



# Workers Doing Time Must Be Protected by Job Safety Laws

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### **About the National Employment Law Project**

Founded in 1969, the National Employment Law Project (NELP) is a leading advocacy organization with the mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs.

### **Foreword by Senator Cory A. Booker (D-NJ)**

“It is unfathomable that to this day the Constitution allows prisons to force incarcerated people to work, often in dangerous conditions, and exploit their labor for the profit of corporations. This report lays clear the dangers that incarcerated people face when working both inside and outside the walls of prison. I am grateful to the National Employment Law Project for shining a light on these abuses. We must work to pass the Correctional Facilities and Occupational Safety and Health Act, which would explicitly apply OSHA protections to incarcerated individuals and ensure that they are not forced to work in dangerous conditions. Our labor laws should apply to All American workers and we must recognize that incarcerated are a critical work force in our country that has been hidden from public view. We must do more to support incarcerated individuals as they prepare to reenter society,” said Senator Booker.

### **Foreword by Representative Emanuel Cleaver, II (D-MO, 5<sup>th</sup> District)**

“In the United States of America, every individual should be treated with the respect and dignity that all human beings deserve—but far too often that isn’t the case for those who are incarcerated,” said Congressman Cleaver. “Whether it’s the lack of workplace protections or the atrocious wages being paid for essential labor, I appreciate the attention NELP is bringing to the failures of America’s incarceration system, as well as the desperate need for immediate reforms. Congress should begin the process of rectifying the unacceptable standards we see today by passing the Correctional Facilities and Occupational Safety and Health introduced by myself and Senator Booker, to ensure that everybody is guaranteed a safe workplace.”

## Executive Summary

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In virtually all US states, official emergency response plans (EOPs) include roles for incarcerated workers as part of preparation, response, and recovery work. Many EOPs define roles for “inmates” or “prisoners” that place these workers in danger from environmental hazards or exposure to chemicals or biological dangers. Elected officials often admit that they could not afford to engage in disaster response without access to this coerced and typically unpaid work force.

But in most cases, states also refuse to extend the typical health and safety protections of other workers as laid out in the Occupational Safety and Health Act (OSHA). These states alternately rely on longstanding and racist loopholes in Civil War-era amendments that extended coerced labor for those in the carceral system, assertions that incarcerated disaster workers are volunteers engaging in dangerous work as a form of redemption, and claims that exemptions in federal OSHA law for public sector employees shield departments of correction from having to abide by labor protections.

We explore the language and structure of assignments in some of the 30 states that include incarcerated workers in their EOPs to identify how age-old notions of a racist carceral system and the necessity of punishment underlie dangerous assignments during disasters. We place this analysis next to legal arguments and conventions in health and safety laws that put these workers outside the jurisdiction of labor regulators. Together, these narratives work to put incarcerated people in peril during natural disasters without even basic workplace protections.

We find that:

- In many states incarcerated workers are labelled as “prisoners” or “offender labor” and are sent to clear roadways of debris, engage in wildfire suppression, assist in heat emergency response, and dispose of dead or diseased livestock.
- While departments of correction often characterize this work as voluntary, systems of physical danger, privation, and excessive carceral costs and fees coupled with strong incentives for early release push incarcerated workers into accepting dangerous assignments.
- Very few incarcerated workers have recourse to OSHA protections if they get hurt working on assignment by department of corrections officials, and nearly 90 percent fear retaliation if they lodge complaints about carceral operations.
- Health and safety protections for incarcerated workers are minimal and inconsistent, with some states offering limited protections for workers having contact with private businesses, others denying all coverage entirely, and some deciding on a case-by-case basis if OSHA has jurisdiction.

We conclude that:

- The abolition of coerced labor entirely is a matter of basic human rights and dignity, and every state should amend its state constitution to prohibit all slavery and then immediately change all regulations, rules, and practices that exempt these workers from basic labor standards.
- States with their own OSHA plans should explicitly extend health and safety protections to all incarcerated workers and work with community advocates and incarcerated workers to understand the health and safety needs of this group of workers.
- Federal lawmakers should pass the Correctional Facilities Occupational Safety and Health Act immediately to amend the OSH Act to include state and local carceral facilities as employers and incarcerated workers as employees under the law.

## Needed, but Still Excluded from Basic Job Safety Protections

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In August 2023, as Hurricane Idalia bore down on Florida’s Gulf Coast as a Category 4 storm, the Federal Emergency Management Authority (FEMA) administrator urged residents to evacuate and protect property from a destructive storm surge. More than 30 county leaders followed suit.<sup>1</sup> As has long been the case, various government agencies relied upon incarcerated workers to act as disaster preparation workers. “Got a sandbag? Thank an inmate!” the Flagler County Sheriff’s Office posted on Facebook, noting that in two days incarcerated workers filled and distributed more than 5,100 sandbags to residents.<sup>2</sup> Fortunately, the storm shifted direction and Flagler County was spared the deaths and damages that other parts of the state suffered.

But how safe were these incarcerated workers? Workers in the United States are supposed to be protected from workplace hazards by either the federal Occupational Safety and Health Administration (OSHA) or under a comparable state-level plan. However, longstanding cultural and structural beliefs connecting notions of “punishment,” “remorse,” and “redemption” allow policymakers and regulators to exclude incarcerated workers from OSHA protections.

Like Florida, many states rely on incarcerated labor to prevent and respond to natural disasters. State emergency planners mobilize incarcerated workers to do dangerous tasks – shifting vulnerability to workers often excluded from basic protections like pay and health and safety precautions. Choosing to exclude incarcerated workers from basic health and safety protections reflects and expands anti-poor and anti-Black policies increasingly recognized as foundational to US criminal punishment.<sup>3</sup> If policies to address climate change are to be just, all workers who perform critical preparation, mitigation, and recovery work must at the very least have the same protections as other workers.<sup>4</sup>

In this brief, we examine the types of work incarcerated workers are assigned through official state Emergency Operations Plans (EOP). We then place these work assignments side-by-side with language from state and federal occupational health and safety laws to explore the dangerous (and purposeful) gap in which incarcerated workers labor in an era of increasing climate change.

**We find that in most states, public authorities and the carceral system knowingly place incarcerated workers in job categories with high incidences of injuries in the name of public safety while absolving themselves of responsibility for ensuring their safety.**

Major natural disasters are becoming more numerous and more frequent with just 18 days on average separating crises between 2017 and 2021.<sup>5</sup> Much of the disaster work assigned to incarcerated workers is inherently and obviously dangerous. As is true for any worker, an occupational illness or injury sustained while doing coerced work may have lifetime ripple effects, including diminished physical ability, mental trauma, and a lack of faith in the ability of regulatory agencies to protect working people.

As climate change exacerbates both the frequency and severity of natural disasters—and, by extension, the level of danger these workers face in their role as emergency responders—it is ever more important that policymakers end the unjust exclusion of incarcerated workers from our workplace safety laws.

## **Forced incarcerated labor is rooted in slavery.**

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It is a legacy of the racist history of the carceral system that states and counties assign incarcerated workers to duties before, during, and after natural disasters. With the official end of slavery after the Civil War, governments and businesses needed to replace the unpaid labor to continue building their economies that were established using enslaved laborers.

The Thirteenth Amendment to the US Constitution outlaws slavery and involuntary servitude, “except as a punishment for crime whereof the party shall have been duly convicted,” an exception which quickly allowed white supremacists and elected lawmakers to reinstitute a pool of Black coerced labor.<sup>6</sup> White legislators and policy makers implemented Black Codes and Jim Crow laws to restrict the movement and employment of Black workers that remained in legal effect until 1965, including broad and vague vagrancy laws that subjected hundreds of thousands of people to criminal prosecution, imprisonment, and compulsory labor for appearing “out of place,” “wandering without apparent lawful purpose,” or not carrying proof of employment.<sup>7</sup>

“Convict leasing” allowed Southern states to replenish coffers diminished by the Civil War and Reconstruction by charging private parties for incarcerated workers and by using their labor to rebuild state infrastructure.<sup>8</sup> In Northern states, prisons

implemented a system of building workplaces within the carceral facility and signing contracts to produce goods for private businesses.<sup>9</sup> And in the West, despite a state constitution that outlawed slavery, California coerced labor from Indigenous and Black workers to the profit of private entities.<sup>10</sup>

By the 20th century, states throughout the country used incarcerated labor to maintain carceral facilities, produce a variety of goods through prison industries, and provide services to other state and local governments at an unrealistically low cost. “Progressive Era” policies of the 1910s celebrated using incarcerated labor to build public works, boasting that, “Splendid highways have been shot through mountain fastnesses, [and] splendid manhood has been made from degraded, sullen and vicious men.”<sup>11</sup> Mass incarceration of Black men because of the so-called “War on Drugs” waged since the 1970s resulted in continued labor market manipulation by the State as carceral systems pulled potential workers out of the labor pool and then reoffered their work for little or no pay.

We recognize the challenges in naming incarcerated people doing natural disaster work. We believe it is important to use the term “worker” to underscore our assessment that if an employer requires or allows individuals to work (or “suffer or permit to work,” in the terms of the Fair Labor Standards Act), that individual should be protected by all labor standards and protections.

However, the word “worker” can diminish the violent and coercive context of racial capitalism and the carceral system. It is the very presence of this coercion that courts and legislatures use to undervalue the labor and the person doing it to exclude these workers from workplace protections.

The terms “incarcerated disaster worker” and “incarcerated workers” are attempts to wrestle with the racial capitalism that fuels the country’s exceptionally large carceral system and to capture the economic and social value of the labor performed by these human beings. Many of the public policies we examine here use terms like “inmates,” “prisoners,” “offenders,” or “trustees” to refer to incarcerated workers. When examining these policies, we will use those terms in quotes to reflect the narrative that Departments of Correction and other agencies promote regarding people in the carceral system.

States have long depended on incarcerated labor to prevent and fight natural disasters.<sup>12</sup> For example, California’s use of incarcerated workers for wildfire management goes back to the early 1900s when fire wardens pulled unemployed “vagrants” off the streets and gave them the option of doing forestry work or going to jail.<sup>13</sup> Later the state switched to a forestry labor camp model that has been widely replicated.<sup>14</sup>

States come to depend on these cost savings:

- Between 2015 and 2019 an estimated 3,500 Florida incarcerated workers did nearly 18 million hours of public works valued by the Department of Correction (DOC) at \$147.5 million, though this number does not reflect the real cost of competitive pay and benefits necessary to recruit un-incarcerated labor.<sup>15</sup>
- In 1970 in California, a community fought against a prison closure concerned that they would not be able to afford wildfire management programs without unpaid labor, and fifty years later the state legislature rejected a ballot measure to abolish slavery in part due to concerns about the cost of paying incarcerated workers.<sup>16</sup>
- In 2022, the director of Arizona’s Department of Corrections (DOC) testified to state legislators that many communities would “collapse” without access to underpaid incarcerated labor.<sup>17</sup>

At times, the lines between private contracting of incarcerated workers and public emergency disaster relief can become blurred.

- In 2010 when the British Petroleum Company was compelled to clean up its Gulf Coast oil spill. The company used workers from Louisiana state prisons to do the work, paying them nothing, providing substandard protective equipment, and counting on the lack of protection from state agencies.<sup>18</sup>
- In a bid to undermine a 2020 sanitation worker strike in New Orleans over personal protective equipment and hazard pay related to COVID-19, employers used staffing agency People Ready which contracted with a private “transitional work release company” to replace strikers with incarcerated workers.<sup>19</sup>
- In numerous states, incarcerated workers were recruited during the COVID pandemic to produce protective equipment, face masks, and hand sanitizer for health care workers even as they themselves became infected and too often went untreated.<sup>20</sup>
- In 2022, during a Colorado mass culling of chickens in an attempt to stave off bird flu, an incarcerated worker doing the killing became the first documented case of human infection.<sup>21</sup>

The coercive reach of punishment systems extends far beyond physical prisons and jails themselves. State ordered work occurs while a worker is free in the community but they are threatened with incarceration or reincarceration. They include parole, probation, and diversion requirements that mandate work as a condition of release.

Such conditions can pressure workers to accept substandard jobs and stay silent about safety hazards, discrimination and harassment, asking for accommodations, and organizing with co-workers – for fear of incarceration.



Private labor brokers target such workers for underpaid and often dangerous jobs. One union has begun challenging these coercive work structures. Concerned with how court-supervised workers were both being exploited and being leveraged by employers against unionized workers, New York’s Construction and General Building Laborers’ Local 79 organized its “Real Reentry” campaign to bring transparency and accountability to what is often an opaque dynamic between punishment systems and labor markets.

These victories included legislation requiring labor brokers in New York City to maintain insurance for workers’ compensation, disability, and unemployment, and, importantly, changes to parole rules that previously considered workplace organizing a parole violation. More must be done, but campaigns such as the Laborers show us the beginning of what’s possible when pro-worker formations organize workplaces to challenge the criminal punishment system.<sup>22</sup>

Lacking precise data on the race of incarcerated workers, we can still assume that like the carceral population overall they are so disproportionately Black or Latinx that they are mostly Black or Latinx. The most recent Bureau of Justice Statistics survey of state-level carceral facilities in 2016, found that 33.8 percent of incarcerated people were Black, 20.7 percent identified as Hispanic, and 11.3 percent were two or more races.<sup>23</sup>

An analysis by The Pew Charitable Trust and the Jail Data Initiative estimate that in local jails, Black people comprise an average 26 percent of the incarcerated population, more than twice the 12 percent Black population in local communities.<sup>24</sup> The most recent data from the Federal Bureau of Prisons reveals that 38.6 percent of federally incarcerated people are Black, and that 29.8 percent identify as Hispanic.<sup>25</sup> As Michele Goodwin has argued, the state-sanctioned use of coerced incarcerated labor is simply the “reject[ion] of one form of discrimination—antebellum slavery—while distinguishing it from the marginally remunerated and totally unremunerated prison labor that courts legitimate.”<sup>26</sup>

## When disasters strike, states depend on incarcerated workers.

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Under the Stafford Disaster Relief and Emergency Assistance Act, which authorizes FEMA, states are instructed to create a multi-agency Emergency Operations Plan (EOP) to address all types of hazards (natural and human-caused) and are given 15 different types of emergency support functions to include, ranging from communications to the public, to mass care and public health, to post-disaster long-term community recovery.<sup>27</sup> Each of these functions has a lead agency to coordinate and oversee the response, with other state agencies assigned supplemental roles.

When an EOP lays out incarcerated workers’ assigned tasks or details about transportation or housing for these workers, it is directly related to the long history of unpaid incarcerated work in maintaining public infrastructure and underscores the potency of state control of their work.

EOPs are documents of urgency, most of them list systems of authority and reporting without details of the human beings doing critical emergency response work. One exception is the way that incarcerated workers appear in the text using language that presumes untrustworthiness and with assignments that come with danger of harm. While silent about other emergency workers, many EOPs underscore the stereotype of incarcerated people as inherently dangerous by specifying that incarcerated workers must be “trustees” or “minimum-security inmates,” or state that the DOC can assign workers “within security limitations.”<sup>28</sup>

New York’s plan includes details on what the expected ratio of incarcerated workers to corrections staff will be for any crew.<sup>29</sup> In Ohio, the EOP specifically states that while incarcerated workers might remove domestic debris, scrap tires, and appliances from curbsides they are not authorized to enter dwellings.<sup>30</sup>

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An EOP is an instruction manual for state authorities and a claim to the public that they will be able to protect residents during a disaster and quickly return society to its previous condition. The language of emergency itself helps fuel state planners’ justification for placing incarcerated workers in dangerous jobs.

Behind this language, emergency planners absolve themselves of wrestling with the conflicting notions that **the state can both knowingly send incarcerated workers into dangerous situations and deny them its own health and safety protections.**

Critics of the current process for emergency declarations note the way they reinforce and expand racial, socio-economic, and political inequities and privilege wealthy communities.<sup>31</sup> Assigning incarcerated workers to clear away fallen trees or dead animals or to fight fires threatening private property exacerbates wealth inequality—sometimes literally, as in the case of filling sandbags for property owners—while ignoring the needs of the communities where their own families and friends live.

## **Emergency Operations Plans provide insight into how states use incarcerated labor as part of emergency response.**

Not all states include a role for incarcerated workers in their EOP, and sometimes ambiguity in language complicates analysis. In 2020, researchers found EOPs for 47 states, and concluded that nearly two-thirds called for incarcerated labor in at least one of the 15 functional areas.<sup>32</sup>

We also examined publicly available EOPs to analyze the language emergency management authorities used to discuss incarcerated labor and the tasks they are assigning to them. In a few cases, the role of the state’s DOC is limited. In Maryland and

Massachusetts, the EOP has no specified role for the Department of Corrections (DOC), while Pennsylvania lists only responsibilities for maintaining carceral facilities and occupants. Connecticut’s plan notes transportation and communications equipment that the DOC might provide but remains largely silent on the issue of human labor.

In other cases, the role for the DOC is broadly stated and vague:

- In Louisiana, the plan simply states that for various functions, the DOC and other agencies are “responsible for developing and maintaining plans, procedures and asset inventories” to support the primary agency coordinators.<sup>33</sup>
- In Oklahoma, the DOC is flagged for support in public works, firefighting, and distributing donations, assigned “as requested, [to] provide manpower, equipment, and other appropriate resources.”<sup>34</sup> Oregon notes that when the state issues any state of emergency declaration, “inmate work crews” might be dispatched to tasks like mass feeding operations, debris mitigation, wildland firefighting mop up, or setting up mobile showers.<sup>35</sup>

While some incarcerated workers may be confined in camps during a disaster response, carceral facilities themselves pose significant risks for those compelled to live there during a climate-change emergency.<sup>36</sup>

One incarcerated firefighter in Washington State filed a grievance over the heat at a correction center, saying “I battle dehydration and heat exhaustion. The living conditions in my unit when returning from work are unsafe due to oppressive heat.”<sup>37</sup>

Flooding in the Florida Panhandle in 2014 resulted in a gas explosion in the laundry room of the Escambia County Jail, killing two incarcerated people and injuring 184 others and corrections staff.<sup>38</sup>

When a natural disaster takes place, the people incarcerated within carceral facilities depend on corrections officials to safely evacuate them. A survey of nearly 600 incarcerated Californians found that 72 percent did not know the emergency procedures in case of extreme heat, 88 percent did not know how to respond to extreme cold or to wildfires, and 92 percent reported no knowledge of procedures to address flooding.<sup>39</sup>

Frequently, people inside carceral facilities are not evacuated during natural disasters or are evacuated carelessly and haphazardly to other unsafe facilities without even the knowledge of their loved ones.<sup>40</sup>

But in other states, during an emergency the role of incarcerated workers is laid out more specifically:

- Arizona’s firefighting plan calls for the DOC to provide a “minimum 20-person crew plus supervision for multiple labor tasks including certified wildland firefighting, debris removal, sandbagging, etc.”<sup>41</sup>
- In the event of a biological incident or a pathogen outbreak in Alabama, incarcerated workers may be assigned by the DOC “to use as a labor force to clear roadways and debris after storms,” and “to assist in the collection and disposal of animal carcasses.”<sup>42</sup>
- In Kansas, they may be deployed for “cleaning domestic animals, and livestock care.”<sup>43</sup>
- North Carolina’s plan states that in a heat emergency the DOC may, “provide prisoner work teams to assist with the heat emergency response.”<sup>44</sup>

In many states, “offender labor” and “correctional facility work crews” are to be available for sandbagging, non-hazardous cleanups, distributing meals to emergency personnel, and especially in doing wildland firefighting work.

Some EOPs list work assignments that muddy the distinctions between work that supports the internal functioning of the carceral facility and public works that take place outside the property:

- Illinois’ mass care plans call for “use of the correctional institution (including the use of individuals in custody and correctional center staff) for the preparation of food for disaster victims and emergency workers” and to “provide for the use of correctional center laundry facilities to wash disaster victims’ and emergency workers’ clothing.”<sup>45</sup>
- Nevada’s plan similarly mentions that the DOC might provide “meals from institutional culinary facilities,”<sup>46</sup> using systems that typically include incarcerated workers as staff.

This distinction between work to maintain the carceral facility itself and work outside of it to maintain private property and public order can become important for decisions regarding incarcerated workers’ pay and whether they have access to health and safety protections.

## **The carceral system defines incarcerated labor in contradictory ways to avoid employer responsibilities.**

Departments of Correction depend on two narratives about incarcerated workers and disaster work to distance themselves from legal definitions of employers; they simultaneously cast this work as an integral part of punishment, but they also claim that the work is “similar to community service or volunteer work.”<sup>47</sup>

Neither narrative fully reflects the role that incarcerated workers play in state-designed emergency preparedness and response, even as both give the DOC and state policymakers a rationale for excluding these workers from standard health and safety protections.

OSHA exempts workers who are currently incarcerated because the agency regulates employers and thus only protects workers who are classified as “employees.” In a continuation of the antebellum privileging of white “free labor” over Black “slave labor,” courts have frequently ruled that incarcerated people live within a system of forced and unpaid labor and are therefore not employees.

Although most prison work programs consistently emphasize the voluntary nature of incarcerated work—as skills development, altruism, voluntary rehabilitation, or a means to a shorter sentence—OSHA and the courts have determined that the coercive nature of the penal relationship makes a true market relationship within the carceral system impossible.<sup>48</sup>

This stance is rooted in the provision in the 13th Amendment that allows for involuntary servitude as “punishment for a crime whereof the party shall have been duly convicted.” As one researcher notes, in the United States “prison is punishment, prisoners are convicts, not workers, and regardless of the work they may perform, their offenses have not earned them the ‘privilege’ of workplace safety.”<sup>49</sup>

Similar to the notion that participants in welfare programs must prove their worth by working to gain access to benefits, incarcerated people must work without pay or benefits to prove they are being punished.

However, even as the coercive nature of incarcerated work is used to justify a lack of health and safety protections, DOCs also take great pains to cast this work as voluntary. The language of volunteerism can serve a strategic legal purpose.

Just as the category of prisoner is not extended labor protections, so too volunteers are not generally covered by labor standards that protect employees in a contractual relationship with employers. In claiming that incarcerated people uniformly want to serve outside communities in a time of need, carceral systems echo the post-bellum racially based arguments that have long protected their ability to direct unpaid and underpaid incarcerated labor and to avoid the statutory obligations of employers.

Relatedly, this characterization of incarcerated disaster work as redemptive or rehabilitative to the incarcerated

**Incarcerated  
wildland  
firefighters  
in CA were**

**4x**

***More likely to suffer  
injuries than  
professional firefighters***



worker also relieves lawmakers of funding actual alternatives to incarceration, casting unpaid work as a reform alternative itself.

One effect of the failure to include incarcerated workers in OSHA’s jurisdiction is that carceral facilities are excused from reporting requirements to which other employers must comply. As a result, our knowledge about the rate or type of injuries or illnesses that these workers may suffer doing emergency disaster work is limited.

One report found that incarcerated wildland firefighters in California were four times more likely to suffer some injuries and eight times more likely to inhale smoke and particulates than professional firefighters on the same fire.<sup>50</sup> OSHA data on facilities that hire work-release incarcerated workers show at least 20 complaints between 2017 and 2020.<sup>51</sup>



Workers recognize the peril of working while incarcerated. Among the demands during an extended strike by incarcerated people during 2021 was the lack of safety protection for prison labor,<sup>52</sup> and 64 percent of incarcerated workers interviewed by researchers stated that they were concerned about their safety while working.<sup>53</sup> However, they are also aware of the limited options to address these concerns.

## **The carceral context complicates workers' choices to accept dangerous work.**

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One typical response to worker complaints of dangerous workplaces is to say they should simply find other work. While this is a questionable solution for any worker, it is clearly not an option for an incarcerated one.

Incarcerated workers are unable to challenge workplace directives lest they experience dangerous repercussions. These workers may feel they must accept dangers while doing disaster work to avoid potentially worse circumstances as punishment for refusal.

## **Poverty and debt push incarcerated workers into unpaid and underpaid disaster work.**

Pay for incarcerated disaster workers is often difficult to uncover, and in some cases, it is determined by the agency for which the work is being done.<sup>54</sup>

- As of 2017, in Alaska, community works projects paid incarcerated workers up to \$1 per hour (though with no provisions for pay beyond 8 hours of work).
- In Idaho work camps pay between 50 and 90 cents per hour.
- In Minnesota, wages were specified for bio-hazardous waste cleanup work at a rate of \$2.00 per event.
- In Missouri incarcerated workers on detail with the Department of Transportation—which could include both disaster work and day-to-day litter details—are paid \$7.50 per day.
- South Dakota's incarcerated wildland fire workers get paid 38 cents per hour, but if staff find their work unsatisfactory, they may not be compensated at all.
- California's DOC maintains numerous conservation camps from which incarcerated workers do preventive forestry work and fight active fire outbreaks. For weeks that may stretch to 72 hours, they are paid approximately \$3 to \$5 a day with a slight increase for active firefighting work.<sup>55</sup>
- In Washington State, incarcerated firefighters are paid about 62 cents per hour.<sup>56</sup>

Even these meager wages may not reach the incarcerated worker, but in what some call a “play-to-stay” system may be garnished by the carceral facility to pay for operations costs.

Other systems may take wages to offset criminal justice system fines, fees, or restitution costs.<sup>57</sup>

- In Montana, the DOC’s crew of incarcerated firefighters are paid \$15 an hour by the Department of Natural Resources, but the DOC applies \$50 per day toward the worker’s court fees, restitution, or child support with the remainder going to pay prison operations costs.<sup>58</sup>
- Carceral facilities also charge exorbitant rates for basic necessities like warm clothing, extra food, toilet paper, and soap – in at least 18 states, assistance given to those who cannot afford the inflated prices is issued by the facility as repayable debt.<sup>59</sup>

This practice of layering indebtedness on top of incarceration can act as another form of coercion that keeps incarcerated workers doing emergency disaster work even at risk to their own bodily safety; if they aren’t earning even pennies for their labors, they cannot escape these monetary sanctions.

## **Violence and conditions within carceral facilities may push incarcerated workers into disaster work.**

The living conditions in carceral facilities can be so brutal that those living there may see any chance to leave as a saving grace, no matter the conditions in the work camps or on the job doing disaster work. “I never met a fellow prisoner who didn’t want to be in ‘fire camp’,” recalls Matthew Hahn who was incarcerated in California. “The conditions in California prisons are so terrible that fighting wildfires is a rational choice. It is probably the safest choice as well.”<sup>60</sup>

Poor living conditions, insufficient staffing, hostile authoritarianism, social isolation, and undiagnosed mental trauma all combine to make carceral facilities dangerous places.<sup>61</sup> Carceral facilities may be built on properties that are highly vulnerable to disasters like flooding,<sup>62</sup> earthquakes,<sup>63</sup> hurricanes,<sup>64</sup> and wildfire smoke.<sup>65</sup>

During 2023 heat waves, incarcerated people reported being exposed to dangerous levels of heat in Texas, Kentucky, Alabama, New York, Louisiana, Pennsylvania, Florida, Iowa, and in carceral facilities run by the Bureau of Indian Affairs or tribal nations.<sup>66</sup> Researchers have found that just one extreme heat day in a carceral facility’s location could result in a 3.5 percent increase in deaths, with the rate rising to 7.4 percent during a three-day heatwave.<sup>67</sup>

These poor conditions can result in serious injuries for incarcerated people. According to 2004 data, people incarcerated in state facilities suffered a violence-related injury rate more than 14 times that of community residents, and accident-related injuries were 2.3 times higher than among community counterparts. Researchers found that those on



work details suffered fewer violent injuries, although their work-related accident injury rate increased.<sup>68</sup>

Even shorter-term disaster preparedness work may seem more appealing than the day-to-day existence in a carceral facility. Incarcerated workers filling sandbags in Illinois received contributions of food from local fast-food restaurants, which may have been a welcome and necessary supplement to carceral meal offerings.<sup>69</sup>

Mr. Hahn also observed that the food at the fire camps was plentiful and “more nutritious and higher-calorie than those served in the chow hall behind the walls.” He called the decision to participate in the program as one “made under duress.”<sup>70</sup>

### **Incarcerated workers may acquiesce to dangers in disaster work to limit the terms of their imprisonment.**

Given the perils of life inside a carceral facility, incarcerated workers may accept dangerous disaster work to earn expedited early time off or to protect promises of an earlier parole.

- In California, incarcerated workers earned “good time,” or days off their sentences, at a higher rate for doing firefighting work than any other type of work assignment.<sup>71</sup>
- In Colorado incarcerated workers can earn time off sentence for various educational or therapeutic programs, but get an additional 1 day for every day they spend working at a disaster site,
- In Nevada, they earn 10 days for a month working in a conservation camp. In Louisiana they must work a full 30 days on disaster remediation to earn an equivalent 30 days off their sentence.<sup>72</sup>

“Good time” can be used as a punishment as well as an incentive.

- In Tennessee, laws written before the recent vote to abolish coerced labor in the state said that, “Any prisoner refusing to work or becoming disorderly may be confined in solitary confinement.”<sup>73</sup>
- Texas DOC policies state that an incarcerated person who refuses to work may have recreational privileges taken away or be restricted to their cell.<sup>74</sup>
- Refusing to work while incarcerated in Louisiana can mean punitive forfeiture of 15 days of good time, loss of wages, and solitary confinement up to 180 days.<sup>75</sup>
- A 2022 labor strike in Alabama carceral facilities resulted in the Alabama DOC limiting meals, switching to a less substantial “holiday meal schedule” on the fourth day of the strike and serving only two meals a day.<sup>76</sup> The same year, Alabama voters approved a ballot measure to change the state’s constitution and prohibit slavery and involuntary servitude, but just months later the Alabama Governor signed an executive order calling for strong punishments if incarcerated workers refuse to work. If an individual refuses, he could lose two

years' worth of accrued time off sentence and could not earn any new time for at least six months. And if he is perceived to be encouraging others to refuse, the penalty increases to three years of lost accrued time and a prohibition on earning new time for a year.<sup>77</sup>

With these dire consequences, an incarcerated worker assigned to clear downed trees after a storm or incinerate culled animals after an avian flu outbreak is highly unlikely to prioritize his own safety or that of his fellow workers over obeying orders to work.

## **Incarcerated workers have little or no legal protection from injury or illness.**

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Incarcerated workers labor under patchwork of health and safety rules. There is one set for those in federal facilities and different rules for those in state or local carceral facilities.

Some state OSHA plans cover only selected incarcerated workers, while other states explicitly exclude all incarcerated workers, and still others decide on a case-by-case basis. As a result, tens of thousands of workers face injury and even death as they perform inherently dangerous disaster work and critical public safety functions.

The consequences can be dire. Travis Buckley, who was incarcerated in Alabama, recalls feeling fearful about his assignment to chainsaw a tree that was blocking a road. He had never been trained on this equipment. He was told to do the task anyway or risk a written reprimand that could imperil his eligibility for parole. The resulting accident left him paralyzed.<sup>78</sup>

Similarly, seven incarcerated women in Nevada working as part of a fire crew allege that after a three-day initial classroom program, they did not receive other crucial firefighting training in the field before being sent in to a “mop up” operation to clean up any burning. When their protective boots failed, they were not able to refuse to continue working lest they be sent away from the camp to a high security facility.<sup>79</sup>

## **Federal OSHA has a narrow provision for jurisdiction over a small number of incarcerated workers.**

In federal prisons, if the work performed by incarcerated workers has them “working in conditions similar to those outside prisons,” they can file an OSHA complaint, but results are few and far between.

The Bureau of Prisons requires advance notice from OSHA of any inspection and control over witness interviews by prison officials. The facility can even simply ask OSHA officials to leave, after which they may not be allowed to complete the investigation.

“If this occurs, the Bureau [of Prisons] will be requested to complete the investigation and provide a report to OSHA,” explains an OSHA directive.<sup>80</sup>

The role of the carceral power structure in the safety claims process creates a strong disincentive for workers to raise concerns about workplace safety, particularly without real whistleblower protections. One survey of incarcerated people found that more than 70 percent of respondents said they faced retaliation after voicing grievances about facility operations, and 87 percent believed that the corrections staff would retaliate if they used the grievance process.<sup>81</sup>

In addition, more than half of incarcerated people are in state-run facilities, and Section 3(5) of the OSHA Act specifically excludes a State or any political subdivision of a State from coverage. Dodging the question of whether incarcerated workers meet other legal criteria for employment, an OSHA interpretation letter written in 1992 explains to a man incarcerated in Colorado that it will not investigate his complaint of exposure to hazardous chemicals because the OSH Act does not cover Colorado's own employees, "including inmates in correctional institutions, either paid or nonpaid."<sup>82</sup>

### **Most state OSHA plans also fail to protect incarcerated workers in state and local carceral facilities.**

There are 22 state plans that cover both private sector and public sector workers. Another 7 states or territories have a plan solely covering public sector workers (who are exempted from federal OSHA) but depend on the federal infrastructure to protect private sector workers.

Any state plan must be deemed at least as effective as OSHA in protecting workers and preventing workplace illnesses and injuries. Generally, incarcerated workers in states with their own OSHA plans do not have any more protection than their counterparts in states where health and safety is overseen by federal OSHA. Here, too, OSHA agencies have jurisdiction over "employers" and their "employees."

In some cases, lawmakers explicitly exclude incarcerated workers from state protections.

- In Arizona the state code specifies that "no prisoner given a work assignment or required to perform any labor by the state department of corrections shall be considered an employee or to be employed" by the state or the DOC, and therefore "none of the rights or privileges otherwise accorded to employees by law shall accrue to such prisoners." Its definition of "employment" does not include "an inmate of a custodial or penal institution," primarily because hard labor is required by those in carceral facilities.<sup>83</sup>
- In New Mexico, "An inmate participating in the [forestry work camp] program shall not be considered an employee of the state or of any other person deriving benefits from inmate services pursuant to the program."<sup>84</sup> Even when a private company is operating on carceral property and is bound by occupational health and safety standards, the workers doing the work are considered "volunteers" and therefore not "employees" for purposes of filing an occupational health and safety complaint.<sup>85</sup>
- In Kentucky, where seven incarcerated workers were killed in a private manufacturing facility when a tornado hit in 2021, the statute regarding the

leasing of incarcerated labor states that, “the leasing of prisoner labor shall not be deemed to create an employer-employee relationship between the person leasing the labor of the prisoner and the prisoner.”<sup>86</sup>

- A North Carolina Department of Justice opinion letter determines that because incarcerated workers are laboring “for the public benefit” of lowering carceral facility costs and to gain “skills and work habits needed to secure honest employment after their release,” they are not employees for purposes of the state’s occupational safety and health laws.<sup>87</sup>
- A Virginia directive says that because the state’s minimum wage law specifically excludes incarcerated workers, unless an incarcerated worker is employed by a public employer as part of a work-release program, she is not under the jurisdiction of the state’s OSHA definition of “public employee.” If an incarcerated worker nonetheless filed a complaint, the state OSHA regional director may choose to send a notification to the warden of the correctional institution notifying them of the complaint.<sup>88</sup>

In other states, decisions about occupational safety and health agencies’ jurisdiction over these workers may be made on a case-by-case basis.

- In Nevada, OSHA may investigate the injury of an incarcerated worker if they are being compensated for the work,<sup>89</sup>
- In Utah OSH officials report that claims filed by incarcerated workers have resulted in investigations if the work is done for a private employer inside the carceral facility.<sup>90</sup>
- In Wyoming state law specifies that “inmates” are excluded from the definition of “employee,” but DOC policies and procedures state that facilities should have written documentation that working conditions meet any applicable health and safety standards, and if an incarcerated worker filed a complaint with the state’s OSHA agency a compliance team would review the complaint to determine if they have jurisdiction over the case.<sup>91</sup>

## **In some states selected incarcerated workers may have health and safety protections.**

Along the West Coast, state OSHA programs do offer some levels of protection for incarcerated workers.

- In Oregon, cities and counties might make the decision to include incarcerated workers in their workers’ compensation programs, and in accordance with state code those workers would then also be covered by occupational safety and health laws.<sup>92</sup> (It is unclear how this system may change because of the 2022 ballot initiative to abolish slavery and involuntary servitude from the State Constitution, see box below.)
- In California, if CalOSHA receives notice of an injury or death of an incarcerated worker the agency can communicate recommendations to the DOC “of ways in

which corrections might improve the safety of the working conditions and work areas of state prisoners and other safety matters.” If the DOC does not comply with those recommendations or CalOSHA otherwise deems it necessary, it can adopt special orders with which correctional staff must comply.<sup>93</sup>

- And in Washington State, the occupational health and safety agency is required to consider incarcerated workers who are doing work for private companies, state-owned and -operated work programs, or providing services to the government or non-profit organizations as being within its jurisdiction. (However institutional support services or court-ordered community service programs are considered compulsory and are therefore not covered by the state OSHA agency.<sup>94</sup>)

It is unclear how recent votes in Oregon, Tennessee, and Vermont to remove prison labor from their constitutions will impact state-plan OSHA coverage for incarcerated workers. (Alabama voters also chose to prohibit coerced labor, but the state is covered by federal OSHA).

For example, Tennessee Code has a provision stating that no government agencies or government employees would have any liabilities to incarcerated workers who were injured on the job and state OSHA employees stated to us that incarcerated workers did not fit the definition of “employee.”

Even after its amendment banning slavery was passed, a recent investigation of incarcerated labor in Colorado found that more than 14,000 incarcerated people were given disciplinary write-ups for failing to work, with many assigned to do even more work or losing other privileges.<sup>95</sup>

- Even in these states, some incarcerated people may not receive the benefits of the health and safety protections in the place where they were convicted. Interstate agreements allow one state to send incarcerated people to another, so that, for example, an incarcerated worker from Washington State where at least some types of work merit OSHA coverage might be sent to serve a sentence in Arizona where they do not.
- In fact, in 2019 Washington State sent people to 23 other states many of which do not have their own OSHA systems and some of which, like Florida, have compulsory labor mandates for all incarcerated people. In Vermont, where voters approved a measure to abolish slavery for incarcerated people, 15 percent of people in the state’s prisons were transferred to other states in 2019.<sup>96</sup>

## Conclusion

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Extending health and safety protections to incarcerated workers doing state-mandated disaster work alone does not address the coercive nature of this work. And yet it is a step that can protect workers and inspire greater campaigns and challenges towards economic justice and decarceration.

Despite claims that the work is voluntary, these workers are compelled to obey the demands of supervisory corrections officials, or the directives of other state agency personnel, and every element of the work is controlled by DOC staff or officials of other state agencies.

Their work is a critical component of emergency preparedness and response, and several officials have been candid about their inability to perform these duties without the un- or under-paid labor of incarcerated workers. Including these workers in ordinary safety standards during a disaster is the least the state could do in return for their work. At the same time, exempting incarcerated workers by simultaneously arguing that the work is compulsory and it is voluntary delegitimizes the fundamental commitment of OSHA to protect all workers.

### **Ultimately, the abolition of coerced labor entirely is a matter of basic human rights and dignity.**

As scholars of the carceral system have observed, incarcerating significant portions of a community weakens its own ability to survive a natural disaster and rebuild while carceral facilities fail to protect incarcerated people in their roles as workers and residents alike.<sup>97</sup>

As a first step, every state should follow the examples set by Rhode Island, Nebraska, Utah, Alabama, Colorado, Oregon, Vermont, and Tennessee and amend state constitutions to prohibit all slavery and indentured servitude. And they should then immediately change all regulations, rules, statutes, and practices that exempt these workers from basic labor standards or that allow the carceral system to coerce labor or punish the refusal to do labor by incarcerated workers.

Another short-term protection on the path to abolition of coerced labor is to ensure that these workers have the right to fundamental safety on the job as a concrete policy to counter callous disregard for their bodily integrity and value as workers.

- This year the Correctional Facilities Occupational Safety and Health Act was introduced in both the US House and Senate to amend the OSH Act to include state and local facilities as employers and incarcerated workers as employees, and to require the same of state plans. Lawmakers should pass this Act now and with requirements that OSHA implement and enforce it quickly.
- All states with their own OSHA plans should explicitly extend health and safety protections to all incarcerated workers. Those with partial protections should make policy changes to create parity between incarcerated workers performing

labor within carceral facilities and those working outside the facility. OSHA officials should craft these policy changes in partnership with incarcerated workers themselves through the formation of an advisory committee to identify the health and safety needs of this community appropriately and adequately.

- Both state and federal OSHA agencies should insist on the collection of illness and injury data among incarcerated workers and the federal agency should make all reported data publicly available.
- States with labor protections for incarcerated workers, including health and safety protections, should not engage in agreements to move incarcerated people to other states. Not only does this practice deprive them of the protections that voters and elected leaders in their own communities have deemed important for them, but it also separates incarcerated people from the family and community connections that are critical for reentry after release.



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