



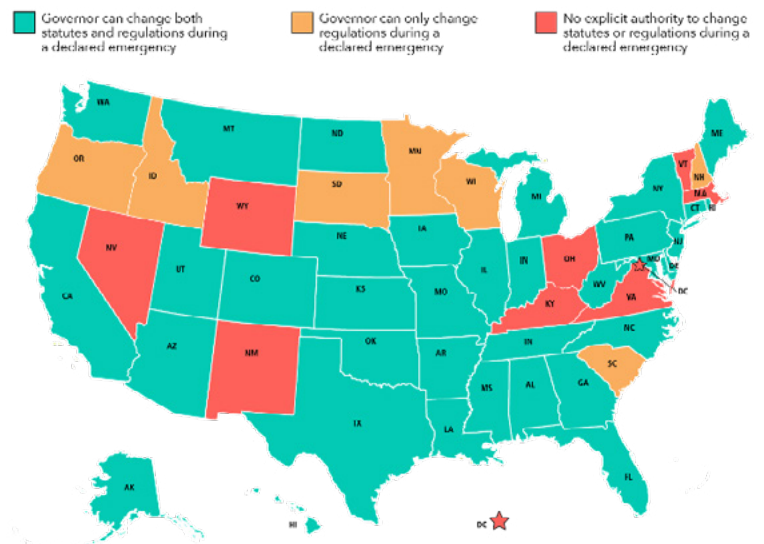
A Union of Professionals

Emergency Declarations, Executive Orders and the Implications for Collective Bargaining

Governors in every state and Puerto Rico, and the mayor of Washington, D.C., have declared states of emergency in response to the COVID-19 pandemic. Many governors have also issued additional COVID-19-related executive orders (EOs) with implications for our members. EOs issued in Minnesota and the District of Columbia go as far as suspending certain provisions of collective bargaining agreements.

A majority of states have laws enabling their governor to temporarily change statute or regulation during a declared emergency (see map below).¹

Despite having broad powers to change statutes and regulations, this power does not necessarily extend to collective bargaining agreements, though some collective bargaining agreements stipulate that some or all of the agreement is suspended in the event of a formal declaration of an emergency.² It is not clear what authority Minnesota and D.C. are relying on in taking action to suspend contract provisions, but it is easy to imagine an unfriendly governor exploiting a declared emergency to undermine a state's collective bargaining law entirely. In states where work rules and conditions of employment are enacted through state legislative or regulatory action, including states where legislatures



are required to approve collective bargaining agreements, we can expect governors to assert power to make changes to work rules and collective bargaining agreements.

While executive actions vary significantly across states, these emergency declarations and EOs contain language with implications for

1 <https://www.nga.org/wp-content/uploads/2019/06/An-Assessment-of-State-Laws-Providing-Gubernatorial-Authority-to-Remove-Legal-Barriers-to-Emergency-Response.pdf>

2 https://www.aft.org/sites/default/files/covid19_info_legalguide_031320.pdf

The **American Federation of Teachers** is a union of 1.7 million professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

Randi Weingarten
PRESIDENT

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members. For example:

- Washington, D.C., Mayor Muriel Bowser's emergency declaration provides that the city administrator can "deploy personnel in a manner that may contravene provisions of existing collective bargaining agreements and may designate employees as essential at any time, or delegate such designation responsibilities to agency heads."³
- Oregon's governor issued an EO on school closures that directs public schools to continue to pay employees and provides that schools may require school employees to report to work.⁴
- Colorado governor's State of Emergency
 - Directs the Colorado Department of Personnel Administration to engage in emergency rulemaking regarding state employees "to ensure that state functions continue to run smoothly."
 - Provides that if workers fall ill and cannot perform their duties, they will be able to use paid leave, and the state will be flexible with that paid leave.
 - Suspends the requirement that state employees who are absent from work due to COVID-19-like symptoms for three or more consecutive days provide a medical certificate form from a healthcare provider.⁵
- Maryland's governor issued an EO that suspends certain child care regulations to expand capacity for temporary child care facilities for school-age children of police, emergency responders and healthcare workers.
- Minnesota's governor has issued a number of executive orders in response to COVID-19, two of which affect educators. Executive Order 20-02 requires all school districts and charter schools to close to students from March 18-27 in order to prepare for distance learning.⁶ It also

requires all school districts and charter schools to provide free child care, at a minimum, to the children of healthcare and public safety workers, and if possible, educators and other essential workers. Executive Order 20-07 suspends, for the duration of the peacetime emergency, provisions for all state employees' collective bargaining agreements regarding work schedules, work locations, assignments and reassignments.⁷ It also provides for paid leave for employees who must be absent from work for reasons related to COVID-19, including those caring for children due to COVID-19-related school closures, and suspends the 35-day waiting period for new insurance-eligible executive branch employees to receive coverage.

How Should Affiliates Respond?

Regardless of whatever state action governors take, our public and private sector employers still need to hear from frontline workers on how best to respond to the COVID-19 health emergency. AFT affiliates should not hesitate to make demands of their employers to ensure that our members, and the people they serve, are kept safe; and many affiliates have already done so:

- AFT Local 2121 (the City College of San Francisco Faculty Union) formally requested negotiations with the employer over the impact of COVID-19 and reached an agreement which ensures that faculty pay, benefits and other contractual rights are intact through this crisis.⁸
- The State Employees Bargaining Agent Coalition (SEBAC) in Connecticut has asked for a daily point of contact between a designated union leader for each bargaining unit, and a designated management representative to

3 https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/release_content/attachments/MO.DeclarationofPublicEmergency03.11.20.pdf

4 https://www.oregon.gov/gov/Documents/executive_orders/eo_20-08.pdf

5 <https://drive.google.com/file/d/1szJfU9WF36-ICVgRhXMAJdlQyTSG83e/view>

6 https://mn.gov/governor/assets/EO%2020-02%20Final_tcm1055-423084%20%281%29_tcm1055-423779.pdf

7 https://mn.gov/governor/assets/EO%2020-07%20%28Accessible%29_tcm1055-423777.pdf

8 <https://www.aft2121.org/2020/03/aft-2121-reaches-agreement-on-impacts-of-covid-19-plans/>

ensure continuous sharing of information. SEBAC has submitted a set of demands regarding essential employees in response to the administration's actions under the state of emergency.⁹

- United Teachers of Los Angeles is calling on state and local officials to provide free and reliable broadband internet access and access to electronic devices for students while at home; debt forgiveness, suspended rent and mortgage payments, suspended eviction court and utility shut-offs; and suspension of penalties for schools based on attendance or missed standardized assessments.¹⁰
- The Chicago Teachers Union, in coalition with the community, called a press conference to demand that the mayor take all action within the mayor's authority to support 15 days of paid sick leave for all Chicago Public Schools parents and Chicago residents and immediately suspend all evictions. The union has also demanded that the district suspend use of the School Quality Ratings Policy.¹¹
- The Wisconsin Federation of Nurses and Health Professionals is calling on hospitals and state officials to adopt a policy of paid leave forgiveness; provide COVID-19 testing and coverage for all related medical treatment at no cost to employees; and to provide child care subsidies or alternative methods of child care to all healthcare workers in need of child care.¹²
- The Ohio Nurses Association has called on state officials to allow no-cost testing and telemedicine, and on hospitals to enhance transparency and communication between health facilities and workers.¹³
- The AFT Higher Education Division has put forward a set of principles for state and employer responses to COVID-19, including that clinical faculty members and academic staff at

teaching hospitals or engaged in healthcare should be provided with adequate protective equipment, and that every employee should be held harmless economically and professionally for the dislocations caused by COVID-19. The division is also demanding that all plans reflect appropriate care for any staff, including support staff, who are asked to remain on campus to enact those plans. Special care should be taken for the protection of employees who are, or have household members who are, at higher risk for complications from COVID-19.¹⁴

- Education Minnesota worked collaboratively with Gov. Tim Walz's office on the development of the executive order related to school closures, and continues to work with the state Department of Education on guidance and implementation of that order. Education Minnesota is in contact with the Walz administration regarding implementation of the executive order related to state employee paid leave and collective bargaining agreements. On March 16, Education Minnesota released a joint statement with organizations representing the state's school boards and school administrators calling on schools and public officials to prioritize student and staff safety, and to ensure that neither districts nor educators are financially harmed as a result of COVID-19-related closures.¹⁵

AFT affiliates should reach out to their governors and local officials to explore how emergency powers can be used to ensure that AFT members and the communities they serve have the support they need during this public health crisis.

9 https://drive.google.com/file/d/1IMbNKizJjr8Fc2UrwQ7N0qzGLK_FQsh1/view

10 <https://www.utla.net/news/utla-statement-proactive-closure-laUSD-schools>

11 <https://www.ctulocal1.org/posts/covid-letter/>

12 <http://wfnhp.aft.org/press/nurses-health-professionals-demand-immediate-action-protect-healthcare-workers-wisconsinites>

13 <https://ohnurses.org/ohio-nurses-calling-for-five-efforts-to-prevent-the-spread-of-covid-19/>

14 https://www.aft.org/sites/default/files/covid19_aft-aaup_guidanceprinciples_031320.pdf

15 <https://educationminnesota.org/news/media-resources/news-releases/Joint-statement-on-coronavirus-preparedness-and-re>