



March 12, 2020

To: California Labor & Workforce Development Agency, Future of Work Commission

From: Worksafe, County of Santa Clara Office of Labor Standards Enforcement, Centro Laboral de Graton, Employee Rights Center, IDEPSCA, Instituto Laboral de la Raza, La Raza Centro Legal, National COSH, Santa Clara County Wage Theft Coalition, SoCal COSH, Warehouse Worker Resource Center, and Unite Here, Local 2850

Re: March 12, 2020; Worksafe Comments and Public Testimony

It gives me great pleasure to submit the following comments on behalf of Worksafe and our allies to the Future of Work Commission (“Commission”) for their March 12, 2020, 7th Convening. Worksafe commends the Commission’s work thus far in inviting and aligning experts from diverse fields to share their perspectives. For the most thorough process possible, we encourage the Commission to also engage vulnerable workers of color as well as experts from the fields of occupational health and safety and race equity to provide recommendations for the gaps we identify below.

Worksafe is a California-based non-profit organization with expertise in occupational health and safety. Our work amplifies the voices of California’s vulnerable workers, particularly the experiences and *expertise* of low income, immigrant, and workers of color. We advocate for protective worker health and safety policies, laws, and remedies through supporting grassroots efforts, transforming cultural narratives about work, policy advocacy, and agency oversight. We engage in worker-led and informed campaigns in coalition with unions, workers, community, environmental and legal organizations, and scientists to eliminate workplace hazards.

This comment letter focuses on occupational health and safety (OSH) which falls within the field of public health and encompasses the health, safety, and welfare of workers. The World Health Organization (WHO) defines the field of OSH as dealing "with all aspects of health and safety in the workplace" with a "strong focus on primary prevention of hazards."¹ We do this by studying and recognizing trends in worker illnesses, injuries, and fatalities and advocating for strategies and regulations that will prevent them. OSH includes disciplines such as occupational medicine, toxicology, epidemiology, ergonomics, and violence prevention.

To ensure that our advocacy work reflects the totality of circumstances for workers, we engage the concept of “health equity” which is defined by the Robert Wood Johnson Foundation as the state where:

¹ World Health Organization, *Occupational Health*, (last visited March 11, 2020) available at https://www.who.int/topics/occupational_health/en.

everyone has a fair and just opportunity to be as healthy as possible. This requires removing obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care. For the purposes of measurement, health equity means reducing and ultimately eliminating disparities in health and its determinants that adversely affect excluded or marginalized groups.²

The “social determinants of health” (SDOH) that we consider are the conditions that shape and influence a person’s health such as race and ethnicity, where they went to school, cultural norms, social support, and income and economic stability.³ The presence of all of these have a profound impact on the quality of life of workers and their workplace success, productivity, and performance.⁴ Job quality, for example, is an example of an SDOH that the Commission has been considering.⁵ Poor job quality, as well as unregulated and unsafe workplaces, has been shown to worsen health disparities.⁶

The “Future of Work” and the “social compact” that the Commission seeks to create will not only affect the workplace and working conditions, but the overall health of workers, their families, and their communities. Given that race has been identified as one of the most critical SDOH impacting people’s lives, it is essential to engage an explicit race equity lens to analyze the information provided by experts to the Commission to account for the part structural racism will play in the “Future of Work.” Without intentionality, long-standing practices that result in generational disparity will not disappear with the advent of emerging technologies unless solutions are created with the specific goal to dismantle them.

In this vein, Worksafe appreciates the opportunity to offer the following comments. To provide some structure to our comments, we utilized the Commissions’ [Draft Problem Statement](#)⁷ as a reference source for our recommendations.

(1) Be Race Explicit.

Although we appreciate the Commission’s attention to the disparate and disproportionate impact of the “Future of Work” on vulnerable populations, it was a challenge to find intentionality with respect to recognizing structural racism in the Commission’s expert testimony, reports, and recommendations. Although the terms “equity” and “equality” are used often in the materials, there was no single

² Braveman P, Arkin E, Orleans T, Proctor D, and Plough A. What Is Health Equity? And What Difference Does a Definition Make? Princeton, NJ: Robert Wood Johnson Foundation, 2017 at 2, <https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity-.html>.

³ *Ibid.* at 3; Blacker, et. al., *Social Determinants of Health - An Employer’s Priority*, (Accessed March 11, 2020) https://docs.google.com/viewer?url=https%3A%2F%2Fhero-health.org%2Fwp-content%2Fuploads%2F2019%2F09%2FHERO_HWHC_SDOH_Report_FINAL_090419.pdf; See also Blacker, et. al., *Social Determinants of Health - An Employer’s Priority*, *Am. Journal of Health Promotion*, (Feb. 13, 2020) https://journals.sagepub.com/doi/full/10.1177/0890117119896122b?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed.

⁴ *Id.* at 5.

⁵ Peckham, Trevor, et al. *Evaluating Employment Quality as a Determinant of Health in a Changing Labor Market*, 5 *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 258–281 (Sept. 2019) (Accessed March 11, 2020) www.jstor.org/stable/10.7758/rsf.2019.5.4.09.

⁶ See Murray, *Sick and Tired of Being Sick and Tired: Scientific Evidence, Methods, and Research Implications for Racial and Ethnic Disparities in Occupational Health*, 93 *Am J Public Health* 221–226 (Feb. 2003) (Accessed March 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447720>.

⁷ California Future of Work Commission, *Problem Statement*, (Jan. 16, 2020) (Accessed March 11, 2020), https://www.labor.ca.gov/wp-content/uploads/2020/02/SR-21122B_Conv-5_wmDRAFT_Problem-Categories.pdf

definition of either in the materials. Moreover, the terms' relationship to racism and discrimination, though often implied, lacked a clear statement of intentionality with respect to the role of structural racism in all of the issues presented to and identified by the Commission.

We believe that the failure to identify structural racism as a key factor causing inequality and inequity may lead to its treatment as a collateral issue to be addressed among many, rather than a central one. In the same way that the Commission provides a historical perspective of the emerging technologies, it is equally important to provide a historical perspective of the structural and institutional systems that have created disparity among California's workers. This perspective can begin and be centered on race, and expand to include other important issues such as gender and ability. It is critical, however, that the starting point is centered on race since structural racism sits at the foundation and intersection of all of the issues affecting vulnerable workers⁸.

As the Robert Wood Johnson Foundation made clear:

Definitions can matter. While differences between some definitions may represent stylistic preferences, others can reflect deep divides in values and beliefs that can be used to justify and promote very different policies and practices. Clarity is particularly important in the case of health equity because pursuing equity often involves a long uphill struggle that must strategically engage diverse stakeholders, each with their own agenda. Under those circumstances, if we are unclear about where we are going and why, we can more easily be detoured from a path toward greater equity; our efforts and resources can be co-opted, and we can become lost along the way.⁹

Thus, in order to create a "social compact" that will truly address workers in this age of automation and robotics, we need an explicit and clear definition that drills down to the root cause of social inequalities. "Root cause" is a core principle in the field of OSH that refers to the "fundamental, underlying, system-related reason why an incident occurred that identifies one or more correctable system failures."¹⁰ OSH practitioners believe that conducting a root cause analysis and subsequently addressing the actual root causes, rather than bandaging the situation, will better prevent workplace hazards that lead to injuries, illnesses, and fatalities.

Similarly, structural racism lies at the root of workplace inequality. Workplace discrimination remains a pervasive problem despite five decades of protective legislation.¹¹ Failure to identify structural racism may lead to solutions that, rather than addressing racism, minimize, deny, passively imply, or avoid it. The Commission's focus on quality jobs rather than overemphasizing skill attainment for workers is one such example of centering equity. The quick fix of "more skills training", a popular remedy, relies upon

⁸ See e.g. Perty, Harp & Oser, *Racial and Gender Discrimination in the Stress Process: Implications for African American Women's Health and Well-Being*, 56 *Social Perspectives* 25-48 (2013), (Accessed March 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3783344>; See also Frederick & Shrifer, *Race and Disability: From Analogy to Intersectionality*, 5 *Sociology of Race & Ethnicity* 200-214 (2019), (Accessed March 11, 2020), https://www.researchgate.net/publication/326330829_Race_and_Disability_From_Analogy_to_Intersectionality.

⁹ Braveman, et. al., *What Is Health Equity? And What Difference Does a Definition Make?*, Robert Wood Johnson Foundation, 1 (May 2017), (Accessed March 11, 2020), <https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity.html>.

¹⁰ Center for Chemical Process Safety, *Guidelines for Investigating Chemical Process Incidents* (2003) pp. 179.

¹¹ Fekedulegn, et. al., *Prevalence of workplace discrimination and mistreatment in a national sample of older U.S. workers: The REGARDS cohort study*, 8 *SSM - Population Health* 100444 (Aug. 2019) (accessed March 11, 2020), <https://www.sciencedirect.com/science/article/pii/S2352827319300588?via%3Dihub>.

narratives popularized by the Reagan administration of “personal responsibility, achievement, ability, and talent [that] fail to recognize the historical and intergenerational way in which multiple systems, including not only workforce, but also education, housing, criminal justice and others, have created an inherent set of disadvantage for people of color.”¹² Focusing on quality jobs, on the other hand, indicates a recognition of chronic income inequality, the availability of health insurance and retirement plans, poorer job quality for Black workers, an unequal educational system, and historical trends in the job market that disadvantage workers of color.

To quote Race Forward, “[b]eing race explicit allows us to identify the root cause as a systemic one that employs, at times unintentionally and unidentified biases in the rules, unwritten practices, and culture within and across our institutions thereby necessitating remedies that are” systemic, race-explicit, and outcome-oriented.¹³

An example of a non-explicit definition is the WHO’s definition of “equity” and “health equity”:

Equity is the absence of avoidable, unfair, or remediable differences among groups of people, whether those groups are defined socially, economically, demographically or geographically or by other means of stratification. “Health equity”...implies that ideally everyone should have a fair opportunity to attain their full health potential and that no one should be disadvantaged from achieving this potential.¹⁴

An example of a race explicit definition is the one offered by Race Forward:

Racial equity is the systematic fair treatment of people of all races that results in equitable opportunities and outcomes for everyone.¹⁵

Being race explicit does not mean minimizing other forms of discrimination. What it means is being clear in stating a commitment to dismantling those institutions that create discriminatory practices for everyone, especially workers of color. We believe in the power of **naming** the problem. By being race explicit, we can examine the emerging economy with an eye on the historical legacy of racism and its devastating effect on vulnerable workers. We can also identify ways to track disparities and measure progress with intentionality. Thus, any policy or innovation that comes out of the task force should explicitly address “structural biases [that] reinforce barriers to employment,”¹⁶ job quality, and income inequality.

(2) Workers *are* the Experts.

Worksafe and many of the allies who are reflected as signatories on this letter work with low-wage immigrant workers, black workers, and other workers of color in advocating for better working

¹² Race Forward, *Race-Explicit Strategies for Workforce Equity in Healthcare and IT*, (June 15, 2017) (Accessed March 11, 2020), <https://www.raceforward.org/research/reports/race-explicit-strategies-workforce-equity-healthcare-and-it>.

¹³ *Id.* at 43-47.

¹⁴ WHO, *supra* note 1, *Health Equity*.

¹⁵ *Ibid.*

¹⁶ Center for American Progress, *A Design for Workforce Equity: Workforce Redesign for Quality Training and Employment: A Framing Paper*, (Oct. 16, 2019) (Accessed March 11, 2020), <https://www.americanprogress.org/issues/economy/reports/2019/10/16/475875/design-workforce-equity>.

conditions. We know from experience that workers *are* the best experts to provide information about their experiences in the workplace as well as Californians.

A third of California's workers earn low wages, and the overwhelming majority of them are workers of color.¹⁷ The input of these workers is critical to designing and implementing equity-centered solutions to our state's economic challenges. Although the first convening hosted a panel of workers, later convenings did not. This is a profound missed opportunity. We believe that it is imperative that conversations regarding the future of work, low-wage work and economic equity include the expertise and voices of the people most directly impacted in our state — low-wage workers of color.

Although the Commission convenings are coming to an end, we believe that more work is necessary to engage California's workers. We recommend that the Commission engage in listening circles throughout the state to allow workers to share their stories whether through virtual or in-person focus groups, town hall meetings, regional worker panels, or participatory surveys. We recommend the following:

- Partner with local worker centers and community-based organizations to ensure worker input is elicited and provided
- Create a virtual space for workers and community-based organizations to share their suggestions
- Hold an additional Future of Work Commission convening focused on the role of immigration and undocumented workers
- Ensure a bilingual process by providing translation services for all public meetings
- Release Commission materials in languages that reflect California's diverse workforce
- Ensure that future meetings with workers utilize facilitation structures that promote collaboration between the Commissioners, community-based organizations, and workers.

When those who are directly impacted are at the center of policy conversations, our policies and solutions are stronger. In envisioning the future of work, we want to ensure that recommendations for future policies and programs take into consideration and are accessible and responsive to every worker — including undocumented immigrants. We extend our support to the Commission in improving worker participation for future engagements.

(3) Economic equity begins with an OSH inclusive recognition of the unequal distribution of wages, income, and wealth.

Worksafe commends the Commission for prioritizing these issues. We offer the following OSH-oriented observations. We believe that the wages and income or the financial worth of a worker also includes the workers' health and well-being. These are difficult things to quantify in terms of dollar amounts, but it is incontrovertible that a workers' well-being and ability to be productive at work is valuable to both the worker and the employer. When workers are pushed to their mental and physical limits, becoming injured or ill as a result of working conditions, this translates to an economic loss for both the worker and the employer. An employer may see this in terms of lost days at work and lost productivity, perhaps an increase of workers' compensation premiums and the usage of benefits.

For the worker, workplace injury or illness often translates into out-of-pocket expenses that are solely born by the worker. This is another form of wage theft that comes in the form of broken spirits and

¹⁷ UC Berkeley Labor Center, *Low-Wage Work in California*, (Accessed March 12, 2020) <http://laborcenter.berkeley.edu/low-wage-work-in-california/#the-numbers>.

bodies that contributes to income inequality. For example, when a worker is injured, workers must pay out of pocket due to difficulties obtaining workers compensation. Many workers do not file for workers' compensation for fear of retaliation¹⁸. Some have even reported being explicitly told *not* to file a claim. Thus, immigrants and other vulnerable workers are less likely to receive workers' compensation or to have health insurance or access to other safety net benefits. This results in the economic burden of the workplace injury or illness falling upon their shoulders.¹⁹

Additionally, family members must often reduce their work hours to become caregivers. If the primary wage earner is injured, others must work even more hours to make up the difference in the household budget. Either way, the added workload can lead to fatigue at home or at work, which can put the *caregivers* at increased risk of injury in their own workplace.

OSHA recognized this phenomena in their report titled, "Adding Inequality to Injury: the Costs of Failing to Protect Workers on the Job."²⁰ The report, authored by Dr. David Michaels, former Assistant Secretary of Labor for the Occupational Safety and Health Administration, provides an in-depth analysis of the costs of workplace injuries that are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net.²¹

The report identified two major contributing factors to this downward mobility: changes in state workers' compensation systems that have it more difficult for injured workers to receive full benefits, and recent changes in employment relationships, with the rise of temporary workers or those often misclassified as "independent contractors," which often puts them in higher risk jobs with higher injury rates. The report's ultimate finding is that all of these factors contribute to income inequality serving to force working families out of the middle class and into poverty, while preventing the families of lower-wage workers from entering the middle class.²²

(4) Workforce Inequalities across race and gender is a matter of life and death.

In our annual *Dying at Work* reports, Worksafe has consistently published the devastating effect of workplace gender and race-based inequalities on low income, immigrant, and workers of color. It is undeniable that low income, immigrant, and workers of color earn disproportionately less, regardless of education, while facing the brunt of workplace abuses that include wage theft, occupational health and safety hazards, and a troubling workers' compensation system.²³ Women in low-wage occupations are

¹⁸ Milkman, et al., *Wage Theft and Workplace Violations in Los Angeles*, Institute for Research on Labor and Employment University of California, Los Angeles, 3-4, 27 (2010) (Accessed March 11, 2020), <https://www.labor.ucla.edu/publication/wage-theft-and-workplace-violations-in-los-angeles>; Riley, et al., *Patterns of Work-Related Injury and Common Injury Experiences of Workers in the Low-Wage Labor Market*, UCLA Labor Occupational Safety and Health Program, 3, (March 2015) (Accessed March 11, 2020), https://www.dir.ca.gov/chswc/Reports/2015/Patterns_Work_Related_Injury.pdf.

¹⁹ See also Dembe, *Access to medical care for occupational disorders: difficulties and disparities*, 12 J Health Soc Policy 19–33 (2001), <https://www.ncbi.nlm.nih.gov/pubmed/11140117>; Zabin, Dube, Jacobs, *The hidden public costs of low-wage jobs in California*, Center for Labor Research and Education, 44 (May 2004) <http://laborcenter.berkeley.edu/the-hidden-public-costs-of-low-wage-jobs-in-california>.

²⁰ U.S. Department of Labor, *Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job*, (June 30, 2015) (Accessed March 11, 2020), https://www.osha.gov/Publications/inequality_michaels_june2015.pdf.

²¹ *Ibid.*

²² *Adding Inequality to Injury*, *supra* note 19, at 4.

²³ *Ibid.* (citing to Washington Center for Equitable Growth, *Fact sheet: Occupational segregation in the United States*, (Oct. 3, 2017) (Accessed March 11, 2020), <https://equitablegrowth.org/fact-sheet-occupational-segregation-in-the-united-state>; Solomon, Maxwell, & Castro, *Systematic Inequality and Economic*

generally paid 15% less than their male counterpart and are at risk for sexual assault, sexual harassment, and workplace violence.²⁴

With respect to race, Latinos are disproportionately at risk for injuries, illnesses, and death,²⁵ while Black workers have had the “highest prevalence of work-related disability.”²⁶ Black workers, who reported an “hourly rate of pay in the lowest quintile compared with workers of other ethnicities,”²⁷ exhibited the highest rate of “lost-work time injuries and illnesses among both men and women.”²⁸

These tenuous working conditions are made more difficult by the fissuring of the workplace that leaves many workers unprotected under workplace employment schemes that misclassify workers or employ them as permanent temporary and contingent workers. The temp worker industry has grown in staggering numbers over the past two decades. Almost one-fifth of total job growth since the end of the recession in 2009 is in the temporary sector.²⁹ In 2010, there were 282,000 temp workers in California alone.³⁰

Temp workers tend to be young, female, and black or Latino.³¹ Among blue collar temp workers, African Americans and Latino workers are disproportionately represented, making up 20% of the sector despite being only 11% and 16% of the American workforce, respectively.³² They are also overrepresented in high hazard industries such as production, transportation, and material moving occupations with 22% of the workers being Latino and 15% being African Americans.³³

Opportunity, Ctr for Am. Progress, (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472910/systematic-inequality-economic-opportunity>.

²⁴ National Women’s Law Center, *Black Women Disproportionately Experience Workplace Sexual Harassment, New NWLC Report Reveals*, (Aug. 2, 2018) (Accessed March 11, 2020), <https://nwlc.org/press-releases/black-women-disproportionately-experience-workplace-sexual-harassment-new-nwlc-report-reveals>. See also National Partnership for Women & Families, *Sexual Harassment and the Gender Wage Gap*, (Apr. 2019) (Accessed March 11, 2020) <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/sexual-harassment-and-the-gender-wage-gap.pdf>.

²⁵ Worksafe, *Dying at Work Report*, (April 28, 2019) (accessed March 11, 2020), https://worksafe.org/file_download/inline/27660373-456a-42b1-8883-9855e84f08a9; AFL-CIO Commission on the Future of Work and Unions, AFL-CIO, (Sept. 13, 2019), https://aflcio.org/sites/default/files/2019-09/Report%20of%20the%20AFL-CIO%20Commission%20on%20the%20Future%20of%20Work%20and%20Unions_FINAL.pdf.

²⁶ Seabury, Terp, & Boden, *Racial and Ethnic Differences in the Frequency of Workplace Injuries and the Prevalence of Work-Related Disability*, 36 Health Aff 266-273 (Oct. 23, 2018) (accessed March 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6198680>.

²⁷ Strong & Zimmerman, *Occupational Injury and Absence from Work Among African-American, Hispanic, and Non-Hispanic White Workers in the National Longitudinal Survey of Youth*, 95 Am. J. Public Health 1226-1232 (July 2005) (last accessed March 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449344>.

²⁸ *Ibid.*

²⁹ Grabell, *The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed*, ProPublica, (June 27, 2013) <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.

³⁰ Dietz, *Temporary Workers in California Are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, UC Berkeley Labor Center, (Aug. 28, 2012), 6-7 available at: http://laborcenter.berkeley.edu/pdf/2012/temp_workers.pdf.

³¹ *Ibid.* at 9.

³² *Ibid.* at 11.

³³ *Ibid.*

Temp workers face some of the highest levels of risk for serious injuries without the accompanying protections and safeguards. They are, by and large, far more likely to be hurt or killed than other workers. They have about a 50% greater risk of being injured on the job than traditional direct-hire employees.³⁴ This may be due, in part, to the fact that they may be assigned to the most dangerous jobs,³⁵ without proper training or safety equipment.³⁶

They may also suffer health consequences of both a hazardous work environment and stress related to their precarious situation. Workers in these relationships, particularly those who are short-term or seasonal workers, may be more subject to job stress and its adverse health consequences and less likely to benefit from the workplace factors that may mitigate these effects.³⁷ This is exasperated by the fact that they tend to have less access to health insurance and workers' compensation benefits³⁸ despite having greater need. A recent ProPublica analysis of workers' compensation claims in California, Florida, Massachusetts, Minnesota, and Oregon found that the incidence of temp worker workplace injuries was between 36 to 72% higher than for non-temp workers³⁹. As stated above, multiple studies also indicate that vulnerable workers are less likely to report their injuries, illnesses, and hazards – let alone file a workers' comp claim due to fear of retaliation. The chilling reality is that these figures are severely under-representative of the true state of affairs for workers. See NELP Testimony to the California Future of Work Commission, Debbie Berkowitz, Worker Health and Safety Program Director, Nayantara Mehta, Strategic Partnerships Director, March 12, 2020.

Thus, any “social compact” regarding the “Future of Work” must be considered in light of the day-to-day realities of vulnerable workers whose life and limbs are at risk every single day at work. The Commission's intensive examination of as many aspects of this issue as possible, supplemented by worker experiences and expertise is critical to understanding how to structure informed solutions that lead to effective measures to prevent worker injury, illness, and death. Moreover, it is critical that government agencies are adequately resourced to be able to enforce California's laws, standards and regulations. See Statement by Garrett Brown, MPH, CIH, former staff of Cal/OSHA (1993-2014), Compliance Safety and Health Officer and Special Assistant to the Chief of the Division, March 12, 2020.

(5) Quality jobs means changing the narrative & emphasizing workers' experiences.

Current dominant narratives around work emphasize certain ideas that are presented as “truths” serving to dissuade workers from advocating for better working conditions while legitimizing systemic workplace abuses.⁴⁰ For example, the narratives around gig and temporary work or misclassification

³⁴ Grabell, Pierce, & Larson, *Temporary Work, Lasting Harm*, ProPublica, (December 18, 2013) <https://www.propublica.org/article/temporary-work-lasting-harm>.

³⁵ Mehta & Theodore, *Workplace Safety in Atlanta's Construction Industry: Institutional Failure in Temporary Staffing Arrangements*, 9 WorkingUSA: Journal of Labor and Society 59-77 (Feb. 17, 2006), <https://onlinelibrary-wiley-com.ucsf.idm.oclc.org/doi/pdf/10.1111/j.1743-4580.2006.00093.x>.

³⁶ Grabell, *supra* note 35.

³⁷ Bernhardt, et. al., *Future of Work Paper Series*, U.S. Department of Labor, 13 (Feb. 17, 2016), https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/Future_of_Work_Paper_Series.pdf.

³⁸ *Ibid.* at 14.

³⁹ Pierce et al., *How We Calculated Injury Rates for Temp and Non-Temp Workers*, ProPublica (Dec. 18, 2013) <https://www.propublica.org/nerds/how-we-calculated-injury-rates-for-temp-and-non-temp-workers>.

⁴⁰ Norton, *Truth and Lies in the Workplace: Employer Speech and the First Amendment*, 101 Minnesota Law Review 31, 31 (2016), <https://www.minnesotalawreview.org/wp-content/uploads/2016/11/Norton.pdf>.

emphasize that workers have “freedom” and “flexibility” despite the fact that such “rights” cut into their wages and result in impoverishing wages and unsafe working conditions.

We can see how this played out in our own history. The Reagan administration ushered in the codification of neoliberalism with its narratives about meritocracy in the nation’s laws. These narratives served as the foundational rationale for the dismantling of critical social support networks for Americans. Specifically, they crushed welfare, labor unions, and ultimately affirmative action. They resulted in the suppression of workers’ voices and their rights and they helped to pave the way towards a widening gap of income inequality.

Narratives are powerful. What is not present in the current recommendations is a need to dive deep into the narratives that proliferate workplace culture. One example of a damaging narrative within OSH is that the root cause of workplace injuries is worker behavior. If we fix the worker, we’ll fix the OSH issue. Thus, there are programs that focus on this such as Behavioral Based Safety Programs and Safety Disincentive Programs. In the context of emerging technologies, we see apps and technology that have been created to monitor workers in order to gauge their work performance and “choices,” the latter of which may be the cause for why workers get injured so often. In a recent gathering of automation and robotic innovators gathered by 3M in their “New Economy Forum,” smart app designers claimed that their apps could improve health and safety by monitoring how many times a worker “broke” workplace health and safety rules to perform a work duty.

The problem with this concept, however, is that, though the smart app can monitor how many times a worker bypassed a warning alert, it cannot measure the workplace culture that precipitated the action such as workplace quota pressures or even supervisors’ direct orders to ignore safety warnings. As worker advocates, we often see this with forklift speed rules - employers are more than willing to look the other way or support drivers speeding on forklifts due to the pressure to meet certain quotas - until a worker is injured - and then it becomes a behavioral safety issue - fix and discipline the worker.

Worksafe anticipates that once new technologies roll out, these narratives will not go away. They will continue to do the job they’ve been doing so well for decades. Unless there is an intentional approach driven by an explicit definition of equity as well as specific goals around analyzing and transforming these narratives, they will continue to feed into the rationale that ensures that institutional biases continue into the new economy, replicating once again, possibly worsening working conditions for vulnerable workers and furthering depressing communities at the expense of widening the income gap.

(6) Protect workers in a data driven future by protecting human-based solutions such as unionization, health & safety committees & emphasizing workplace culture over data.

In addition to examining harmful narratives, any social compact should also protect human-based solutions such as unionization, health and safety committees, and raising the bar for workplace culture that prioritizes workplace health and safety.

Worksafe supports the issues identified in the Problem Statement under “Empower worker voice and organization.” In addition to these, we want to emphasize that no amount of technology can replace the importance of human to human interaction. Workplace stressors contribute to worker health and safety, and the failure to adequately support workers and address stressors can lead to increased injuries, illnesses or fatalities among workers. They account for the physical illness, substance abuse, and

family problems experienced by millions of workers and they are linked to low productivity, absenteeism, and increased rates of accidents on and off the job⁴¹.

The American Institute of Stress has reported that job-related stress is the number one cause of stress for Americans.⁴² This includes “Co-Worker Tension, Bosses, Work Overload.”⁴³ The second and third highest causes of stress also have a relationship with work: these include “Money, Loss of Job, Reduced Retirement, Medical Expenses,” and “Health Crisis, Terminal or Chronic Illness” some of which may be caused by workplace injuries or illnesses. Furthermore, In 2015, health economists from business schools at Harvard and Stanford published an alarming article in which they estimated that “more than 120,000 deaths per year ... are associated with and may be attributable to how U.S. companies manage their work forces.”⁴⁴ As we highlighted in our 2019 *Dying at Work* report, work management factors such as the pace and amount of work (work pace), job control (workers’ ability to have a say in how they work), the design of tasks (repetitive vs. varied), among others, all contribute to working conditions that may amplify stressors to the detriment of worker health and safety.⁴⁵

Workers exposed to “work stressors” experience chronic stress, which causes damage to the physical and mental health of working people in the long run while affecting the well-being and quality of life of workers and their families in the short term. It can result in health issues such as cardiovascular disease, which is the number one cause of death in the U.S. and globally, resulting in over 800,000 deaths in the U.S. annually. In fact, scientists in occupational cardiology reached a consensus at an international meeting in 2013 stating: “10 to 20 percent of all causes of CVD deaths among the working-age populations can be attributed to work.”⁴⁶ This means that 80,000 to 160,000 deaths annually in the U.S. could be prevented if we were to address the work-related causes of CVD, which include work stressors.

The presence of new technologies may exacerbate current workplace stressors by intersecting with components such as the pace and demands of work which reflect human intervention or control. In addition, it is doubtful that technological innovation can address human-based workplace stressors such as retaliation and discriminatory promotion opportunities. Worksafe recommends that factors that contribute to workplace stress as outlined in our *Dying at Work* report be included in the Commission’s analysis to ensure that all aspects of workers’ experience is considered in developing solutions to emerging issues. See also Berkeley Labor Occupational Health Program, Public Testimony, Future of Work Commission, March 12, 2020.

(7) Prepare for jobs of the future by ensuring that workers receive adequate training.

In addition to the educational equity issues presented to the Commission, emphasis needs to be placed on the quality, frequency, and effectiveness of worker training. A consistent citation by Cal OSHA is for

⁴¹ U.S. Dept. of Health and Human Services, *Stress at Work*, NIOSH (1999) (Accessed March 11, 2020), <https://www.cdc.gov/niosh/docs/99-101/pdfs/99-101.pdf?id=10.26616/NIOSH PUB99101>.

⁴² The American Institute of Stress, *Stress Research*, (last visited March 11, 2020), <https://www.stress.org/stress-research>.

⁴³ *Ibid.*

⁴⁴ Goh et. al., *The Relationship Between Workplace Stressors and Mortality and Health Costs in the United States* 62 *Management Science* 608-628 (March 13, 2016), <https://www.gsb.stanford.edu/faculty-research/publications/relationship-between-workplace-stressors-mortality-health-costs-united>.

⁴⁵ *Dying at Work Report*, *supra* note 26 at 26-28.

⁴⁶ Tsutsumi, *Prevention and Management of Work-Related Cardiovascular Disorders*, 28 *Int J Occup Med Environ Health*, 4-7 (Jan. 2015), <http://ijomeh.eu/Prevention-and-management-of-work-related-cardiovascular-disorders,1940,0,2.html>.

lack of proper worker training. With emerging technologies, it is more important than ever to ensure that workers are receiving adequate training in a language that they understand, in order to properly do their job. In the fast-paced environment of some of these emerging workplaces where employers are incentivized to cut corners or enlist staffing agencies for their workforce, less importance is placed on properly preparing and ensuring that workers have the tools and safety equipment they need to do their job.

Workers have reported that they either did not receive any training to perform their job or received a seven minute safety video in English, a language of which they were not fluent, to then perform sometimes difficult and hazardous tasks. This cannot be the norm for the future. To ensure that we prioritize life and limbs, we need to hold employers accountable for taking the time to design and implement robust trainings, not once, but often.

Finally, though the phrase “Future of Work” is the current catch phrase to encompass all that will come, from our perspective, this discussion is also about the future of workers, and thus, should be framed as such.⁴⁷ Emerging technologies and the changing economy with its impact on job opportunity and job quality has wide-reaching impacts on the health of workers, their families, and their communities. Issues of health equity, race equity, and occupational health and safety are critical, foundational issues that must be considered in envisioning the new “social compact.” We stand prepared to provide our expertise and our assistance to the Commission and the California Labor and Workforce Development Agency to ensure that the workers’ voice is heard and that their rights are protected.

Respectfully submitted,

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Instituto Laboral de la Raza, www.ilaboral.org
La Raza Centro Legal, www.lrcl.org
National COSH, www.coshnetwork.org/
Santa Clara County Wage Theft Coalition, www.wagetheftcoalition.com
SoCal COSH, www.socalcosh.com
Unite Here, Local 2850, www.unitehere.org
Warehouse Worker Resource Center, www.warehouseworkers.org

⁴⁷ Gupta, et. al, *It's Not the 'Future of Work,' It's the Future of Workers That's in Doubt*, (Aug. 31, 2019) (Accessed March 12, 2020), <https://prospect.org/labor/future-work-future-workers-doubt>.