

Work-refusal safety laws serve employees poorly during pandemic

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Current work-refusal laws are out-of-step with modern workplaces and provide meager benefits to employees who decline to work when faced with risks involving chemicals, radiation and other microscopic or invisible hazards such as COVID-19, says research from Michael LeRoy, a professor of labor and employment relations at Illinois. Credit: L. Brian Stauffer

A new paper from a University of Illinois Urbana-Champaign expert in labor law shows that current work-refusal laws are out-of-step with modern workplaces and provided meager benefits to employees who have refused to work when risks involved chemicals, radiation and other microscopic or invisible hazards such as COVID-19.

An analysis comparing work-refusal cases from 1944-2020 with cases from 2020-21 finds new forms of work refusal shifting from traditional blue-collar jobs to service- and [health care](#)-based occupations, says research from Michael LeRoy, a professor of labor and employment relations at Illinois.

"An employee's fundamental right to refuse work due to abnormally dangerous work conditions has been recognized since the 1940s, and traces back to ancient Roman laws that provided a right of self-defense when a person's life was threatened. That idea has taken on new relevance during the COVID-19 pandemic," he said. "As many workers have been forced to choose between serving the public as a frontline worker to earn a living or risking serious illness or death, employers in hospitals, meatpacking plants, grocery stores and the like have put their workers in this vise."

In the study, LeRoy examined workers' right of self-preservation in the context of the novel coronavirus and investigated rulings from courts and agencies involving employees who refused to work when they believed their assignment posed a risk of death or serious injury.

The paper presents data on court and administrative rulings involving employees who were disciplined or quit after refusing to work due to concerns about death or injury. The cases that preceded the COVID-19 pandemic were concentrated in mining, construction and transportation. By contrast, the COVID-19-era cases span new occupations in [social services](#), education, law, health care, protective services, food

preparation and building cleaning.

"I conclude that work-refusal laws are out-of-date with today's workplace because they apply mostly to work refusal in mines, construction and trucking—male-dominated workplaces with only 10%-30% of female workers," LeRoy said. "Certainly, these laws achieve policy objectives when there is a good match between an industry-specific law and a physical hazard that a court or agency can readily comprehend—a falling roof in a mine, molten lead that splashes into a workspace or an underwater leak from an oil rig.

"But those industrial settings don't reflect changes in the economy that have expanded jobs in service and office sectors, or the growth of gig work that falls outside the scope of protections of work-refusal statutes. My paper shows structural problems with our work safety laws."

Before COVID-19, employees lost most work-refusal cases because laws such as the National Labor Relations Act, the Occupational Safety Health Act and others narrowly protected them from employer retaliation. In the past year, the Emergency Paid Sick Leave Act has afforded workers broader protections, but that law expired at the end of 2020.

"If COVID-19 mutations were to persist and evade vaccines, Congress might consider reviving the Emergency Paid Sick Leave Act," LeRoy said. "My research also underscores the possible utility of a federal paid sick leave law. For immunocompromised individuals, a paid sick leave law would obviate some of the need for these vulnerable people to refuse work in order to avoid consequential exposures to seasonal flu, measles and other upsurges in infectious diseases."

The paper also offers policy prescriptions to modernize worker protections.

"The Americans with Disabilities Act could be amended to say that an employee has the right to wear a mask at work as a presumptive reasonable accommodation, unless this creates an undue hardship for the employer," LeRoy said. "A narrow OSHA work-refusal rule could be broadened to include invisible exposures that are associated with COVID-19, carcinogens and other life-threatening conditions. Title VII could also be amended in response to severe forms of sexual and racial harassment, particularly workplace assaults, so that a victim's refusal to continue to work in conditions they perceive as unsafe is protected from employer indifference, inaction or retaliation for reporting.

"And gig workers, a growing segment of the workforce that is currently exempt from employment and labor laws, ought to be included in any work-refusal protections."

Amending those laws would seemingly address employee concerns about poor employer mitigation for COVID-19 but would also have longer impact for workers who are exposed to secondhand smoke, the flu and other aerosol hazards, LeRoy said.

"At some point, the pandemic will recede and the pattern of work refusal may revert to trends from 1944-2020, when it was invoked in more blue-collar occupations," he said. "But as COVID-19 shows, a virus can present risks that the traditional occupational safety laws will likely miss."

More information: Request a copy of the report, "Refusing work to avoid serious injury or death: An empirical study of legal protections before and during COVID-19," via email: pciciora@illinois.edu

Provided by University of Illinois at Urbana-Champaign

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