



A Union of Professionals

COVID-19 Resources: Guidance for AFT Members

What Are My Rights during a State of Emergency?

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The U.S. Constitution vests the national government with a set of specific enumerated powers. The rest of the powers are reserved to states, with public health traditionally falling under a state government’s powers. In actuality, the federal government’s ability to bring together resources and technical expertise and work to scale on issues that cross state lines have made it an essential partner in responding to public health crises. And states have in many instances given local governments their own sets of powers and abilities to respond to public health crises. The result is that the policy response—coming from all three levels of government can appear confusing. But state governments have important and clear responsibilities apart from the federal government and set the parameters for local response.

When a state, city or county is hit by a natural disaster, a security threat or an infectious disease outbreak, all states have mechanisms that allow government officials to declare a state of emergency, thereby activating powers and resources that are unavailable in non-emergencies. Every state gives its governor the authority to declare one or more types of emergencies, and these emergency declarations have various implications for AFT members:¹

ACTIVATION OF STATE EMERGENCY RESPONSE PLANS AND MUTUAL AID AGREEMENTS.

- Mutual aid agreements facilitate rapid sharing of emergency aid and resources among governments. During Hurricane Katrina, for example, states provided shelter, food, clothing and education for residents who had to flee New Orleans.² Mutual aid agreements might be used to resolve questions about scope of practice for licensed healthcare professionals who are providing care in another state from the one in which they are licensed.³

ACTIVATION OF A STATE EMERGENCY OPERATIONS CENTER AND INCIDENT COMMAND SYSTEM.

- An emergency operations center is a “specially designated centralized facility where officials meet face to face to coordinate a jurisdiction’s overall disaster response and recovery efforts in support of field operations.”⁴ In New York, as part of the city’s preparedness efforts regarding COVID-19, the New York Department of Health and Mental Hygiene has activated an incident command system that is aimed at focusing agency resources on COVID response.

Find these resources and more at www.aft.org/coronavirus

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.

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AUTHORITY TO EXPEND FUNDS AND DEPLOY PERSONNEL, EQUIPMENT, SUPPLIES AND STOCKPILES.

- Gov. Jay Inslee’s declaration of emergency directs the Washington State Department of Health and other state agencies to “identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.”

ACTIVATION OF STATUTORY IMMUNITIES AND LIABILITY PROTECTIONS FOR THOSE INVOLVED IN RESPONSE ACTIVITIES.

- Hospital licensure laws and professional scope of practice, and laws relating to the liability of hospitals, healthcare workers and other healthcare providers, are subject to waiver under a state of emergency.⁵ Without statutory immunities and liability protections, for example, a licensed healthcare provider may be subject to negligence claims “for exceeding scope of practice by making decisions or undertaking tasks beyond what state law permits for their profession.”⁶

STREAMLINING OF STATE ADMINISTRATIVE PROCEDURES, SUCH AS PROCUREMENT REQUIREMENTS.

- Under a state of emergency, state officials may be able to circumvent state competitive bidding requirements in order to speed up the procurement process.⁷

SUSPENSION AND WAIVER OF STATUTES, RULES AND REGULATIONS.

- In California, for example, Gov. Gavin Newsom’s emergency proclamation authorizes the waiver, suspension or alteration of various statutory provisions related to time periods for renewing local emergency proclamations, licensing requirements for health facilities that treat legally isolated COVID-19 patients, state and local laws related to the sharing of medical information, patient transportation to health

facilities, and the licensing requirements for child and adult care facilities.⁸ Gubernatorial power to suspend laws and regulation is discussed in more detail below.

Governors in most states have some power to suspend state laws and/or regulations via executive action in order to provide services and resources during a declared emergency:⁹

- 35 states permit governors to suspend or amend both statutes and regulations.
- 7 states permit governors to amend regulations during a declared emergency, but the governors are not explicitly authorized to modify or remove statutes.
- 8 states and the District of Columbia provide no explicit authority to governors to change statutes or regulations during a declared emergency.

States may take additional steps to create new emergency powers. For example, New York recently passed legislation that gives the governor power to act when a crisis is “impending” or “urgent” and gives new powers beyond the ability to suspend laws. Those powers would be exercised through executive order.¹⁰

There are currently locally declared emergencies in New York City, King County in Washington, and Sonoma County and San Diego County in California, at the least.

One concern we have is that emergency declarations have the power to undo rules and regulations that support our members in their work. Regulations regarding scope of practice, overtime and licensure all may be subject to change. And a brief review of collective bargaining agreements finds examples where the declaration of a state of emergency allows management to take steps regarding assignments, scheduling, overtime and other provisions.

What needs to be explored is the extent to which these emergency powers can be used to ensure that healthcare workers have the support they need. For example, California issued guidance about how workers who are quarantined can file for a short-term disability insurance benefit.¹¹ States might potentially use

an emergency declaration to provide presumptive coverage for quarantined or exposed workers for unemployment insurance, disability, workers' compensation or other state benefits to provide support for workers who have to self-quarantine.

One final note: The ability of state and local governments to suspend laws, rules and regulations could have wide implications. The Geneva Centre for Security Sector Governance raises important issues about the implementation of emergency laws in an international context that are relevant here. It warns that:

“The implementation of emergency law invariably leads to restrictions on normal economic, civil or political activity and rights in order to address the extraordinary circumstances that have given rise to the emergency situation. Certain restrictions may be fully justified. At the same time, there is a danger that a government will take advantage of a state of emergency to introduce unwarranted restrictions on human rights and civil liberties, to neutralize political opponents, to postpone elections, or for other self-serving purposes that would be more difficult to pursue under normal circumstances.”¹²

ENDNOTES

- 1 <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Emergency-Declarations-and-Authorities-Fact-Sheet/>
- 2 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1854975/>
- 3 <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Liability,-Immunity,-and-Workers%E2%80%99-Compensation-Issues-in-Public-Health-Emergencies-Issue-Brief/>
- 4 <https://www.washington.edu/uwem/resources/emergency-operations-center/>
- 5 <https://www.nga.org/wp-content/uploads/2019/06/The-Changing-Nature-and-Scope-of-Public-Health-Emergencies-in-Response-to-Annual-Flu.pdf>
- 6 <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Liability,-Immunity,-and-Workers%E2%80%99-Compensation-Issues-in-Public-Health-Emergencies-Issue-Brief/>
- 7 <https://canons.sog.unc.edu/emergency-procurement-%E2%80%93-when-is-an-emergency-really-an-emergency/>
- 8 <https://www.astho.org/StatePublicHealth/State-Emergency-Declarations-and-COVID-19/03-05-20/>
- 9 <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>
- 10 <https://www.nysenate.gov/legislation/bills/2019/s7919>
- 11 https://edd.ca.gov/about_edd/coronavirus-2019.htm
- 12 https://www.files.ethz.ch/isn/14131/background_02_states_emergency.pdf