



## Appendix: Suggestions for Using American Rescue Plan Funds to Implement Model Policies for Workers During the COVID-19 Pandemic

In April 2021, NELP, EPI, and ABB published our [toolkit](#) for local governments considering policies to improve workplace standards for frontline workers during COVID-19 and beyond. While infection rates and deaths from COVID-19 have declined significantly with the use of vaccines in recent weeks, workers and communities remain at risk. The federal government's failure to protect workers from COVID-19 means that it is now more important than ever for local governments to put in place the key policies that workers need right now. **This appendix to our April 2021 toolkit offers suggestions for how local governments can take advantage of funds that are now available to local governments through the American Rescue Plan (ARP) to implement our toolkit's policy recommendations.**

Local governments must play a critical role now to protect workers, their families, and their communities from COVID-19, and ARP funds geared towards supporting our COVID-19 recovery can support these efforts. More than ever, enacting core protections for workers is both a worker rights and urgent racial equity issue. [As of June 7, 2021](#), over 15,000 new cases of COVID-19 were reported along with over 450 deaths that day. We are also only beginning to see the racial impact of a vaccination effort that has not yet overcome vaccine hesitancy and access challenges for Black people and other communities of color. In Washington, D.C., *The Washington Post* [reports](#) that Black residents now make up more than 80 percent of COVID-19 cases, compared with 46 percent in 2020, and COVID-19 cases in white people account for less than 10 percent of new cases in the District.

The [CDC's May 2021 recommendation](#) that fully vaccinated people outside of health care settings no longer need to wear a mask or physically distance in indoor settings fails to address workers' continued exposure to COVID-19, and it puts workers and communities where both vaccinated and unvaccinated individuals work together at risk of infections and outbreaks. A large portion of the working-age population in the U.S. is not fully vaccinated. Black and Latinx workers continue to face greater risk. Widespread [occupational segregation](#) means they are [more likely to work](#) in jobs and industries with a high risk of contracting COVID-19 and close proximity to others.

Our toolkit offers model legislation to adopt much-needed standards to protect workers during and after COVID-19: 1) emergency premium pay for frontline workers; 2) a permanent right to paid sick leave with additional time off during a declared public health emergency; 3) health and safety protections for certain frontline and essential workers; and 4) anti-retaliation protections to ensure workers can speak up about job conditions and enforce their rights safely during and after the COVID-19 crisis.

As outlined below, ARP funds to local governments can be used to implement core pieces of the toolkit's recommendations. Under the ARP's Local Fiscal Recovery Fund, local governments may receive [\\$130,200,000,000](#) until December 31, 2024. Eligible local governments include metropolitan cities, [non-entitlement units](#) of local government, and counties. As is relevant for the toolkit, ARP [funds may be used to](#): 1) respond to the public health emergency or its negative economic impacts; 2) respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; and 3) for the provision of government services to the extent of the reduction in revenue due to COVID-19 relative to revenues collected in the most recent full fiscal year prior to the emergency.<sup>i</sup> The Treasury's interim final rule on ARP funding notes that within these categories, local governments "[have flexibility](#) to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations."

#### 1. Emergency premium pay for frontline workers.

- ARP funds may be used to provide workers with premium pay if they performed essential work during the COVID-19 public health emergency. Funds for premium pay can also be provided to employers who are employing eligible essential workers.
- The Treasury's interim final rule defines [eligible essential workers](#) as those who are "'needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.'" In addition, "[essential work](#)" is defined as "work involving regular in-person interactions or regular physical handling of items that were also handled by others."

- The interim final rule [highlights](#) how “many essential workers are people of color or low-wage workers,” and it lists a number of industries where workers have “borne a disproportionate share of the health and economic impacts of the pandemic.” These include: nursing home and home care staff; farm workers; food production, grocery, and restaurant workers; janitors and sanitation workers; truck drivers, transit staff, and warehouse workers; public health and safety staff; childcare workers; and social service and human services staff.
- The Treasury’s interim final rule acknowledges that many essential workers “earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population,” and their “low pay . . . makes them less able to cope with the financial consequences of the pandemic or their work-related health risks.”
- Premium pay is characterized as a way to “remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency.” In “providing premium pay to essential workers or grants to eligible employers, a [recipient must consider](#) whether the pay or grant would ‘respond to’” the workers performing essential work.
- Premium pay can be an [amount up to](#) “\$13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker.” Premium pay awards using ARP funds “should prioritize compensation of those lower income eligible workers that perform essential work.” In addition, if the premium pay grant to a worker would increase the worker’s total pay “[above 150 percent](#) of their residing state’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, or their residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis,” then the local government must provide to the Treasury or make public “a written justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency.”
- Premium pay paid for through ARP funds must be pay on top of “a worker’s regular rate of wages and other remuneration and [may not be used to reduce or substitute](#) for a worker’s normal earnings.”
- ARP funds for premium pay may be issued [retroactively](#). Also, workers who have received some premium pay already remain eligible for additional payments, and

workers may receive both retroactive premium pay as well as future premium pay for “current or ongoing work.”

- If ARP funds for premium pay are issued to employers, the ARP requires [additional reporting](#).
2. A permanent right to paid sick leave with additional time off during a declared public health emergency.
- A Better Balance has prepared [this fact sheet](#) on how ARP funds may be used to address the care crisis, including the need for access to paid sick leave and paid family and medical leave, as well as strong enforcement of workplace leave protections.
  - Based on ABB’s analysis, it is likely that local governments may use ARP funds for critical paid leave policies, including emergency leave protections, so that workers who contract COVID-19 can stay home without risking their livelihoods. ARP funds can likely be used to provide payments to businesses or workers, and funds could also be used for outreach, education, and enforcement tied to emergency leave policies.
  - In addition, ARP funds can likely be used for paid vaccine leave programs, and associated outreach and enforcement.
  - For local governments that have already implemented paid family and medical leave programs, ARP funds could help restore funds in these programs if lower payroll contributions due to higher unemployment rates during the pandemic have reduced available funds.
  - Funding new or existing paid family leave and medical leave programs through ARP funds, including outreach, education, and enforcement tied to such programs, arguably advances the ARP’s [public health and economic recovery objectives](#). These programs can support workers seeking to balance “the competing demands of work and caring for their own health and the health of their loved ones in the years to come”—demands which have been intensified by the pandemic. In addition, paid family and medical leave is a proven tool for supporting women’s labor force attachment and earning potential, making it a crucial response to the negative economic impact of COVID-19 on women’s—and especially women of color’s—workforce participation.

3. Health and safety protections for certain frontline and essential workers who will not be protected by a federal Occupational Safety and Health Act (OSHA) standard or state COVID-19 protections (including those who are classified or misclassified as independent contractors, like gig workers, and domestic workers employed by an individual in their own residence).
- The toolkit provides model ordinance language to establish COVID-19 health and safety protections for frontline essential workers.
  - It is likely that ARP funds may be used to implement and enforce a local law establishing a COVID-19 health and safety standard for essential workers because it would directly help respond to the public health emergency. The Treasury acknowledges in its [interim final rule](#) for the ARP that “[t]he need for public health measures to respond to COVID-19 will continue in the months and potentially years to come,” including “the continuation of the vaccination campaign,” “monitoring the spread of COVID-19 variants,” and a long-term “public health response.”
  - Regarding eligible uses of ARP funds to address the COVID-19 public health emergency, the Treasury’s interim final rule lists various non-exclusive examples, such as “enforcement of public health orders,” “support for prevention, mitigation, or other services in congregate living facilities . . . and other key settings like schools,” and “payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency.”
  - A local policy that sets a COVID-19 health and safety standard to help protect workers in essential industries from contracting COVID-19 and that can help curb community spread advances a long-term public health response by helping to mitigate spread, along with the health, social, and economic consequences of falling ill with COVID-19. ARP funds could be used to ensure that a local government office has sufficient staff and resources to enforce the standard while also conducting outreach and education.
  - Notably, “[f]or administrative convenience, the recipient [of ARP funds] may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency.”

- Also, “services to address health disparities are presumed to be responsive to the public health impacts of the pandemic.” A health and safety policy aimed at reducing the disproportionate impact of COVID-19 on Black, Latinx, and other workers of color, as well as workers in low-wage jobs who have borne a disproportionate weight of the ongoing pandemic, should be seen as addressing health disparities.
4. Anti-retaliation protections to ensure workers can speak up about job conditions and enforce their rights safely during and after the COVID-19 crisis.
- Across the country, workers have experienced, witnessed, and/or feared retaliation for voicing their concerns about COVID-19 protections on the job. [Black workers](#) report fear or retaliation for raising COVID-19 concerns at higher rates than other workers. And countless stories during the pandemic have exposed employers like [Amazon](#) and [meatpacking companies](#) for punishing workers who complain about or publicize COVID-19 risks at work.
  - Ensuring that every worker can report unsafe conditions and concerns about COVID-19 at work is critical to responding to the COVID-19 public health emergency. Local governments should consider using ARP funds to implement a local anti-retaliation policy that, at a minimum, protects workers during the COVID-19 pandemic.
  - The Treasury’s [interim final rule](#) explains that “[a]ssessing whether a program or service ‘responds to’ the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact.” It further notes that “eligible uses under [the public health and economics impact category of ARP funding] must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.”
  - If workers cannot speak up about COVID-19 concerns at work, workers will continue to face unnecessary COVID-19 contagion risks at work that inevitably contribute to outbreaks and illness in the community at large. A strong local anti-retaliation policy that protects workers when they report COVID-19 concerns at work would allow more workers to speak up about COVID-19 risks and help protect everyone’s health. Such a policy would therefore directly advance the ARP’s public health objectives.
  - As discussed in more detail above with regards to health and safety protections during COVID-19, ARP funds can be used to fund staff who are responding to the COVID-19 public health emergency. This can presumably include staff who would

handle the implementation and enforcement of a local anti-retaliation policy, including outreach and education.

For additional information on the ARP and potential uses for funds by local governments, here are various resources that local governments and advocates can consult:

- Department of the Treasury: [Interim Final Rule](#)
- Treasury: [FAQs](#)
- Center for Budget and Policy Priorities: [Treasury's Interim Final Rule for the Rescue Plan's Fiscal Recovery Funds](#)
- A Better Balance: [Using the American Rescue Plan's State and Local Fiscal Recovery Funds to Address the Care Crisis](#)

Please contact NELP ([lhuizar@nelp.org](mailto:lhuizar@nelp.org)), EPI ([earn@epi.org](mailto:earn@epi.org)), or A Better Balance ([sleiwant@abetterbalance.org](mailto:sleiwant@abetterbalance.org) or [jmake@abetterbalance.org](mailto:jmake@abetterbalance.org)) with any questions or requests for technical support in implementing local protections for workers.

*NOTE: This appendix/toolkit does not represent an exhaustive overview of the law described, and it does not constitute legal advice. Please note that failure to comply with restrictions on the use of these funds as set forth in the American Rescue Plan may result in recoupment of funds. Other limitations on spending may apply. Moreover, a city's or county's authority to adopt the model laws in this toolkit may vary depending on state law. For additional resources to assist in understanding the nature and scope of local city or county authority in a particular state, we recommend the [Local Solutions Support Center's](#) (LSSC) online resources (including, for example, an overview of [home rule](#) in all 50 states; memos [for advocates](#) considering local authority; and a [guide to the legal analysis](#) involved in evaluating local authority).*

*This publication was released in June 2021.*

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<sup>i</sup> The [fourth](#) permissible purpose is to "make necessary investments in water, sewer, or broadband infrastructure."