

WORLDWIDE RESPONSE TO COVID-19 THROUGH A LABOR AND EMPLOYMENT LAW LENS

CHRISTOPHER ELKO* & RICHARD A. BALES**

ABSTRACT

In the wake of the deadly Covid-19 pandemic of 2020, governments across the world were faced with a difficult balancing act. The methods of controlling the virus and protecting public health made standard labor procedures impossible. Many governments responded with a form of lockdown or quarantine, thus forcing large portions of the labor force to be temporarily or permanently unemployed. For those who were able and allowed to continue work, new safety precautions were needed. Each government responded with measures concerning labor issues differently based on the specific needs of their populations.

This article compares the various measures taken across the world in six different areas of labor law: workplace safety precautions, wage replacement, job retention, protection for underrepresented portions of the economy, child care laws, and the role of social partners in the decision-making process. This article also analyzes how these laws have been exploited, the disparate impact the laws have had on women and lower social classes, and how the role of social partners such as labor unions may be affected moving forward.

INTRODUCTION

In the early months of 2020, the world was faced with a deadly pandemic, the likes of which had not been seen since at least 2009.¹ SARS-CoV-2 (Covid-19) spread rapidly throughout the world's population.² As the world scrambled to understand and mitigate the

*Law student, The University of Akron School of Law

**Professor of Law, Ohio Northern University, Pettit College of Law (visiting 2020–21 Peking School of Transnational Law, Shenzhen, Peoples Republic of China).

¹ 2009 H1N1 Pandemic (H1N1pdm09 virus), CDC, <https://www.cdc.gov/flu/pandemic-resources/2009-h1n1-pandemic.html> [<https://perma.cc/JU2D-BB84>] (last modified June 11, 2019) (“Additionally, CDC estimated that 151,700 [to] 575,400 people worldwide died from (H1N1)pdm09 virus infection during the first year the virus circulated.”).

² See Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (June

transmission and effects of the virus, countries promoted social isolation and implemented varying degrees of lockdowns to control the spread of the virus.³ Some countries moved swiftly in their response to the crisis,⁴ while others chose to take a wait-and-see approach, hoping the spread of the virus would not be as bad as originally thought by experts.⁵ Several countries chose to make mere recommendations rather than enact mandatory restrictions.⁶ By April 3, 2020, over ninety countries and territories were under some form of lockdown or quarantine, accounting for 3.9 billion people—roughly half of the world's population.⁷

The inability of citizens to safely leave their homes and go to work took a heavy toll on economies across the globe. Some governments shut down large sectors of their workforce completely, while others took a more piecemeal approach by allowing some businesses to remain open based on their risk levels. Almost all governments deemed portions of their labor force “essential” and allowed those businesses to continue operating and employees to continue working. With individual governments’ varied responses to the crisis came the need for varied legislation to protect those who were affected by it. As unemployment spiked, it became clear that measures were needed both to protect workers who were still active in the work force and to replace the wages for those who were unable to work.⁸ Each country responded based on the needs of their citizens and the financial capacity of the country.

9, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html> [https://perma.cc/Z9SB-PZGW] (noting that the government in Wuhan, China confirmed the existence of Covid-19 on December 31, 2019, and by April 26, 2020, there were nearly three million cases worldwide).

³ See Daniel Dunford et al., *Coronavirus: The World in Lockdown in Maps and Charts*, BBC NEWS (Apr. 7, 2020), <https://www.bbc.com/news/world-52103747> [https://perma.cc/MJP3-JY72].

⁴ *Id.* (illustrating that numerous countries, such as Guyana, Uruguay, and Belize, instituted lockdowns before the first case of Covid-19 was diagnosed within their borders).

⁵ *Id.* (illustrating that countries such as the United States, France, and Germany waited weeks or months after the first reported case to institute a lockdown).

⁶ *Id.* (illustrating that some countries, such as Sweden, instituted suggested guidelines rather than mandatory lockdown orders).

⁷ Alasdair Sandford, *Coronavirus: Half of Humanity Now on Lockdown as 90 Countries Call for Confinement*, EURONEWS (Apr. 3, 2020), <https://www.euronews.com/2020/04/02/coronavirus-in-europe-spain-s-death-toll-hits-10-000-after-record-950-new-deaths-in-24-hou> [https://perma.cc/4APC-DRA7].

⁸ See Giles Clark, *COVID-19: Impact Could Cause Equivalent of 195 Million Job Losses, Says ILO Chief*, UN NEWS (Apr. 8, 2020), <https://news.un.org/en/story/2020/04/1061322> [https://perma.cc/S27C-K5FJ] (estimating that 2.7 billion workers had already been affected by the crisis, with a potential for 195 million job losses).

This article will compare various countries' labor law responses to Covid-19 and analyze the issues the crisis has exposed in existing labor systems. Section I will provide a background of the Covid-19 pandemic and discuss its profound effect on labor laws. Section II will compare and contrast individual approaches taken by countries to address the crisis in six major areas of labor law: workplace safety initiatives, wage replacement policies, job retention, protection for underrepresented portions of the economy, child care laws, and the role of social partners in the negotiations of legislation. Section III will analyze several themes common across the labor responses from multiple countries. Section IV concludes.

I. BACKGROUND: COVID-19 PANDEMIC OF 2020

The first case of Covid-19 was discovered in Wuhan City, China in December 2019.⁹ While the exact origin of the virus is unknown, it is thought to have started at a wholesale food market.¹⁰ Subsequent testing suggests that the virus is zoonotic, most likely contracted from local bat populations.¹¹ By late December 2019, cases began arising at Wuhan area hospitals where dozens of patients were being treated for pneumonia-like symptoms.¹² On January 3, 2020, the Chinese government officially notified the World Health Organization of an outbreak of an unknown disease.¹³ On January 11, 2020, the first known death related to Covid-19 was reported.¹⁴

Nine days later, on January 20, 2020, cases were confirmed in Thailand, Japan, and South Korea; the first confirmed case in the United States came on January 21.¹⁵ As the virus began its rapid spread across the globe, it became clear that drastic measures might be necessary to control the outbreak. On January 23, 2020, the national government of the People's Republic of China isolated the nearly eleven million residents of Wuhan from the rest of the country in order to stop

⁹ *Coronavirus Disease 2019 (COVID-19) Situation Report – 94*, WORLD HEALTH ORGANIZATION [WHO] (2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0_2#:~:text=Retrospective%20investigations%20by%20Chinese%20authorities,%2C%20some%20did%20not [<https://perma.cc/ZEU3-2P9X>].

¹⁰ *Id.*

¹¹ *Id.*

¹² Taylor, *supra* note 2.

¹³ *Listings of WHO's Response to COVID-19*, WORLD HEALTH ORGANIZATION [WHO], <https://www.who.int/news-room/detail/29-06-2020-covidtimeline> [<https://perma.cc/J7W4-CXKY>] (last updated Dec. 28, 2020).

¹⁴ Taylor, *supra* note 2.

¹⁵ *Id.*

the spread.¹⁶

Covid-19 was officially declared a global health emergency by the World Health Organization on January 30, 2020.¹⁷ By March 1, 2020, there were fifty-six countries with confirmed cases and nearly 85,000 cases world-wide.¹⁸ Those numbers continued to escalate, and the World Health Organization officially declared Covid-19 a pandemic on March 11, 2020.¹⁹

What makes Covid-19 especially problematic from a health and labor perspective is the manner in which it spreads. At the time that many initial labor decisions had to be made there was no known vaccine to prevent the spread of the virus.²⁰ Knowledge of the virus was in its infancy, and it was just being realized that the virus was primarily spread by person-to-person contact, particularly when people are within six feet of one another.²¹ The primary means of transmission is through respiratory droplets produced when someone coughs, talks, or sneezes.²² To complicate matters further, at the time it was unknown whether Covid-19 could be transmitted through asymptomatic carriers.²³

Advice on the best way to minimize the spread of Covid-19 has been inconsistent from different organizations. In the United States, the Centers for Disease Control and Prevention has recommended frequent hand washing; the wearing of cloth masks while in close proximity to others; and the practice of “social distancing,” which requires that individuals remain six feet from one another.²⁴ The World Health Organization has provided similar advice for social distancing but has been inconsistent with its guidance for wearing masks in public.²⁵ The

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Alex Marshall, *Making a Plague Movie, With Coronavirus on the Doorstep*, N.Y. TIMES (Mar. 1, 2020), <https://www.nytimes.com/2020/03/01/world/europe/coronavirus-movie-italy-decameron.html> [<https://perma.cc/UX5G-TPHH>].

¹⁹ *Listings of WHO's Response to COVID-19*, *supra* note 13.

²⁰ *COVID-19: How to Protect Yourself & Others*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> [<https://perma.cc/W9XH-HWLR>] (last updated Feb. 4, 2021) [hereinafter *CDC Memo*].

²¹ *Id.*

²² *Id.*

²³ Jacqueline Howard, *Coronavirus Spread by Asymptomatic People 'Appears to be Rare,' WHO Official Says*, CNN (June 9, 2020), <https://www.cnn.com/2020/06/08/health/coronavirus-asymptomatic-spread-who-bn/index.html> [<https://perma.cc/RGV3-GAZZ>].

²⁴ *CDC Memo*, *supra* note 20.

²⁵ See Associated Press, *WHO Changes COVID-19 Mask Guidance: Wear One if You Can't Keep Your Distance*, NBC NEWS (June 5, 2020), <https://www.nbcnews.com/health/health-news/who-changes-covid-19-mask-guidance-wear-one-if-you-n1226116>

inconsistency of advice by various health organizations left governments and employers unsure of what means are necessary to safely resume economic activities. Additionally, the methods by which the Covid-19 virus spreads and the apparent need for social distance or isolation to contain the virus are the driving forces behind the current labor crisis. With such a large proportion of the world's workforce dependent on face-to-face interaction for work, requirements for social distancing, let alone social isolation, make high unemployment rates inevitable.

II. GOVERNMENTAL RESPONSES THROUGH A LABOR AND EMPLOYMENT LAW LENS

Each country has reacted differently in response to the labor crisis caused by the Covid-19 pandemic. Some countries proposed wide-scale, sweeping legislation intended to cover large sectors of the labor force, while others reacted with more narrow measures aimed at specific issues. In some instances, several countries in the same geographic area adopted similar approaches, while other geographic areas saw individualistic approaches. There are six common themes that all countries have attempted to address: workplace safety initiatives, wage replacement policies, job retention, child care for workers, protections for underrepresented sectors of the economy, and the role of social partners in developing initiatives. Each of these six areas will be discussed in turn by comparing various countries' approaches.

A. Workplace Safety Initiatives

While much of the world's workforce was forced into temporary layoffs or permanent unemployment, sectors of each economy were required to continue working amid the global pandemic. Large numbers of workers deemed "essential" had to risk exposure to Covid-19 to maintain certain basic operations of society.²⁶ Many such workers fell ill and succumbed to the virus.²⁷ Affected essential workers include highly paid medical professionals, grocery store clerks earning

[<https://perma.cc/P36R-BFSX>].

²⁶ See Celine McNicholas & Margaret Poydock, *Who are Essential Workers?*, ECON. POL'Y INST.: WORKING ECONS. BLOG (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/> [<https://perma.cc/7FRH-YCFD>] (discussing twelve major essential work industries in the United States that consist of over fifty-five million workers).

²⁷ See Christina Jewett et al., *Exclusive: Nearly 600 US Health Workers Died of Covid-19 - and the Toll is Rising*, THE GUARDIAN (June 6, 2020), <https://www.theguardian.com/us-news/2020/jun/06/us-health-workers-dying-coronavirus-stats-data> [<https://perma.cc/N33R-UU8N>].

minimum wage, and many others.²⁸

Countries seeking to protect their essential workers were faced with a bifurcated choice. The first, and safest, choice was to require workers to work from home if possible. When this was not possible—as for front line responders, agricultural workers, transit workers, and grocery workers—physical workplace safety initiatives needed to be put into place.²⁹

Remote work, or “telework,” quickly became a popular choice for those industries that could afford to continue their business operations without the physical presence of their workforce.³⁰ In some countries, such as the United States, telework was increasingly popular prior to the pandemic due to companies’ abilities to decrease overhead costs and hire geographically distant employees.³¹ This option, however, largely depended on the technological capabilities of each country and the percentage of the work force in a country that was able to operate remotely.³² Shaky technological infrastructure, such as subpar internet services, made remote work an implausible option for some countries.³³

Developing countries faced harsh impacts, as some did not have the infrastructure in place to support remote work and also had a high percentage of the workforce employed in jobs that were not conducive to telework.³⁴ For example, India, despite not having the technological capabilities to support vast numbers of its workforce working remotely, instituted a full lockdown of its 1.3 billion citizens.³⁵ India also employs one of the highest number of migrant workers in the world, estimated to be at over 100 million.³⁶ This combination led to a dramatic

²⁸ See Marc Kagan, “Essential” Workers are Dying, SLATE (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/essential-workers-deaths-underclass.html> [https://perma.cc/62S8-RRWK].

²⁹ *Id.*

³⁰ See Melanie Uy, *What Does Telework Mean?*, LIFEWIRE (last updated Apr. 24, 2020), <https://www.lifewire.com/what-is-telework-2377427> [https://perma.cc/BM9G-3E8W]; Bhaskar Chakravorti & Ravi Shankar Chaturvedi, *Which Countries Were (And Weren’t) Ready for Remote Work?*, HARV. BUS. REV. (Apr. 29, 2020), <https://hbr.org/2020/04/which-countries-were-and-werent-ready-for-remote-work> [https://perma.cc/S8BW-U7NT].

³¹ See Adam Hickman & Jennifer Robison, *Is Working Remotely Effective? Gallup Research Says Yes*, GALLUP (Jan. 24, 2020), <https://www.gallup.com/workplace/283985/working-remotely-effective-gallup-research-says-yes.aspx> [https://perma.cc/V84J-XCCR].

³² See Chakravorti & Chaturvedi, *supra* note 30.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See India Must Follow Supreme Court Orders to Protect 100 Million Migrant Workers: UN Rights Experts, UN NEWS (June 4, 2020), <https://news.un.org/en/story/2020/06/>

spike in the unemployment rate, from approximately 7% pre-Covid-19 to approximately 24% by May 2020.³⁷

Some countries were innovative in their implementation of remote work. On April 1, 2020, Panama instituted a quarantine where only 50% of the population was allowed to be outside at a time, alternating days of the weeks by gender.³⁸ To accommodate the restrictions, the government adopted Law No. 126 to allow for telework in Panama.³⁹ In addition to allowing for telework, the government also issued Executive Decree No. 78, which required employers to inform employees about the ability to telework.⁴⁰ While Panama issued governmental orders to allow for, and inform employees of, remote work, Italy relaxed its standards under previous orders to allow more participants to work remotely.⁴¹ Under Act No. 81/2017, enacted years prior to the Covid-19 outbreak, regulations on Italy's version of remote work (known as "agile work") required individual agreements between employers and employees before agile work could commence.⁴² These agreements covered performance outside of the office, methods for ensuring control by the employer, tools used by the employee, and regulations regarding rest for the employee and the right to disconnect.⁴³ Post Covid-19 decrees loosened these restrictions to allow for an easier transition to agile work for the Italian labor force.⁴⁴

For workers deemed essential but for whom telework was unavailable, many governments instituted policies that decreased the number of individuals permitted to be present in the workplace. Israel, after initially calling for no disruption to its economic activity, began a

1065662 [<https://perma.cc/BAA5-WMXM>].

³⁷ Deccan Herald, *Impact on Unemployment Rate Due to the Coronavirus (COVID-19) Lockdown in India from January 2020 to January 2021*, STATISTA (Feb. 19, 2021), <https://www.statista.com/statistics/1111487/coronavirus-impact-on-unemployment-rate/> [<https://perma.cc/MSW3-FNVH>].

³⁸ Tequila J. Brooks, *COVID-19 and Labour Law: Panama*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10799/10707> [<https://perma.cc/4J7S-MN47>] (noting that women were allowed outside on Mondays, Wednesday, and Fridays, and men on Tuesdays, Thursdays, and Saturdays).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Chiara Gaglione et al., *COVID-19 and Labour Law: Italy*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 3, <https://illej.unibo.it/article/view/10767/10677> [<https://perma.cc/4J7S-MN47>].

⁴² See Feliciano Iudicone, *Italy: New Rules to Protect Self-Employed Workers and Regulate ICT-Based Mobile Work*, EUROFOUND (Aug. 2, 2017), <https://www.eurofound.europa.eu/publications/article/2017/italy-new-rules-to-protect-self-employed-workers-and-regulate-ict-based-mobile-work> [<https://perma.cc/TCK8-CW4W>].

⁴³ *Id.*

⁴⁴ Gaglione et al., *supra* note 41, at 3.

rotating percentage system for allowing employees into work spaces.⁴⁵ The first attempt at limiting employees allowed for no more than ten workers or 30% of the normal workforce, whichever number was less, to be present at one time.⁴⁶ Israel subsequently increased the restrictions, allowing only 15% of the normal workforce to be present at one time.⁴⁷ This attempt at limiting exposure to Covid-19 serves as a prime example of the delicate balance between health and labor initiatives during the pandemic. While a cap on the allowable number of employees can help reduce spread through proper spacing, many businesses could not sustain their operations with a maximum of ten employees present.⁴⁸ Some workplaces could still provide partial services under these requirements, but ultimately the employee cap has been attributed to a spike in unemployment.⁴⁹

In contrast to the rotating percentage system employed by Israel to minimize the number of employees present at a given time, some countries opted to grant additional paid leave for various reasons to encourage workers to stay home. Russia took an extreme measure by declaring a “Nationwide Non-Working Week” from March 30, 2020, to April 3, 2020.⁵⁰ Before the expiration of the non-working week, on April 2, 2020, the government issued a presidential decree titled “On Measures Insuring Sanitary and Epidemiological Well-Being of the People of the Russian Federation Following the Spread of the New Coronavirus Infection (COVID-19).”⁵¹ This decree extended the non-working days for Russian citizens from April 4, 2020, through April 30, 2020.⁵² During this non-working period, with the exception of essential services, all business activities were ceased and employers were required to continue paying their employees.⁵³

Other countries granted additional time off for employees through less drastic measures. Iran reduced its working hours and encouraged

⁴⁵ See Einat Albin & Guy Mundlak, *COVID-19 and Labour Law: Israel*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10794/10701> [<https://perma.cc/4J7S-MN47>].

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* (noting that employment rose from 3.5% in early 2020 to approximately 25% by March of 2020).

⁵⁰ Iuliia Ostrovskaya, *COVID-19 and Labour Law: Russian Federation*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 1, <https://illej.unibo.it/article/view/10791/10721> [<https://perma.cc/4J7S-MN47>].

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1–2.

shift work in the public sector of its economy.⁵⁴ The private sector of the economy was not regulated, leaving the decision of whether to shut down squarely on the shoulders of the employers.⁵⁵ Croatia closed all non-essential businesses and reduced the opening hours of essential stores to limit contact between employees and customers.⁵⁶ Panama attempted to minimize the risk to certain portions of its work force by allowing them extended leave.⁵⁷ Pregnant workers, workers with chronic illnesses, and workers over the age of seventy were allowed to utilize vacation time before it was officially accumulated.⁵⁸

For those essential workers who could not utilize telework and were not granted additional leave, physical measures could be put in place to increase workplace safety, although these measures were not as effective as complete isolation.⁵⁹ Given the method of transmission of the virus, physical distance and cleanliness in the workspace became paramount.⁶⁰ Several countries took additional steps to protect their workforce. In South Africa, employers implemented engineering measures, such as high-efficiency air filters, in addition to more standard physical measures, such as replacing face-to-face meetings with virtual meetings and providing gloves to employees.⁶¹ In Ireland, The National Standards Authority of Ireland published an official guide that “specifie[d] requirements to implement, maintain and improve an organization’s ability to protect against, prepare for, respond to and recover from COVID-19 related disruptions”⁶² To comply with these official recommendations, businesses were provided €2500

⁵⁴ Elaheh Zabehe, *COVID-19 and Labour Law: Iran*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, <https://illej.unibo.it/article/view/10770/10679> [<https://perma.cc/4J7S-MN47>].

⁵⁵ *Id.*

⁵⁶ See Ivana Grgurev, *COVID-19 and Labour Law: Croatia*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 3, <https://illej.unibo.it/article/view/10773/10682> [<https://perma.cc/4J7S-MN47>].

⁵⁷ Brooks, *supra* note 38, at 2.

⁵⁸ *Id.*

⁵⁹ See Anthony Sarna & Lauren Novak, *COVID-19 Workplace Safety: Tips for Employers with Essential Employees*, NAT’L L. REV. (Apr. 9, 2020), <https://www.natlawreview.com/article/covid-19-workplace-safety-tips-employers-essential-employees> [<https://perma.cc/Q9DR-CUC3>].

⁶⁰ ILO, *Practical Guidance: Safe Return to Work: Ten Action Points*, at 2–3 (May 2020), https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—safework/documents/instructionalmaterial/wcms_745541.pdf [<https://perma.cc/ATW6-SEGE>].

⁶¹ Stefan van Eck, *COVID-19 and Labour Law: South Africa*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 3, <https://illej.unibo.it/article/view/10780/10689> [<https://perma.cc/4J7S-MN47>].

⁶² David Mangan, *COVID-19 and Labour Law: Ireland*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 5, <https://illej.unibo.it/article/view/10771/11149> [<https://perma.cc/4J7S-MN47>].

vouchers for workplace improvement.⁶³ While telework provides the best option for long-term employment while in isolation, governments have used a number of methods to increase safety at workplaces during the pandemic.

B. Wage Replacement Policies

Workers not deemed essential faced furloughs, layoffs, or terminations. Many countries responded with their own variations of a wage replacement scheme based on the needs of their population, their ability to pay, and the country's individual unemployment numbers. Some countries responded with aggressive schemes in the hopes of stimulating the economy, while others attempted to avoid overtaxing already strained unemployment systems. As the outbreak continued, countries quickly realized that immediate measures would need to be taken. Some countries were hit significantly harder than others; some countries faced hardships only in particular sectors of the economy.⁶⁴ In India, for example, one survey showed that 90% of the construction workers in the country "had lost their source of income due to the lockdown."⁶⁵ Additionally, a "survey of stranded workers estimated that 89% of workers interviewed hadn't been paid by their employers up to the third week of lockdown and 50% of such workers had less than a day's food grains left with them."⁶⁶ More than 300 deaths were reported due to starvation within India by mid-April.⁶⁷

China responded with a highly aggressive measure requiring employers to pay full wages "even [if the] workers [were] unable to work due to mandatory quarantine or other government-imposed mandatory measures."⁶⁸ The government left employers some wiggle room by stating that if a business was experiencing "operational difficulties"

⁶³ *Id.*

⁶⁴ Harry Kretchmer, *How Coronavirus Has Hit Employment in G7 Economies*, WORLD ECON. F. (May 13, 2020), <https://www.weforum.org/agenda/2020/05/coronavirus-unemployment-jobs-work-impact-g7-pandemic/> [<https://perma.cc/6KCX-HPY>] (noting that within the G7 there was a wide range of unemployment rates in April 2020, from 13% in Canada to 2.5% in Japan).

⁶⁵ Saurabh Bhattacharjee, *COVID-19 and Labour Law: India*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10879/10782> [<https://perma.cc/4J7S-MN47>].

⁶⁶ *Id.* at 2–3.

⁶⁷ *Id.* at 3 (citing Shivam Vij, *More than 300 Indians have Died of the Coronavirus, and Nearly 200 of the Lockdown*, THE PRINT (Apr. 13, 2020), <https://theprint.in/opinion/more-than-300-indians-have-died-of-the-coronavirus-and-nearly-200-of-the-lockdown/400714/> [<https://perma.cc/3G9M-8W9A>]).

⁶⁸ Wenwen Ding, *COVID-19 and Labour Law: China*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 1, <https://illej.unibo.it/article/view/10786/10694> [<https://perma.cc/4J7S-MN47>].

due to the pandemic, it could “negotiate with employees to cut wages.”⁶⁹ The government offered several options for “temporarily unemployed persons” who needed unemployment benefits.⁷⁰ For those who would not regularly be eligible for unemployment benefits or had already exhausted their unemployment benefits, an additional six months’ worth of benefits were available, albeit at a reduced rate.⁷¹

The United States also provided an aggressive wage replacement scheme.⁷² The United States did not institute a federal lockdown or quarantine, but rather opted for a state-by-state approach to the crisis.⁷³ Despite the fragmented approach to quarantine and economic shut-down, the approach to wage replacement was federal.⁷⁴ The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, instituted on March 27, 2020, provided eligible Americans with \$600 per week for four months in addition to state unemployment benefits for which an individual was eligible.⁷⁵ On top of the enhanced unemployment benefits for displaced workers, the CARES Act provided \$1,200 “per qualifying adult, with an additional \$500 per qualifying” child under the age of sixteen.⁷⁶ In addition to the CARES Act, the United States also passed a second bill known as the Family First Coronavirus Response Act.⁷⁷ For private employers of less than 500 employees, in addition to certain public employers, this Act provides for an additional eighty hours of paid sick leave due to a localized quarantine, or eighty hours of paid sick leave at two-thirds the employee’s salary to care for an individual subject to a quarantine.⁷⁸

As opposed to providing direct financial relief for employees who were laid off or terminated, some governments opted to create breaks for individuals who needed relief. Some countries attempted to make the receipt of unemployment benefits easier, while others used alternative methods to attempt to supplement incomes. In France, the

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 1–2.

⁷² See generally Richard Bales, *COVID-19 and Labour Law: U.S.*, 13 *IT. LAB. L. E-J.*, no. 1S, 2020, at 1, <https://illegj.unibo.it/article/view/10807/10714> [<https://perma.cc/4J7S-MN47>].

⁷³ *Id.* at 1.

⁷⁴ *Id.* at 2.

⁷⁵ *Id.*

⁷⁶ Ryan Guina, *Second Stimulus Check Timeline—Everything We Know About A Possible Second Stimulus Check*, *FORBES* (June 30, 2020), <https://www.forbes.com/sites/ryanguina/2020/06/30/second-stimulus-check-timeline-everything-we-know-about-the-next-stimulus-check/#3e963533b1b0> [<https://perma.cc/QNH2-3U26>].

⁷⁷ Bales, *supra* note 72, at 2.

⁷⁸ *Id.* at 2–3.

government agreed to delay recent reforms to the unemployment system until September 2020.⁷⁹ The reforms would have made it more difficult for workers to collect unemployment benefits.⁸⁰ Iran provided different means of support for different sectors of the economy.⁸¹ For instance, teachers' salaries were ordered to be paid through the end of the scholastic year, even though school was no longer in session.⁸² Additionally, loans at 4% interest were offered to construction workers, seasonal laborers, street vendors, taxi drivers, and restaurant staff who had been laid off.⁸³ Families with no income received monetary vouchers.⁸⁴

Several countries have faced criticism for the income supplementation schemes that were—or were not—employed to combat the economic effects of the pandemic. In India, the Central Government announced that it would pay 24% of wages under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.⁸⁵ This percentage under the Act would be paid only for three months and would apply only to "establishments having one hundred or fewer employees" and in which 90% of the employees earned monthly wages of less than Rs.15000 (\$21.16).⁸⁶ This provision covered only a small portion of India's massive workforce.⁸⁷ In the United Kingdom, the statutory rate for sick pay was already set at a very low amount—less than 30% of the national minimum wage.⁸⁸ The government made one adjustment to the standard sick leave policy that benefitted some workers but left others vulnerable: the eligibility to collect sick leave was allowed to begin on the first day of use for those self-isolating due to suspected Covid-19 exposure.⁸⁹ The first day coverage did not, however, extend to those isolating simply because they were considered to be of a

⁷⁹ Nicolas Moizard, *COVID-19 and Labour Law: France*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10782/10690> [<https://perma.cc/4J7S-MN47>].

⁸⁰ *Id.*

⁸¹ See generally Zabeh, *supra* note 54.

⁸² *Id.* at 1.

⁸³ *Id.* at 2.

⁸⁴ *Id.* (noting that individuals with no income received at least 2,000,000 IR Rial per month (\$22.17), with a maximum of 6,000,000 IR Rial per month (\$66.50) for families of five or more).

⁸⁵ Bhattacharjee, *supra* note 65, at 4.

⁸⁶ *Id.*

⁸⁷ *Id.* at 5.

⁸⁸ Tonia Novitz, *COVID-19 and Labour Law: United Kingdom*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 3, <https://illej.unibo.it/article/view/10808/10712> [<https://perma.cc/4J7S-MN47>].

⁸⁹ *Id.*

vulnerable class.⁹⁰ Those individuals were forced to wait until the fourth day of missing work before they were eligible to receive paid sick leave.⁹¹

Success at handling the health crisis does not necessarily equate to success in the economic crisis. Vietnam has been heralded by medical professionals for its response to the pandemic from a healthcare standpoint.⁹² Despite medical successes, an estimated twenty million people were economically affected by the crisis.⁹³ Under the Vietnamese unemployment system, a worker must be jobless for fifteen days before being able to file for benefits.⁹⁴ If approved, the worker will be eligible for 60% of her average wages for the previous six-month period.⁹⁵ Estimates show that the average unemployed Vietnamese worker was receiving VND4.1 million (\$178) per month.⁹⁶ In April 2020, the Vietnamese government announced a VND62 trillion (\$2.6 billion) economic relief package for unemployed workers.⁹⁷ Due to the high volume of applicants, local confusion as to who may receive the money, and a large amount of paperwork needed to prove lost wages, many were ineligible or did not even apply for relief due to the difficulty.⁹⁸ For those who did receive the money, villages could force their residents to remit a percentage as “coffee money,” which was to be used for “coffee and sharing with less unfortunate [sic] families who do not qualify for financial assistance.”⁹⁹

The long-term effects of the measures taken across the globe to supplement the incomes of those individuals who were laid off or terminated have not yet been realized. With the majority of businesses

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See Era Dabla-Norris et al., *Vietnam's Success in Containing COVID-19 Offers Roadmap for Other Developing Countries*, IMF NEWS (June 29, 2020), <https://www.imf.org/en/News/Articles/2020/06/29/na062920-vietnams-success-in-containing-covid19-offers-roadmap-for-other-developing-countries> [https://perma.cc/9VUR-6Z3T].

⁹³ Dat Nguyen & Hoang Phuong, *With Jobs Lost to Covid-19, Vietnamese Struggle to Make Ends Meet*, VNEXPRESS INT'L (June 17, 2020), <https://e.vnexpress.net/news/business/economy/with-jobs-lost-to-covid-19-vietnamese-struggle-to-make-ends-meet-4116361.html> [https://perma.cc/V53F-GR6U].

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Hoang Tao et al., *Provinces Mishandle Aid Given to People Affected by Pandemic*, VNEXPRESS INT'L (June 13, 2020), <https://e.vnexpress.net/news/news/provinces-mishandle-aid-given-to-people-affected-by-pandemic-4114147.html> [https://perma.cc/M825-25YZ].

⁹⁸ Nguyen and Phuong, *supra* note 93.

⁹⁹ Tao et al., *supra* note 97.

only now returning to full operations, it is difficult to assess how the incentives have affected personal spending. With unemployment in many countries at an all-time high, the economic impact will be felt well into the future. Governments will have to adjust their philosophies on wage replacement measures based on limited initial data.

C. Job Retention

While temporary wage replacement schemes needed to be implemented to alleviate the short-term monetary needs of employees who had been laid off or terminated, perhaps more important were the measures taken to ensure that employees had jobs to return to when the health crisis ended. Again, a wide variety of schemes were implemented in an attempt to avoid a long-term unemployment crisis. Almost all governments made at least some effort to put job retention measures into place. Israel stands out as perhaps the one country that refused to take any measures to encourage the continuation of employment.¹⁰⁰

Some countries deployed short-time working schemes, already well known throughout Europe as a method for combatting layoffs and high unemployment numbers, for the current crisis. Many European nations put forth short-time work schemes during previous economic downturns with varying levels of success.¹⁰¹ Germany was one of the countries to initially deploy short-time work in an attempt to quell long-term unemployment.¹⁰² Under this scheme, German law allowed for businesses facing economic hardships to reduce the working time of employees rather than to terminate them.¹⁰³ Up to 67% of the wages lost due to the reduction in working hours would then be replaced by the German labour administration.¹⁰⁴ This theory of job retention planning was used by Germany previously in 2008 and 2009 during the global financial crisis.¹⁰⁵ It has not, however, been tested on the scale expected to result from the Covid-19 crisis.¹⁰⁶

¹⁰⁰ Albin & Mundlak, *supra* note 45, at 3–4.

¹⁰¹ See generally Pierre Cahuc, *Short-Time Work Compensation Schemes and Employment*, IZA WORLD OF LAB. (May 2019), <https://wol.iza.org/articles/short-time-work-compensations-and-employment/long> [<https://perma.cc/57T2-8BJA>].

¹⁰² Rüdiger Krause & Jonas Walter Kühn, *COVID-19 and Labour Law: Germany*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illeg.unibo.it/article/view/10768/10678> [<https://perma.cc/4J7S-MN47>].

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (noting that from 2009 to 2011, approximately 1.5 million people used the short-time work scheme, with estimates of 2.3 to 5 million short-time workers in 2020).

Sweden enacted the “Short Time Work Allowance Act,” which allowed employees to be furloughed instead of terminated.¹⁰⁷ Under the Act, employers could reduce an employee’s work time by 60%, while still allowing the employee to earn 92.5% of wages.¹⁰⁸ The Swedish government subsidized the majority of the wage difference, with the remainder split between the employer and the employee.¹⁰⁹ France also issued a governmental order allowing for short-time work.¹¹⁰ France’s plan cancelled the financial costs to the employer while covering 70% of the employee’s previous salary.¹¹¹

Other governments put into place tax incentives or subsidies aimed at reducing costs for employers and allowing them to retain employees. Vietnam allowed for 0% interest, collateral-free loans for up to twelve months for employers that had already paid at least 50% of their employees’ salaries from April to June 2020.¹¹² South Africa allowed for a four-month payment deferral of 20% on taxes deducted from employees’ salaries.¹¹³ Australia put forth an A\$130 billion “Job-Keeper” plan.¹¹⁴ The plan allowed businesses with a 30% reduced turnover to obtain a wage subsidy of A\$1500 per fortnight for each retained employee.¹¹⁵ The Netherlands provided support for businesses suffering at least 20% turnover and increased the amount of support given proportional to the amount of the turnover.¹¹⁶ For businesses that suffered 100% loss of turnover, the government would cover 90% of the wage costs.¹¹⁷ Upon application for the funds, the employer was required to commit not to terminate employment contracts for economic

¹⁰⁷ Caroline Johansson, *COVID-19 and Labour Law: Sweden*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10774/10724> [<https://perma.cc/4J7S-MN47>].

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Moizard, *supra* note 79, at 1.

¹¹¹ *Id.* at 1–2.

¹¹² Dezan Shira et al., *COVID-19: Vietnam Issues Financial Assistance for Employers, Employees*, VIET. BRIEFING (Apr. 28, 2020), <https://www.vietnam-briefing.com/news/covid-19-vietnam-issues-financial-assistance-employers-employees.html/> [<https://perma.cc/N4XV-85RU>].

¹¹³ van Eck, *supra* note 61, at 4.

¹¹⁴ Anthony Forsyth, *COVID-19 and Labour Law: Australia*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10812/10719> [<https://perma.cc/4J7S-MN47>].

¹¹⁵ *Id.* at 2–3.

¹¹⁶ Hanneke Bennaars & Beryl ter Haar, *COVID-19 and Labour Law: The Netherlands*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illej.unibo.it/article/view/10779/11130> [<https://perma.cc/4J7S-MN47>].

¹¹⁷ *Id.*

reasons.¹¹⁸ Once this commitment was made, 80% of the funds were forwarded to the business to provide immediate relief.¹¹⁹ After the actual loss of turnover, the amount was recalculated and adjustments could be made.¹²⁰

The United States passed a multifaceted and comprehensive job retention plan. Under the CARES Act, the United States attempted to retain jobs in a manner that benefited both employees and employers.¹²¹ First, the CARES Act allows for workers who are temporarily laid off to collect unemployment benefits on the theory that temporarily furloughing workers will allow employers to bring back their employees at a later date and rather than hire and train new employees.¹²² A second aspect of the CARES Act that encourages the employee retention is the business loan program.¹²³ The Act made \$450 billion in emergency loans available to businesses with the requirement that staffing be maintained through September 2020.¹²⁴ Partially forgivable loans were also an option under the CARES Act for companies with fewer than 500 workers.¹²⁵ These small business loans became wildly popular and were subsequently amended and renewed several times to help keep businesses afloat and employees on the payroll. In June 2020, the bill was amended to allow for more flexibility for business owners in the percentage of the loan that needed to be used to pay workers; the amendment also extended the timeframe to use the loans from eight weeks to twenty-four weeks.¹²⁶ The bill was extended on July 1, 2020, allowing for small businesses to apply for funds through August 8, 2020.¹²⁷

The method of job retention that proves to be most effective will not be realized until the health crisis is over and employees fully return to work, such that true unemployment numbers may be judged against the measures taken by governments. Whether the various breaks and

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Bales, *supra* note 72, at 1–2.

¹²² *Id.* at 2.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Jonathan Nicholson, *Trump Signs Bill Changing Paycheck Protection Program into Law*, MARKETWATCH (June 6, 2020), <https://www.marketwatch.com/story/senate-oks-tweaks-to-small-business-lending-program-bill-goes-to-trump-for-signature-2020-06-03> [<https://perma.cc/WV5S-2LT5>].

¹²⁷ Phil Mattingly, *House Passes Small Business Loan Paycheck Protection Program Extension by Unanimous Consent*, CNN (July 1, 2020), <https://www.cnn.com/2020/07/01/politics/ppp-loan-extension-passes-house/index.html> [<https://perma.cc/T93T-YLNJ>].

advantages given to businesses were enough to keep them afloat during prolonged periods of economic shutdown will be the primary factor in the state of employment rates. A secondary question is whether businesses will honor the conditions of the funds they received and bring the employees back as promised.

D. Independent Contractors, Gig Workers, and Self-Employed Individuals

One sector of the workforce has faced unique challenges both before and during the Covid-19 pandemic. This sector includes members of the work force who are often not treated as traditional employees under the law: independent contractors, gig workers, and the self-employed. These workers often fall outside the gambit of protection from most labor law systems and social partners.¹²⁸ Unless protection was specifically granted to them in the wake of the Covid-19 pandemic, these workers were generally left with very few options.

In the United States, gig workers have traditionally been unable to collect unemployment benefits under state unemployment systems.¹²⁹ Under the CARES Act, some benefits will now be available, at least for the duration of the pandemic.¹³⁰ The CARES Act created the Pandemic Unemployment Assistance Program, which will allow for gig workers to collect unemployment benefits as determined by state law, in addition to \$600 per week from the federal government.¹³¹ Unfortunately, under the federal legislation enacted in response to the crisis, the United States provided some benefits to gig workers but stopped short of granting paid sick leave.¹³²

Some other countries also made efforts to support the self-employed and gig-workers. Norway enacted a temporary scheme covering those who were self-employed or freelancers, granting them 80% of their salaries.¹³³ Under Norway's scheme, these benefits would not begin until the fourth consecutive day of being unable to work due to

¹²⁸ See, e.g., Nicole Clark, *INSIGHT: Gig Workers Can Qualify for CARES ACT Unemployment Aid*, BLOOMBERG LAW (May 6, 2020), https://www.bloomberglaw.com/document/XBOENS4000000?bna_news_filter=daily-labor-report&jcsearch=BNA%252000000171bc1ad730a5f9bd3f86dc0001#jcite ("By operating outside the employer-employee relationship, gig workers [in the U.S.] lack access to certain labor protections, including minimum wage laws, anti-discrimination laws, sick leave entitlements, workers' compensation benefits, and collective bargaining rights.").

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Bales, *supra* note 72, at 3.

¹³³ Bernard Mulder, *COVID-19 and Labour Law: Norway*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 3, <https://illej.unibo.it/article/view/10797/10704> [<https://perma.cc/4J7S-MN47>].

illness.¹³⁴ Ireland extended its weekly €350 unemployment benefit to include self-employed workers.¹³⁵ The United Kingdom enacted the Self-employed Income Support Scheme, which paid up to 80% of wages for three months, although the payment would not be granted until the three months were completed.¹³⁶ This Scheme is predicted to ultimately cover only around 62% of self-employed individuals.¹³⁷ Italy allowed for a monthly €600 payment to self-employed and seasonal workers.¹³⁸ Israel, which previously excluded independent workers from unemployment insurance, allowed for short-term grants of lesser value than general unemployment.¹³⁹ The government also put strict requirements on these grants, which excluded many workers from receiving the benefits.¹⁴⁰

Some countries excluded self-employed individuals and gig workers altogether. For instance, South Africa provided no benefits at all for its informal economy and gig-workers, leaving many with nowhere to turn for relief.¹⁴¹ In fact, this sector of South Africa's economy was hit so hard by the Covid-19 crisis that large corporations and charities were left to hand out food and medical equipment.¹⁴²

E. Child Care for Workers

One of the unforeseen challenges on workers across the globe was the closure of schools and daycares. As children were forced to stay at home, so too were the parents who needed to care for their children. Some countries immediately recognized this secondary issue to the crisis in the labor force and moved swiftly to alleviate its effects. Others chose not to address it all or addressed it only for certain sectors of the economy.

The United States addressed the issue directly. Under the Families First Coronavirus Response Act, which primarily covers private employers with fewer than 500 employees, an additional two weeks (up to eighty hours) of sick leave at two-thirds of the employee's regular rate of pay were granted when an individual had to miss work to care for a child under eighteen years of age.¹⁴³ These benefits were

¹³⁴ *Id.*

¹³⁵ Mangan, *supra* note 62, at 4–5.

¹³⁶ Novitz, *supra* note 88, at 4 (noting that this amount was capped at £2500 per month).

¹³⁷ *Id.*

¹³⁸ Gaglione et al., *supra* note 41, at 2.

¹³⁹ Albin & Mundlak, *supra* note 45, at 3.

¹⁴⁰ *Id.*

¹⁴¹ van Eck, *supra* note 61, at 2–3.

¹⁴² *Id.*

¹⁴³ Bales, *supra* note 72, at 2–3.

contingent upon the child's school or child care provider being closed for reasons related to Covid-19.¹⁴⁴ The Families First Coronavirus Response Act also provided ten weeks of paid family and medical leave at two-thirds the employee's regular rate of pay to care for a child whose school or child care provider was unavailable for reasons related to Covid-19.¹⁴⁵

Italy also gave extensive treatment to employees affected by child care issues. The Cura Italia Decree granted fifteen days of "extraordinary parental leave" between March 5 and April 3, 2020.¹⁴⁶ Workers forced to stay home to care for children under the age of twelve were granted 50% of their salary during this time period.¹⁴⁷ The decree also protected workers against dismissal during the time period covered by the decree.¹⁴⁸ Both parents could take the fifteen days of leave as long as they were not taken concurrently and the other spouse was not already covered by a separate wage replacement scheme.¹⁴⁹ As an alternative, parents were able to receive a voucher for child care services worth between €600 and €1000.¹⁵⁰ Italy also provided specific measures for individuals who were forced to stay home to care for family members with a disability.¹⁵¹ In addition to the three days per month already allowed by law, twelve days of fully paid leave could be taken in March and April.¹⁵²

Although not as thorough as the accommodations made by the United States and Italy, other countries did provide measures for child care. Australia made child care free of charge to promote both parents' ability to work.¹⁵³ Denmark established emergency daycare services for the children of essential workers and children with special needs.¹⁵⁴ The United Kingdom kept schools open for the children of essential workers.¹⁵⁵ Norway, which already had a robust policy for allowing parents to stay home with sick children, doubled the allowable number

¹⁴⁴ *Id.* at 3.

¹⁴⁵ *Id.*

¹⁴⁶ Gaglione et al., *supra* note 41, at 4.

¹⁴⁷ *Id.* (noting there was no provision for children older than twelve).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 5 (noting there was an age limit of twelve, and the €1000 voucher was for medical personnel).

¹⁵¹ *Id.* at 4.

¹⁵² Gaglione et al., *supra* note 41, at 4.

¹⁵³ Forsyth, *supra* note 114, at 3.

¹⁵⁴ Mette Soested & Natalie Videbaek Munkholm, *COVID-19 and Labour Law: Denmark*, 13 *IT. LAB. L. E-J.*, no. 1S, 2020, at 1, 3, <https://illeg.unibo.it/article/view/10803/10710> [<https://perma.cc/4J7S-MN47>].

¹⁵⁵ Novitz, *supra* note 88, at 2.

of days off for 2020.¹⁵⁶ An individual in a two-parent household may take off twenty days per year, or thirty days if there are more than three children.¹⁵⁷ For single-parent households, the number is even greater, with forty days of allotted time off in households of less than three children, and sixty days for households with more than three.¹⁵⁸

Several countries chose not to address the issue of child care at all. China made no accommodations for employees with children who were forced to stay home due to quarantine.¹⁵⁹ In South Africa, The Basic Conditions of Employment Act did not provide any assistance for parental leave due to force majeure.¹⁶⁰ Parents were allowed only three days of family responsibility leave and only if the children were ill.¹⁶¹ This included essential employees and health care professionals.¹⁶²

F. Role of Social Partners

The role of social partners in each country ranged from no involvement at all in labor decisions made by governments to heavy involvement in the negotiations. On the one extreme, the Chinese government refused to negotiate in any manner with social partners.¹⁶³ The Chinese Communist Party only recognizes one trade union, the All-China Federation of Trade Unions.¹⁶⁴ The only notable action including a social partner was an opinion issued recommending that employers and unions negotiate wages, working hours, and safety measures.¹⁶⁵ In the United Kingdom, the Independent Workers Union of Great Britain brought judicial review proceedings to challenge the adequacy of the measure taken by the government for workplace health and safety issues.¹⁶⁶ The Trades Union Congress called for improvement to sick pay.¹⁶⁷ There is no indication that the government will act on any of these measures due to the limited influence of social partners with the current Conservative government.¹⁶⁸ France had open lines of

¹⁵⁶ Mulder, *supra* note 133, at 3.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Ding, *supra* note 68, at 2.

¹⁶⁰ van Eck, *supra* note 61, at 3.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See Ding, *supra* note 68, at 2.

¹⁶⁴ *Id.* at 3.

¹⁶⁵ *Id.*

¹⁶⁶ Novitz, *supra* note 88, at 5.

¹⁶⁷ *Id.* at 6.

¹⁶⁸ *Id.*

communication with social partners, but they played no role in any decisions.¹⁶⁹

Many countries managed to find a middle ground in negotiations between the government and social partners. In Panama, for example, the labor ministry must submit requests to temporarily suspend individual labor contracts to the individual's union or worker representative.¹⁷⁰ An agreement to suspend the contract will then make the worker eligible for governmental financial assistance.¹⁷¹ In the United States, though unions did not play a significant role during the design of Covid-19 labor measures, the CARES Act requires that employers seeking benefits under the Act must promise neutrality in future union elections.¹⁷² While this provides limited short-term benefits on behalf of the social partners of the United States, they appear to have taken an opportunity to leverage future benefits for the work force.

Finally, there were instances in which the social partners played a significant role in the Covid-19 labor decision making process. In Australia, trade unions and businesses were heralded for their "unprecedented cooperation."¹⁷³ The willingness to work together allowed for a rapid adaptation of Australia's regulatory framework, which was adjusted to accommodate remote work and provide new forms of leave to those in quarantine.¹⁷⁴ The changes made by the negotiations have likely affected as many as three million Australian workers.¹⁷⁵

Social partners in Denmark also played a strong role in designing labor reactions responsive to Covid-19.¹⁷⁶ Strong collaborative efforts resulted in tripartite agreements in both the private and public sectors of the economy.¹⁷⁷ One agreement in particular was unique and progressive: the municipalities and the social partners responsible for public employees struck a deal that allowed for employees who were sent home to be reallocated to assist with child care, the elderly, special needs individuals, and health-care.¹⁷⁸ While cooperation between governments and social partners will not be enough to completely quell any potential economic crisis caused by Covid-19, the ability for the social partners to extend any protection to a work force can still go a

¹⁶⁹ Moizard, *supra* note 79, at 2.

¹⁷⁰ Brooks, *supra* note 38, at 2.

¹⁷¹ *Id.* at 2–3.

¹⁷² Bales, *supra* note 72, at 3.

¹⁷³ Forsyth, *supra* note 114, at 3.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Soested & Munkholm, *supra* note 154, at 4.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 4–5.

long way to alleviate hardships for the workers they were designed to protect.

III. ANALYSIS

As Covid-19 continues to spread across the globe, each country has had to grapple with the difficult decision of whether and how much to ease quarantine and lockdown restrictions and return citizens to the workforce. In an increasingly globalist society where individual economies are highly interdependent on one another, forward looking analysis as to the fallout from the crisis may prove to be futile. Should the crisis continue for a lengthy period of time, governments must consider the measures already taken and determine if any information can be gleaned that will assist future decision making. This analysis will look at exploitations of the economic responses to the Covid-19 crisis, the gender unemployment disparity, the effect of Covid-19 on vulnerable populations, and the future role of social partners.

A. Exploitation of the Systems

An often inevitable result of hastily enacted funding legislation is the potential for loopholes and those who are ready to exploit them for personal financial gain. The measures taken throughout the world in response to the pandemic were no exception. The United States, through the Paycheck Protection Program established under the CARES Act, intended to direct its aid to allow small business owners to stay afloat and maintain their payrolls.¹⁷⁹ One of the primary criticisms of the program was that, due to the speed with which the program was enacted, there was very little oversight as to which companies could apply for funds.¹⁸⁰ The government would not disclose which companies were receiving money under the program, but rather allowed companies to self-report.¹⁸¹ It quickly became apparent that money was ending up in the hands of unintended entities.¹⁸² Companies that were paying excessive salaries to executives or that were facing economic hardships due to legal issues apart from the pandemic were found to be applying for and receiving funds.¹⁸³ Additionally,

¹⁷⁹ See generally Jessica Silver-Greenberg et al., *Large, Troubled Companies Got Bailout Money in Small-Business Loan Program*, N.Y. TIMES (May 13, 2020), <https://www.nytimes.com/2020/04/26/business/coronavirus-small-business-loans-large-companies.html> [<https://perma.cc/V6RM-W3JC>].

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

political lobbying resulted in an exception in the legislation that allowed large chain restaurants and hotels to receive funds.¹⁸⁴ These large chain companies, many of which were not facing economic hardships, were able to circumvent the 500 employee restriction due to this exception.¹⁸⁵ Facing intense public scrutiny, some—but not all—companies ultimately returned the money they had received under this exception.¹⁸⁶ Additional oversight provisions must be discussed if subsequent legislation is to be enacted.

Other countries faced issues related to employers exploiting relaxed laws regarding employment retention. While some countries conditioned the receipt of benefits on employee retention, others did not do so explicitly. In Iran, there was a notable lack of safeguards put in place for the private sector of the economy.¹⁸⁷ This led to many employers who were having financial issues prior to the health crisis to use the pandemic as an excuse to terminate employees.¹⁸⁸ In Brazil, no special provisions were made to protect healthcare workers.¹⁸⁹ For those who were forced to risk their safety to assist others, employers were allowed to “interrupt the vacation of [employees] and to extend their working hours.”¹⁹⁰ In South Africa, by not providing wage subsidies to employers for employee retention, it became beneficial for employees to be terminated so they could receive some sort of benefit.¹⁹¹ The United Kingdom found itself in a similar situation, because the job retention scheme reserved the right of the employer to opt for termination rather than furlough of an employee.¹⁹² While it would be hard to place blame on the acting bodies for initial errors in proposed schemes, many policies have proven to have the opposite of the intended effect. To not correct these errors will be to exacerbate the very problem the schemes were intending to avoid.

¹⁸⁴ See Daniel Roberts, *Why Chains Like Shake Shack, Ruth's Chris, Potbelly Qualified for PPP Small Business Loans*, YAHOO! FIN. (Apr. 20, 2020), <https://finance.yahoo.com/news/why-chains-like-shake-shack-ruths-chris-potbelly-qualified-for-ppp-small-business-coronavirus-relief-loans-170921820.html> [<https://perma.cc/X2JB-G6PR>].

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (noting that Shake Shack, which had 8,000 employees and \$595 million in revenue in 2019, subsequently returned the money received through the Paycheck Protection Program).

¹⁸⁷ Zabeih, *supra* note 54, at 1.

¹⁸⁸ *Id.* at 2.

¹⁸⁹ Ana Gomes & Eduardo Dias, *COVID-19 and Labour Law: Brazil*, 13 IT. LAB. L. E-J., no. 1S, 2020, at 1, 2, <https://illeg.unibo.it/article/view/10776/10686> [<https://perma.cc/4J7S-MN47>].

¹⁹⁰ *Id.*

¹⁹¹ van Eck, *supra* note 61, at 2.

¹⁹² Novitz, *supra* note 88, at 4.

B. Gender Disparity

Women, while accounting for 49% of the workforce in the United States, accounted for 55% of the initial job losses due to the Covid-19 crisis.¹⁹³ While this is not an issue localized to the United States, it does appear to be unique to this particular crisis. Under previous economic downturns, men faced greater unemployment numbers.¹⁹⁴ While other economic crises tended to affect the economy more equally overall, the Covid-19 crisis called for the shutdown of specific portions of the work force while leaving some still operational.¹⁹⁵ The percentage of women working in fields that constitute essential services are disproportionately low and may have led to the higher number of women finding themselves initially unemployed.¹⁹⁶ One study showed that “17% of employed women in the U.S. work in critical occupations (mostly in health care) compared to 24% of employed men.”¹⁹⁷ Additionally, in the United Kingdom specifically, pregnant women were instructed to stay at home.¹⁹⁸

Women also constitute a high percentage of single-parent households.¹⁹⁹ In the United States there are approximately fifteen million single mothers, which accounts for 70% of all single-parent households.²⁰⁰ While many countries attempted to account for child care issues, no system was perfect. With social distancing and isolation, it became impossible for schools and child care services to remain completely operational. Even if measures were taken to increase the amount of time off allowed to working parents for child care, those days are finite. Covid-19 will outlive the amount of time allotted for parents to remain home with their children and will likely increase the disparate impact women are facing.

C. Social Class Disparity

In addition to the disparate economic impacts faced by women,

¹⁹³ Danielle Kurtzleben, *Women Bear the Brunt of Coronavirus Job Losses*, NPR (May 9, 2020), <https://www.npr.org/2020/05/09/853073274/women-bear-the-brunt-of-coronavirus-job-losses> [https://perma.cc/SDJ8-UBBK].

¹⁹⁴ Elaine He & Nicole Torres, *Women are Bearing the Brunt of the Covid-19 Economic Pain*, BLOOMBERG OPINION (May 8, 2020), <https://www.bloomberg.com/graphics/2020-opinion-coronavirus-gender-economic-impact-job-numbers/> [https://perma.cc/47L7-WRBS].

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Novitz, *supra* note 88, at 5.

¹⁹⁹ He & Torres, *supra* note 194.

²⁰⁰ *Id.*

other economically vulnerable populations have been disproportionately impacted by the pandemic. Some countries refer to sectors of their economy as “informal,” which can be loosely defined as economic activities that are neither regulated nor protect by labor laws.²⁰¹ In particular, Asian and Latin American countries have large percentages of their work forces in the informal sector.²⁰² In Latin America, more than 50% of the employees work in the informal sector.²⁰³ In Asia, 68.2% of the workforce is in the informal sector—1.3 billion people.²⁰⁴

Brazil excluded the informal workforce from its initial measures, but on April 2, 2020, Law #13,982 was passed, granting informal workers benefits of approximately \$118 per month for up to three months.²⁰⁵ Panama enacted the Panama Solidarity Plan, which provided food, hygiene, medical equipment, and financial aid to vulnerable families suffering from multidimensional poverty.²⁰⁶

China faced a unique issue with its migrant workers, which constitute approximately one-third of the workforce.²⁰⁷ The pandemic struck nationally during the Chinese New Year, when migrant workers had returned to their rural homes.²⁰⁸ Following the lockdown of major cities, most could not return to urban areas and were left without work.²⁰⁹ To complicate matters further, the low-skilled jobs performed by many migrant workers were the hardest hit by Covid-19.²¹⁰ The Chinese government reacted by offering some benefits to companies that hire a certain number of migrants.²¹¹ India faced similar issues under its national lockdown.²¹² The large migrant workforce exited the cities due to the lockdown and returned to their homes in rural areas, leaving as much as 90% of the work force without adequate financial coverage.²¹³ For countries that have a large percentage of their workforce in the informal sector, greater protections throughout the crisis,

²⁰¹ See Nazaret Castro & Laura Villadiego, *Informal Work During the Pandemic: When Essential Activities are the Most Precarious*, EQUAL TIMES (June 17, 2020), <https://www.equaltimes.org/informal-work-during-the-pandemic#.Xv9w0i2ZNp8> [<https://perma.cc/HF7L-JFCU>].

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Gomes & Dias, *supra* note 189, at 3.

²⁰⁶ Brooks, *supra* note 38, at 3.

²⁰⁷ Ding, *supra* note 68, at 2.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Bhattacharjee, *supra* note 65, at 2.

²¹³ *Id.*

and in the future, will be needed.

D. The Role of Social Partners Moving Forward

Even before the Covid-19 crisis, governments had varied working relationships with the social partners within their borders. How these relationships come out the other side is to be determined. There may be no more obvious time in history than this when workers need protection. Some social partners rose to the occasion, while others fell significantly short. In countries such as China, where social partners are generally not recognized by the Communist government or the populace, the limited role of social partners will likely remain the same.²¹⁴

The potential loss of faith in social partners may come from other nations where the social partners were thought to have more bargaining power. In the United States, social partners had limited involvement in the measures taken by the government.²¹⁵ The inclusion of a provision in the CARES Act regarding employer neutrality in future union elections may ultimately serve to give the unions greater power in the future and, thus, greater ability to protect their workers. In the United Kingdom, social partners were generally stonewalled by the Conservative government that opposed them.²¹⁶ If social partners can be excluded by oppositional governments even amidst a health crisis, negotiating powers under normal circumstances would appear to be limited.

CONCLUSION

No labor system in the world was prepared for a crisis of the magnitude of Covid-19. The economies of many countries shut down abruptly in spring 2020, then began to re-open, some abruptly, some in fits and starts. The prospect of widespread vaccinations is a welcome development, but also means that labor policies need to be recalibrated to deal with the reality of some countries vaccinating at a faster pace than others. As countries recalibrate, they should draw on the experience of other countries to ensure that new measures adequately minimize potential exploitation by companies and individuals, address gender and class disparities related to the allocation of resources and overall effects of the pandemic, and ensure that social partners are part of the dialogue to minimize future labor disruption.

²¹⁴ Ding, *supra* note 68, at 2–3.

²¹⁵ Bales, *supra* note 72, at 3.

²¹⁶ Novitz, *supra* note 88, at 6.