

**Florida Cities and Counties Can Enact Worker Health and Safety Ordinances to Protect Workers and the Public from COVID-19**

**MODEL ORDINANCE – APPENDIX A.**

Workers who are providing the critical services on which everyone relies are facing dire health and safety hazards during the COVID-19 crisis. These threats are endangering millions of workers and the broader public, since unsafe workplaces during the pandemic put customers, patients, workers' families, and everyone at risk.

Unfortunately, the federal agency in charge of ensuring that employers provide safe conditions and protect workers from serious hazards—the Occupational Safety and Health Administration (OSHA)—has abdicated its responsibility for protecting workers from exposure to COVID-19 at work. OSHA has failed to issue any specific standards to protect workers from COVID-19. Further, OSHA is not even requiring that employers follow the specific Centers for Disease Control and Prevention (CDC) guidance for employers. The guidance issued by CDC and OSHA are voluntary. Employers can follow them or entirely ignore them. Existing worker protections are grossly inadequate to ensure safe workplaces and protect workers who speak up about hazards.

In addition, the federal government's failure to adopt a COVID-19 worker protection standard has left employers uncertain of their responsibilities and potential liabilities. A clear standard for protecting workers during the COVID-19 crisis would bring some much-needed assurance and clarity to both businesses and workers.

**Florida cities and counties have the authority to adopt a local worker health and safety ordinance to protect workers from exposure to COVID-19 and help curb its transmission.**

Home rule cities and county governments in Florida generally have broad authority to legislate in any area not preempted by federal or state law.

Because OSHA has refused to issue specific standards to protect workers from COVID-19 and the CDC's guidelines are not mandatory for employers, the federal OSHA does not preempt state and local governments from issuing their own requirements to protect workers from COVID-19.<sup>1</sup> And based on NELP's and LSSC's review of Florida's preemption landscape<sup>2</sup> and local authority,<sup>3</sup> Florida cities and counties are also not preempted by state law from adopting the attached model worker health and safety ordinance to protect workers and the public from COVID-19.

See [here](#) for **NELP's Protecting Worker Safety & Health in the Covid Crisis: A State & Local Model Policy Response.**

See [here](#) for the **Local Solutions Support Center** summary of the nature and scope of municipal and county powers in Florida.

For questions or requests for technical assistance, please contact [lhuizar@nelp.org](mailto:lhuizar@nelp.org).

For questions or requests related to local authority or home rule, you may also contact the Local Solutions Support Center at [lssc@supportdemocracy.org](mailto:lssc@supportdemocracy.org).

**APPENDIX A**

**MODEL ORDINANCE FOR FLORIDA CITIES & COUNTIES  
(Worker Health & Safety – COVID-19)**

**WHEREAS**, protecting the health and safety of residents and workers in <City/County> is among the most important functions of local government; and,

**WHEREAS**, it is critical that <City/County> residents who become sick are able to be treated by medical professionals, including when a hospital bed, emergency room bed, or ventilator is needed; and,

**WHEREAS**, it is also critical that the <City/County> health care and first responder workforce has adequate personal protective equipment (PPE) to safely treat patients, respond to public health disasters, and prevent the spread of communicable diseases; and,

**WHEREAS**, Coronavirus Disease 2019 (COVID-19) is a novel severe acute respiratory illness that has spread among people through respiratory transmissions, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020, and the United States Secretary of Health and Human Services declared that COVID-19 presents a public health emergency on January 27, 2020; and,

**WHEREAS**, despite efforts to contain COVID-19, the World Health Organization and the federal Centers for Disease Control and Prevention (CDC) indicated that the virus was expected to continue spreading and it has, in fact, continued to spread rapidly, resulting in the need for federal, State, and local governments to take significant steps; and,

**WHEREAS**, the CDC currently recommends that all United States residents take precautions to contain the spread of COVID-19, including that they: (1) stay home as much as possible; (2) if they must leave their home, practice social distancing by maintaining 6 feet of distance from others and avoiding all gatherings; (3) wear cloth face coverings in public settings where other social distancing measures are difficult to maintain; (4) be alert for symptoms such as fever, cough, or shortness of breath, and take their temperature if symptoms develop; and (5) exercise appropriate hygiene, including proper hand-washing; and,

**WHEREAS**, as circumstances surrounding COVID-19 rapidly evolve, there have been frequent changes in information and guidance from public health officials as a result of emerging evidence; and,

**WHEREAS**, as of <DATE>, there have been nearly <XXX> confirmed cases of COVID-19 in Florida, <XXX> confirmed cases of COVID-19 within <City/County>, <XXX> deaths from COVID-19 in Florida, and <XXX> deaths from COVID-19 within <City/County>; and,

**WHEREAS**, studies suggest that for every confirmed case there are many more unknown cases, some of which are asymptomatic individuals, meaning that individuals can pass the virus to others without knowing; and,

**WHEREAS**, as the virus has progressed through the State and <City/County>, the crisis now requires an evolving response to ensure hospitals, health care professionals, and first responders are able to meet the health care needs of all <City/County> residents and in a manner consistent with CDC guidance that continues to be updated; and,

**WHEREAS**, Florida and <City/County> are using a high percentage of hospital beds, ICU beds, and ventilators as a result of the number of COVID-19 patients that require hospitalization and, if cases were to surge higher, the State and <City/County> would face a shortage of these critical health care resources; and,

**WHEREAS**, <City/County> currently has a total of <XXX> hospital beds with <XXX> ICU beds, of which, as of <DATE>, only <XXX%> of hospital beds and <XXX%> of ICU beds were available statewide, and only <XXX%> of ICU beds were available in <City/County>; and,

**WHEREAS**, the modeling by the [Harvard Global Health Institute](#) calculates that if 20 percent of Florida's population contracts COVID-19 within six months, hospitals across the state will not be able to provide sufficient hospital beds, and that even if 20 percent of the State's population contracts COVID-19 over 12 months, the vast majority of Florida hospitals will find themselves over capacity; and,

**WHEREAS**, the modeling by the Harvard Global Health Institute calculates that in <City/County>, if 20 percent of the population contracts COVID-19 in six months, the need for hospital beds in <City/County> will exceed available beds by <XXX%>, and that if 20 percent of the population contracts COVID-19 over 12 months, the need for hospital beds in <City/County> will exceed available beds by <XXX%>; and,

**WHEREAS**, Governor Ron DeSantis declared all counties in the State of Florida as a disaster area on <DATE> 2020 because the current circumstances in Florida surrounding the spread of COVID-19 constitute an epidemic and a public health emergency under the State Emergency Management Agency Act; and,

**WHEREAS**, <Information re: Any Local Relevant Emergency Declaration (e.g., [Miami-Dade County Emergency Order 20-20](#) ordering persons "working in or visiting grocery stores, restaurants, pharmacies, construction sites, public transit vehicles, vehicles for hire, and locations where social distancing measures are not possible" to wear face coverings) >; and,

**WHEREAS**, for the preservation of public health and safety throughout <City/County>, and to ensure that our healthcare delivery system is capable of serving those who are sick, <Governing Body/Mayor> find it necessary to take measures consistent with public health guidance to protect workers and public health in <City/County>, to slow and stop the spread of COVID-19,

to prevent shortages of hospital beds, ICU beds, ventilators, and PPE, and to increase COVID-19 testing capacity;

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE <MAYOR/ELECTED AND GOVERNING BODY> OF <CITY/COUNTY>, AS FOLLOWS**

**ARTICLE XXX. COVID-19 WORKER SAFETY AND HEALTH ACT**

**Section 1. Definitions**

- (a) “Worker” means any person whom an employer suffers or permits to work, and shall include independent contractors, and persons performing work for an employer through a temporary services or staffing agency.
- (b) “Employer” means an individual or entity that suffers or permits a person to work and shall include contracting for the services of a person. More than one entity may be a “hiring entity.”
- (c) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60 percent alcohol.
- (d) “Health care and emergency response employer” means employers, both public and private, of health care and long-term care sector workers, including nursing home and home health care workers; of paramedic and emergency medical services workers, including such services provided by firefighters and other emergency responders; and of corrections, detention, or secure treatment facility workers to the extent that such facilities are operated by the <City/County>.
- (e) “Employers in other sectors” means employers other than health care and emergency response employers.
- (f) “Department” means <Local Agency Responsible for Enforcing this Act>.
- (g) “Adverse action” means discharge; demotion; willfully preventing or attempting to prevent an individual from securing other employment by word, writing, or any other action; harassment; reduction in worker hours; reduction in employee pay; reporting a worker or former worker’s suspected immigration or work authorization status, or the suspected immigration or worker authorization status of a family member of the worker or former worker, to a federal, state, or local agency; any other action taken against a worker or any other person for exercising or attempting to exercise any right under this Act if that action would dissuade a reasonable worker from making a complaint, bringing an action or proceeding, or participating in an action or proceeding concerning the rights under this Act.

**Section 2. Protecting Workers From COVID-19**

- (a) **Health Care and Emergency Response Employers.** Workers shall be provided with adequate personal protective equipment, respirators, and training. Workers shall be provided with N95 or more protective respirators, gloves, surgical masks, gowns, face shields, and other protective equipment. Each facility shall implement and maintain an

effective, written COVID-19 Exposure Control Plan that includes the protective equipment to be provided to protect workers and procedures the employer will use to identify, temporarily isolate, and refer or transfer COVID-19 cases or suspected cases to COVID-19 rooms, areas or facilities. If the Department determines it is not feasible for an employer to comply with a requirement of this subsection (such as a shortage of the necessary personal protective equipment), the Department may exercise discretion in the enforcement of such requirement if the employer demonstrates that the employer is exercising due diligence to come into compliance with such requirement and in implementing alternative methods and measures to protect workers.

**(b) Employers in Other Sectors.** Employers in other sectors must comply with the following measures:

1. **Social Distancing:** The employer shall maintain six feet between workers, and between workers and customers (except at moments of payment or exchange of goods), by using one or more of the following measures: flexible worksites (e.g., telework); flexible work hours (e.g., staggered shifts); increasing physical space between workers at the worksite to six feet; increasing physical space between workers and customers (e.g., drive-through, partitions, and limits to the number of customers in establishments); flexible meeting and travel options (e.g., postpone non-essential meetings or events); delivering services remotely (e.g., phone, video, or web); or delivering products through curbside pick-up or delivery. This includes reconfiguring spaces where workers congregate, including lunch and break rooms, locker rooms, and time clocks, as necessary.
2. **Face Masks:** All workers shall be provided (free of charge) cotton face masks (double layer cotton) by their employer or face masks that can provide equivalent or greater protection. All customers in retail locations shall be required to wear face masks. Face shields shall also be made available by employers free of charge to workers.
3. **Hand Sanitizing, Hand Washing, and Gloves:** Employers must provide hand sanitizers that are readily available in multiple locations in the workplace. Workers must have the ability to wash their hands with soap and water regularly. Gloves shall be provided by employers to workers who request them.
4. **Regular Disinfection:** Employers must clean and disinfect regularly all frequently touched surfaces in the workplace, such as workstations, touchscreens, telephones, handrails, and doorknobs.
5. **Increase Ventilation Rates:** Increase the percentage of outdoor air that circulates in the system.
6. **Notification of Workers:** If a worker is confirmed to have COVID-19 infection, the employer must inform fellow workers of their possible exposure to COVID-19 in the workplace while keeping the infected worker's identity confidential as required by the Americans with Disabilities Act (ADA).
7. **Deep Cleaning after Confirmed Cases:** If a worker is suspected or confirmed to have COVID-19, the employer shall: Close off workplace areas visited by the ill person; open outside doors and windows and use ventilating fans in the area;

wait 24 hours or as long as practical, and then conduct cleaning and disinfection as directed by CDC Cleaning and Disinfection for Community Facilities guidelines.

**8. Workplace Specific Plan:** Employers shall:

- a. Establish a written, worksite-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas, and designate a person at each establishment to implement the plan. The plan shall identify contact information for the local health department where a worksite is located for communicating information about COVID-19 outbreaks among workers or customers.
- b. Train and communicate with workers and worker representatives on the plan.
- c. Regularly evaluate the worksite for compliance with the plan and document and correct deficiencies identified.
- d. Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection.
- e. Update the plan as needed to prevent further cases.
- f. Identify close contacts (within six feet for 15 minutes or more) of an infected worker and take steps to isolate COVID-19 positive worker(s) and close contacts.

**Section 3. Whistleblower Protection**

- (a) No employer or other person shall discriminate or take adverse action against any worker or other person who raises any concern about workplace health and safety practices or hazards related to COVID-19 to the employer, the employer's agent, other workers, a government agency, or to the public such as through print, online, social, or any other media.
- (b) No employer or other person shall attempt to require any worker to sign a contract or other agreement that would limit or prevent the worker from disclosing information about workplace health and safety practices or hazards related to COVID-19, or to otherwise abide by a workplace policy that would limit or prevent such disclosure. Any such agreements or policies are hereby declared void and unenforceable. An employer's attempt to impose such a contract, agreement, or policy shall constitute adverse action under this Act.
- (c) No employer shall discriminate or take adverse action against a worker who voluntarily brings in and wears his or her own personal protective equipment, such as a mask, faceguard, or gloves, if such equipment provides a higher level of protection than the equipment provided by the employer.
- (d) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this Act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.

#### Section 4. Refusal to Work Under Dangerous Conditions

- (a) A worker shall have the right to refuse to work under conditions that the worker reasonably believes would expose them, other workers, or the public to an unreasonable risk of illness or exposure to COVID-19.
- (b) An employer shall not discriminate or take adverse action against a worker for a good faith refusal to work if the worker has requested that the employer correct such a condition and the condition remains uncorrected.
- (c) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of this Act. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.

#### Section 5. Enforcement

- (a) **Administrative Enforcement.** The Department shall enforce the requirements of this Act. Either on its own initiative or after receiving a complaint, it shall have the authority to inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of them, the Department shall order relief as authorized in this Section.
- (b) **Private Civil Action.** Where an employer does not comply with any requirement of this Act, an aggrieved worker or other person may bring a civil action in a court of competent jurisdiction within three years of an alleged violation and, upon prevailing, shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including without limitation, reinstatement in employment, punitive and/or compensatory damages, and/or injunctive relief.
- (c) **Other Government Enforcement.** The <City/County> attorney may also enforce the requirements of this Act, acting in the public interest, including the need to deter future violations. The city attorney may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action as provided in Section 5(b).
- (d) **Relief.** For administrative proceedings brought to enforce this Act, the court or the Department shall order relief as follows:
  - 1. For any violation of any provision of this Act:
    - a. An injunction to order compliance with the requirements of this Act and to restrain continued violations, including through a stop-work order or business closure;
    - b. Payment to the <City/County> by the employer of reasonable costs and attorney's fees; and

- c. A fine payable to the <City/County> of \$500 per violation of any provision of this Act per worker affected. Each day that a violation occurs shall constitute a separate violation.
    - d. Compensatory damages payable to the aggrieved worker equal to the greater of \$5,000 or twice the actual damages, including but not limited to unpaid wages, benefits, and other remuneration, as well as punitive damages.
  2. For any violation of Section 3 or Section 4 of this Act protecting whistleblowers and workers' right to refuse to work under dangerous conditions:
    - a. Reinstatement of the worker to the same position held before any adverse action, or to an equivalent position, reinstatement of full fringe benefits and seniority rights, and compensation for unpaid wages, benefits, and other remuneration, or front pay in lieu of reinstatement; and
    - b. Compensatory damages payable to the aggrieved worker equal to the greater of \$5,000 or twice the actual damages, including but not limited to unpaid wages, benefits and other remuneration, as well as punitive damages.
- (e) The rights and remedies under this Act may not be waived by any agreement, policy, form, or condition of employment.

## Section 6. Severability

If any section, sentence, or phrase of this Act is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Act.

---

<sup>1</sup> Jane Flanagan et al., Harvard Law School and National Employment Law Project, *How States and Localities Can Protect Workplace Safety and Health* 4 (May 2020),

[https://lwp.law.harvard.edu/files/lwp/files/state\\_local\\_workplace\\_protection\\_lwp\\_nelp\\_0.pdf](https://lwp.law.harvard.edu/files/lwp/files/state_local_workplace_protection_lwp_nelp_0.pdf).

<sup>2</sup> NELP and the Local Solutions Support Center's review of the preemption landscape included review, for example, of Fla. Stat. Ann. § 509.032; Fla. Stat. Ann. § 483.291; Fla. Stat. Ann. § 482.242; Fla. Stat. Ann. § 513.051; Fla. Stat. Ann. § 448.21; Fla. Stat. Ann. § 627.748; Fla. Stat. Ann. § 500.60; Fla. Stat. Ann. § 487.051; Fla. Stat. Ann. § 570.07; Fla. Stat. § 163.3162; Fla. Stat. Ann. § 823.14; Fla. Stat. Ann. § 252.38; Fla. Stat. Ann. § 364.01; Fla. Stat. Ann. § 364.0361; Fla. Stat. Ann. § 500.12; Fla. Stat. Ann. § 502.013; Fla. Stat. Ann. § 507.13; Fla. Stat. Ann. § 538.28; Fla. Stat. Ann. § 500.90; Fla. Stat. Ann. § 559.939; Fla. Stat. Ann. § 624.401; Fla. Stat. Ann. § 320.8249; Fla. Stat. Ann. § 539.001; Fla. Stat. Ann. § 500.511; Fla. Stat. Ann. § 395.001 et seq.; Fla. Stat. Ann. § 400.0060 et seq.; Fla. Stat. Ann. § 401.013 et seq.; Fla. Stat. Ann. § 402.301; Fla. Stat. Ann. § 410.031 et seq.; Fla. Stat. Ann. § 429.01 et seq.

<sup>3</sup> Local Solutions Support Center, Florida (May 2020),

<https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/5eb5e80ac2dd5e6769cd34b4/1588979722984/50+States+---+Florida+%282020+updates%29+%28final%29.pdf>.