spaces](#) at designated sites throughout the city.

While increased funding for emergency sanitation and cleaning supplies for shelters are also important, without immediate access to safe and decent housing or apartment-style shelter, people who are homeless are at high risk of contracting and spreading COVID-19 and will require significant medical interventions during and after control of the pandemic. Significant federal funding is required if states are to effectively protect, and contain the spread of COVID-19 among, people experiencing homelessness.

### **Place A Moratorium On Utility Shut-Off**

The COVID-19 pandemic and social distancing requirements create a situation in which utility shut-off would result in a life-threatening emergency for the majority of Americans. Yet, weeks into the U.S. outbreak, many communities have [yet to receive protections](#) against utility disconnection. According to the World Health Organization, access to clean water for cooking, hydration, and hygiene is [crucial to preventing the spread](#) of the novel coronavirus. Similarly, electric, gas, and steam utilities are essential to one’s ability to heat a home, cook, preserve perishable foods and medication, and use medical equipment—all necessary to sheltering in place, especially for extended periods of time.

In addition, electricity and internet access are indispensable to telecommuting. Most states have already adopted medical and hardship exceptions to utility shut-off that are designed to prevent disease, disability, and death among occupants. But, on their face, these measures may not apply to people who are self-isolating before illness occurs and the quickly increasing business and government closures may create barriers to submitting applications.

To protect the public's health during the COVID-19 pandemic, local and state governments can extend and enforce existing protections against utility shut-off, at least while social distancing recommendations are in effect. In addition, lawmakers can work with utility companies to support suspension of service disconnections across the [151,000 public water systems](#) administered by cities, states, and private companies in the United States. For example, American Water, which serves over 1,600 communities, voluntarily instituted [a moratorium on water utility shut-offs](#) nationwide.

Where utilities are municipally-owned, cities can adopt policies—like [Austin, Texas](#), and Omaha, Nebraska [Public Power](#) and [Metropolitan Utilities Districts](#) did—to proactively suspend all utility disconnections during the COVID-19 pandemic. In [Tallahassee, Florida](#), the city will be providing utilities to residents for the next sixty days. Utilities should also be restored to households whose service was shut off prior to the COVID-19 pandemic.

To secure health justice throughout and beyond this public health crisis, utility companies should forgive, and the federal, state, and local governments should help carry, any utility-related consumer debt incurred during the COVID-19 crisis, as opposed to merely deferring collection or utility shut off to a later date. Otherwise, low-income individuals will be unable to fully recover from the increased utility usage and loss of income associated with social distancing and exposure to COVID-19, suffering significant poor health outcomes as a result.

### **Proactively Enforce Safe And Healthy Homes Regulations**

In a public health crisis, state and local agencies must balance multiple competing demands. As a result, they may deprioritize routine functions, including enforcement of health and housing codes, to free up capacity for emergency response and allow state workers greater flexibility. However, when a key component of the public health response is urging people to stay home, securing safe and sanitary conditions in low-income communities and federally assisted housing must remain a priority.

Every jurisdiction has municipal public health and building codes designed to protect health and safety by setting minimum requirements. For example, the majority of states have adopted a warranty of habitability standard, the Uniform Residential Landlord Tenant Act, the International Building Code, and the International Residential Code, which, taken together, [prohibit environmental health hazards](#) in the home. Robust enforcement is essential to protecting the health and well-being of low-income people and must be increased during the COVID-19 pandemic to prevent harm to low-income people forced to shelter in place in substandard housing.

As of 2016, [23 percent](#) of local health departments were engaged in activities to promote safe and healthy housing and 31 percent of departments conducted housing inspections. During the COVID-19 pandemic and state of emergency, housing, building, and public health inspectors must be deployed to low-income communities to identify hazards, such as leaks, mold, and infestations, and support emergency remediation efforts. This should be understood as a vital part of the COVID-19 response while so many are sheltering in place.

Sheltering in place may also increase the need for emergency services. Close quarters and economic distress may heighten the risk of [domestic partner violence](#) and mental health crises. Despite the [Obama administration's call](#) on local governments to repeal them, over 2,000 municipalities in the United States have [chronic nuisance ordinances](#) that impose penalties for repeated calls to 911. In practice, these ordinances put victims of domestic violence, people with disabilities, and people of color at increased risk of eviction and other harms. In light of the increased risk of the need for emergency services during COVID-19, these laws should immediately be repealed and any eviction arising from emergency events prohibited.

### **Ensure Access To Food And Other Necessities**

About 22 million free and reduced-price lunches and 12.5 million breakfasts are [served in school each day](#). More than 34 million households rely on the [Supplemental Nutrition Assistance Program \(SNAP\)](#), and 6.4 million rely on the [Special Supplemental Nutrition Program for Women, Infants, and Children \(WIC\)](#). These programs, which help meet the needs of low-income children and families who face hunger, are federally funded and administered by state and local governments pursuant to federal requirements. Federal emergency declarations typically free up resources and create regulatory flexibilities to allow state and local leaders to continue to fight food insecurity with federal support during a time of crisis.

In addition to taking advantage of the USDA summer meal program restriction waiver, state leaders may request additional waivers as needed to support innovative responses to COVID-19. For example WIC benefits are restricted to a narrow [list of approved products](#) and SNAP benefits allocation is often spread across intervals of [10, 20, or as long as 40 days](#). At a time when shelf-stable foods are in high demand and subject to shortages, state and local leaders could apply for permission to give beneficiaries more flexibility to purchase a wider range of foods and non-covered necessities, like toiletries and cleaning supplies, as well as the ability to buy in bulk to prepare for longer periods of self-isolation. To enable beneficiaries to abide by social distancing recommendations, the USDA [online purchasing pilot](#) should be expanded from five states to the entire country and include the costs of any delivery fees. [Disaster SNAP](#) benefits are intended to replace food destroyed by, for example, weather-related power outages. A similar program could be created to help people stock up while sheltering in place.

### **Ensure That Implementation Of Any Mandatory Orders Is Consistent With Civil Rights And Civil Liberties**

To protect the public's health from a serious and highly communicable disease threat, some intrusions upon personal liberty are justified. But sweeping restrictions of the sort recently implemented in the [San Francisco Bay Area](#) and under consideration in [New York City](#) must be

implemented with extreme care to avoid running afoul of [constitutional guarantees of due process and equal protection](#). Enforcement of these orders may expose the most marginalized members of our society to harm. Officials charged with conducting enforcement activities must be trained to de-escalate any confrontations, particularly in a crisis where tensions are running high and racial and other biases may come into play.

## **Conclusion**

State and local leaders have an unprecedented opportunity to use a combination of routine and emergency powers to protect the health of low-income people who do not have the ability to shelter in place without severe consequences and who are exposed to unhealthy conditions in their homes at a much higher rate than higher income peers. Social distancing puts the onus on public leaders and health officials to create the conditions required for individual efforts to be successful. State and local leaders can and should act now to protect workers, freeze evictions and utility shut-offs, and prioritize programs that secure safe and healthy housing conditions and nutritional supports.

These steps will have significant impacts, redistributing some of the financial burdens of our unprecedented response to COVID-19 from low-income individuals and families who cannot afford to bear them to employers, landlords, and governments. Direct federal financial assistance for households, employers, and other businesses will therefore be a crucial component of these proposed health justice strategies.

Ultimately, the COVID-19 pandemic underscores the importance of ensuring that all members of society have the ability to benefit from and comply with public health measures. Unless, and until, federal, state, and local government dedicate the resources necessary to comprehensively address the root causes of poor health and poverty, health justice will remain unattainable, harming every member of our society.