Journal of Health Care Law and Policy

Volume 10 | Issue 2 Article 3

Job Security and Income Replacement for Individuals in Quarantine: The Need for Legislation

Mark A. Rothstein

Meghan K. Talbott

JOB SECURITY AND INCOME REPLACEMENT FOR INDIVIDUALS IN QUARANTINE: THE NEED FOR LEGISLATION+

MARK A. ROTHSTEIN*

MEGHAN K. TALBOTT**

INTRODUCTION

For thousands of years, civilized societies have attempted to prevent the spread of communicable diseases by preventing those already afflicted from having contact with those who were still well.[1] The term quarantine is derived from the Italian words *quarantina* and *quaranta giorni*, which were used in the fourteenth and fifteenth centuries and referred to a forty-day period in which certain ships entering the port of Venice were obliged to wait in isolation before any persons or goods were permitted to go ashore.[2] The practice of quarantine, as well as the Italian-derived word itself, was widely adopted by other countries to separate potentially exposed individuals from the rest of society until there was reasonable certainty that the suspected individuals were unaffected.

There have been times in the twentieth century when the use of quarantine was perceived as a crude method of disease prevention made unnecessary by modern medicine. For example, in 1977, the American Medical Association deleted

---

+ This article is an expanded version of Mark A. Rothstein & Meghan K. Talbott, *Encouraging Compliance with Quarantine: A Proposal to Provide Job Security and Income Replacement*, 97 AM. J. PUB. HEALTH S49 (2007).

* Herbert F. Boehl Chair of Law & Medicine, Director, Institute for Bioethics, Health Policy & Law, University of Louisville School of Medicine.

** Research Associate, Institute for Bioethics, Health Policy & Law, University of Louisville School of Medicine.

1. HOWARD MARKEL, QUARANTINE! EAST EUROPEAN JEWISH IMMIGRANTS AND THE NEW YORK CITY EPIDEMICS OF 1892, at 2 (1997).

2. MARK A. ROTHSTEIN ET AL., QUARANTINE AND ISOLATION: LESSONS LEARNED FROM SARS, REPORT TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION 17 (2003), available at http://www.louisville.edu/bioethics/public-health (last visited May 17, 2007) (citing MARKEL, *supra* note 1, at 3).

a provision in its Code of Ethics, which had been part of the Code since 1847,[3] that directed physicians to enlighten the public with regard to quarantine regulations and declared that it was a physician's ethical responsibility to care for the sick in times of epidemics, even though doing so would place their own health in jeopardy.[4] The rationale for removing the provision was that it was no longer needed.[5]

The 2003 epidemic of Severe Acute Respiratory Syndrome (SARS) reminded overconfident health professionals and lay-persons alike that even modern medicine may have few means to prevent the spread of infectious diseases. This is especially the case with a newly emerging pathogen in an interconnected world with high-speed transportation. Thus, despite its ancient origins and lack of technological sophistication, quarantine continues to be one of the only available public health measures to limit the spread of contagion.

The modern definition of quarantine is the "separation and restriction of movement" of people who are not yet ill, but who have been exposed to a contagious disease.[6] It is one of several social-distancing measures that can be used to prevent the spread of disease. Isolation, although often used synonymously with quarantine, is distinct and involves the separation and restriction of movement of those people who are already ill.[7] Quarantine generally takes place in homes, whereas isolation generally takes place in healthcare facilities; public health emergencies, however, sometimes require the use of other locations for quarantine and isolation, including workplaces, schools, and other settings.[8] Compliance with quarantine and isolation may be voluntary or pursuant to a governmental order.[9] Most incidents of noncompliance involve quarantine, because those being asked to restrict their movement are asymptomatic and a high percentage of individuals in quarantine are not, and never will become, infected.

---

3. AM. MED. ASS'N, CODE OF MEDICAL ETHICS OF THE AMERICAN MEDICAL ASSOCIATION 105 (1847), *available at* http://www.ama-assn.org/ama/upload/mm/369/1847code.pdf; *see also* Samuel J. Huber & Matthew K. Wynia, *When Pestilence Prevails . . . Physician Responsibilities in Epidemics*, 4 AM. J. BIOETHICS W5, W6-W7 (2004), *available at* http://bioethics.net/journal/pdf/4_1_IF_w05_Huber.pdf.

4. Huber & Wynia, *supra* note 3, at W6-W7 (quoting Robert Baker, *The American Medical Ethics Revolution*, *in* THE AMERICAN MEDICAL ETHICS REVOLUTION 17, 40 (Robert B. Baker et al. eds., 1999)).

5. *See id.* at W7-W8.

6. CTRS. FOR DISEASE CONTROL & PREVENTION, FACT SHEET ON ISOLATION AND QUARANTINE 1 (2004), http://www.cdc.gov/nciDOD/sars/pdf/isolationquarantine.pdf [hereinafter FACT SHEET ON ISOLATION AND QUARANTINE].

7. *Id.*

8. *Id.*

9. *Id.*

Historically, states and local governments have had the primary responsibility for protecting public health within their borders.[10] The power of states to protect public health, including compelling isolation and quarantine, is derived from their police powers.[11] As early as 1824, the Supreme Court indicated that states have inherent authority to quarantine under their police powers,[12] and since then, numerous courts have upheld state powers to restrict the liberty of individuals to protect public health.[13] The infringement of individual rights has been upheld to promote the public good, as epidemics of diseases, such as yellow fever, tuberculosis, and smallpox, generated litigation during the late nineteenth and early to mid-twentieth century.[14] Courts gave greater weight to state government officials' concerns about public health than to individuals' concerns about their own property or liberty interests. Since the 1960s, constitutional doctrine has evolved stronger due process rights for individuals, but the states' authority to act for the protection of public health and general welfare has remained.[15]

The federal government also has the power to order quarantine. Section 264 of the Public Health Service Act of 1944[16] gives the Secretary of Health and Human Services responsibility for preventing the introduction, transmission, and spread of communicable diseases from foreign countries into the United States and within the United States and its territories/possessions.[17] The federal government has authority to quarantine only for the diseases specifically listed by the President

10. Wendy E. Parmet, *After September 11: Rethinking Public Health Federalism*, 30 J.L. MED. & ETHICS 201, 202 (2002).

11. *See, e.g.*, Hennington v. Georgia, 163 U.S. 299, 309 (1896); Gibbons v. Ogden, 22 U.S. 1, 71-72 (1824).

12. *Gibbons*, 22 U.S. at 205.

13. *See, e.g.*, Compagnie Française de Navigation à Vapeur v. La. State Bd. of Health, 186 U.S. 380, 391 (1902) (permitting involuntary quarantine of persons suffering from complications from communicable diseases); Reynolds v. McNichols, 488 F.2d 1378, 1382 (10th Cir. 1973) (upholding ordinance that authorized involuntary medical treatment of individuals reasonably suspected of having a sexually transmitted disease); Ex parte Martin, 188 P.2d 287, 289 (Cal. Dist. Ct. App. 1948) (holding a health officer only needs probable cause to confine woman who engaged in acts of prostitution); Ex parte Clemente, 215 P. 698, 698 (Cal. Dist. Ct. App. 1923) (finding the health department justified in its detention of woman who engaged in prostitution, which provided reasonable grounds for believing she had a sexually transmitted disease).

14. Hengehold v. City of Covington, 57 S.W. 495, 497 (Ky. 1900) (upholding removal of smallpox patients to pesthouse); In re Halko, 54 Cal. Rptr. 661, 662 (Cal. Ct. App. 1966) (upholding detention of tuberculosis patients).

15. *See* O'Connor v. Donaldson, 422 U.S. 563, 582-83 (1975) (Burger, C.J., concurring) ("There can be little doubt that in the exercise of its police power a State may confine individuals solely to protect society from the dangers of significant antisocial acts or communicable disease."); *see also* Main v. Thomason, 535 S.E.2d 918, 921-22 (S.C. 2000) ("Courts will not interfere with the enforcement of regulations designed for the protection of health, welfare, and safety of citizens unless they are determined to be unreasonable.").

16. 42 U.S.C. §§ 264-272 (2000).

17. *Id.* § 264(a).

in executive orders.[18] The government may enforce quarantine laws through criminal sanctions or judicial injunctions.[19] Even though the federal government long has been involved in public health matters, its role expanded dramatically during the second half of the twentieth century.[20] During real or perceived national crises, the federal government is expected to take the lead in public health and national security issues, such as the Centers for Disease Control and Prevention's (CDC) and the Federal Bureau of Investigation's (FBI) actions during the anthrax incidents of 2001.[21] Although the federal government would likely defer to state governments for implementing intra-state quarantine and isolation measures based on state laws, in situations where the whole country is potentially at risk, national coordination is essential.

The 2003 SARS outbreak was a vivid reminder of the ongoing threat of a global pandemic and the continuing role of quarantine and isolation in attempting to control contagious diseases. In the United States, there were only eight cases of laboratory-confirmed SARS.[22] Patients with the virus were isolated until they were no longer infectious.[23] Individuals who were only mildly ill were treated at home, whereas those who were more seriously ill were admitted to hospitals.[24] Individuals who remained at home were asked to avoid contact with other people and to remain home for ten days after their fever had ended.[25] Individuals exposed to the disease but not displaying symptoms were asked to monitor themselves for symptoms.[26] Quarantine was not recommended at that time because of the limited transmission.[27]

In countries more severely affected by SARS, such as Canada, China, and Taiwan, individual and large group quarantines were used.[28] During the epidemic, hundreds of thousands of people worldwide were quarantined. In Taiwan alone, 131,132 persons were placed in quarantine, including 50,319 close contacts with SARS patients and 80,813 travelers from World Health Organization-designated SARS-affected areas.[29] About 30,000 people were quarantined in Toronto, the

18. *Id.* § 264(b).

19. *Id.* § 271(a); 28 U.S.C. § 1331 (2000).

20. Parmet, *supra* note 10, at 203.

21. *Id.* at 204.

22. CTRS. FOR DISEASE CONTROL & PREVENTION, SEVERE ACUTE RESPIRATORY SYNDROME, FREQUENTLY ASKED QUESTIONS ABOUT SARS 2 (2004), http://www.cdc.gov/ncidod/sars/sars-faq.pdf.

23. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 6, at 1.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 1-2.

29. Ctrs. for Disease Control & Prevention, *Use of Quarantine to Prevent Transmission of Severe Acute Respiratory Syndrome—Taiwan*, 52 MORBIDITY & MORTALITY WKLY. R. 680, 680 (2003).

Canadian city most affected by SARS.[30] However, only twenty-seven cases required written orders mandating quarantine under Ontario's Health Protection and Promotion Act.[31] A similar number of individuals were quarantined in Beijing, China.[32]

Although quarantine has the potential to be the most effective social-distancing measure at limiting the spread of infection,[33] its effectiveness may be limited by lack of compliance. Because of the disruption it creates in their daily lives, individuals subjected to quarantine may be reluctant to adhere to government directives to limit their movement.[34] Even if quarantined in their own homes, they are effectively isolated from the outside world, and time away from work could put their livelihood in jeopardy.[35] One of the most frequently cited major obstacles to compliance with quarantine is loss of income.[36] Quarantined individuals not only risk the loss of income from days of work missed, but they also risk losing their employment entirely due to absence or stigma related to the disease, regardless of whether they become infected. These risks can deter individuals from complying with quarantine orders at a time when public cooperation is critical for containing the spread of disease.

There is additional reason to be concerned about the rate of compliance with a future quarantine in the United States being lower than the rate of compliance with SARS quarantines in 2003. The countries and provinces most affected by SARS—Canada, China, Hong Kong, Singapore, Taiwan, and Vietnam—are known for more communitarian cultures and social solidarity than the United States.[37] For a population characterized by individualism, libertarianism, and distrust of government, it may be especially difficult to convince large numbers of healthy

30. NAT'L ADVISORY COMM. ON SARS & PUB. HEALTH, HEALTH CAN., LEARNING FROM SARS: RENEWAL OF PUBLIC HEALTH IN CANADA 35 (2003), *available at* http://www.phac-aspc.gc.ca/publicat/sars-sras/pdf/sars-e.pdf [hereinafter HEALTH CANADA].

31. ROTHSTEIN ET AL., *supra* note 2, at 58.

32. HEALTH CANADA, *supra* note 30, at 35.

33. Neil M. Ferguson et al., *Strategies for Mitigating an Influenza Pandemic*, 442 NATURE 448, 451 (2006).

34. Nola M. Ries, *Public Health Law and Ethics: Lessons from SARS and Quarantine*, 13 HEALTH L. REV. 3, 4 (2004).

35. *Id.* at 4.

36. THE SARS COMM'N, SECOND INTERIM REPORT: SARS AND PUBLIC HEALTH LEGISLATION 252-53 (2005), *available at* http://biotech.law.lsu.edu/blaw/sars/Interim_Report_2.pdf; Robert J. Blendon et al., *The Public's Response to Severe Acute Respiratory Syndrome in Toronto and the United States*, 38 CLINICAL INFECTIOUS DISEASES 925, 928 (2004).

37. World Health Org., Update 28—Affected Areas, Status of SARS Outbreaks in Individual Countries, www.who.int/entity/csr/sars/archive/2003_04_12/en/index.html (last visited May 11, 2007); *see also* Mark A. Rothstein, *Are Traditional Public Health Strategies Consistent with Contemporary American Values?*, 77 TEMP. L. REV. 175 (2004).

people to forego their livelihoods because, collectively, they may be contributing to public health.[38]

Countries affected by SARS recognized the importance of legal protections for job security and income replacement caused by quarantine and moved quickly to enact the needed legislation.[39] Enacting appropriate, effective legislation in the United States will take time and deliberation. Having laws in place before a pandemic strikes is the best approach. Currently in the United States, few laws provide for the replacement of lost income of individuals during quarantine[40] and for job security after quarantine. Neither existing statutes nor common law would provide adequate protection for the livelihoods of quarantined individuals during a pandemic.

In this article, we discuss current job security and income replacement laws and their applicability to quarantined individuals. Because most of these laws apply to few, if any, quarantined individuals, we propose measures to provide job security and income replacement to meet the basic needs of individuals in quarantine. Although many details of the income replacement program need to be developed, the purpose of this article is to identify limitations in current laws and to advocate for new legislation to provide income replacement and job security for quarantined individuals.

I. JOB SECURITY

Since the late nineteenth century, the employment at will doctrine has been the main organizing principle of American employment law.[41] As formulated by Horace G. Wood, employment agreements without a stated duration are terminable "at will" by either party for any reason without prior notice.[42] Because of the pervasiveness of this doctrine today, and because of technological innovation and global competition, employees are greatly concerned about job security.[43] A few statutory and common law exceptions to employment at will have been suggested as having possible applicability to dismissals during quarantine.[44] On closer

38. *Id.* at 182.

39. ROTHSTEIN ET AL., *supra* note 2, at 23-25.

40. Cleto DiGiovanni et al., *Quarantine Stressing Voluntary Compliance*, 11 EMERGING INFECTIOUS DISEASES 1778, 1778 (2005).

41. 2 MARK A. ROTHSTEIN ET AL., EMPLOYMENT LAW 401-02 (3d ed. 2004).

42.

> With us the rule is inflexible, that a general or indefinite hiring is *prima facie* a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is on him to establish it by proof. . . . [I]t is an indefinite hiring and is determinable at the will of either party . . . .

HORACE G. WOOD, LAW OF MASTER AND SERVANT § 134 (1877).

43. *See* THOMAS S. MOORE, THE DISPOSABLE WORK FORCE: WORKER DISPLACEMENT AND EMPLOYEE INSTABILITY IN AMERICA xiii-xvi (1996).

44. *See infra* text accompanying notes 66, 74-75 (discussing the extension of the public policy exception derived from various sources to protect individuals from discharge from work when following

analysis, however, these laws are unlikely to offer employees much, if any, protection.

A. Americans with Disabilities Act

Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against individuals with physical or mental disabilities, but the law is inapplicable to individuals in quarantine.[45] To be covered under the ADA, an individual must have a physical or mental impairment that substantially limits one or more of the major life activities of that individual, have a record of such an impairment, or be regarded as having such an impairment.[46] The ADA would not cover a healthy individual in quarantine, because the individual would not have any current impairment or past record of such an impairment, only a possible future impairment. The "regarded as" part of the definition might appear to cover quarantined individuals, but, as discussed below, case law confirms its inapplicability.

There is an analogy to genetic discrimination in employment because both quarantine and genetic predisposition involve individuals with a possible or future impairment. In 1995, the Equal Employment Opportunity Commission (EEOC), in its first official interpretation of the issue of genetic discrimination, stated that individuals who are subject to discrimination on the basis of genetic information related to illness are being regarded as having a disability and are covered under the ADA.[47] Following this non-binding interpretation, however, in 1999, the Supreme Court interpreted the coverage of the ADA quite narrowly in a much-analyzed trio of cases.[48] It does not appear that the Court would hold that individuals who are genetically predisposed to illness or individuals in quarantine are covered by the ADA.

The Court also has held that to be "regarded as" having a disability, an employer must either believe an employee has a physical impairment that substantially limits one or more major life activities when he or she has no impairment at all, or the employer must mistakenly believe an actual impairment substantially limits one or more life activities when it is not so limiting.[49] Not only

---

a civic or legal obligation such as quarantine); *see also infra* text accompanying note 81 (stating that some states enacted legislation specifically excepting individuals in quarantine from being discharged from employment).

45. 42 U.S.C. § 12102 (2000).

46. *Id.* § 12102(2).

47. 1 ROTHSTEIN ET AL., *supra* note 41, at 100.

48. *See generally* Albertson's, Inc. v. Kirkingburg, 527 U.S. 555 (1999); Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999); Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999).

49. *Sutton*, 527 U.S. at 489. In *Sutton*, the Supreme Court required that the impairment prevent a "class" of manual activities for it to qualify as substantially limiting a major life activity. *Id.* at 491. The Court's decision in *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 200 (2002) clarified that the

is it difficult to prove an employer's misperception, but this definition does not seem to apply to future impairments. The employer must mistakenly believe at the time of the adverse employment action that the individual has a substantially limiting impairment.

It is also firmly established that the ADA does not cover temporary impairments, such as seasonal influenza[50] and pneumonia,[51] because their relatively short duration and their insufficiently severe long-term impact do not meet the substantially limiting requirement. Thus, the ADA is unlikely to apply to individuals who contract and later recover from most communicable diseases, regardless of whether they were in isolation at the time of the allegedly discriminatory act by the employer. Likewise, if an impairment may be corrected by medication or other measures ("mitigated"), the impairment is not considered one that "substantially limit[s] a major life activity."[52] Because individuals in quarantine only face the possibility of acquiring a communicable disease that is temporary and may potentially be treated with medication, the ADA does not apply.

Along with the ADA, almost every state has its own law addressing disability discrimination.[53] Some, like California's law, are broader than the federal law.[54] For example, whereas the ADA only covers employers with fifteen or more employees, California law covers employers with five or more employees.[55] In addition, California's definitions of "physical disability" and "mental disability" require simply a "limitation" upon a major life activity, not a "substantial limitation," as the ADA requires.[56] Although *Sutton v. United Airlines, Inc.* and other federal ADA cases do not apply to actions brought under these statutes because the ADA does not preempt the broader protection supplied by state laws,[57] the application of current state disability discrimination laws to quarantined

---

Court was discussing "a broad range of jobs" when the major life activity under consideration is work. An individual must have an impairment that prevents or restricts the individual from doing activities that are of central importance to most people's daily lives, not just those tasks specific to his or her job. *Id.* at 200-01.

50. *See* Williams v. Phila. Hous. Auth. Police Dep't, 380 F.3d 751, 765 (3d Cir. 2004) (citing EEOC Interpretive Guidance, 29 C.F.R. Pt. 1630, App. § 1630.2(j) (2006)); Procopio v. Castrol Indus. N. Am., Inc., No. 96-5234, 1996 U.S. Dist. LEXIS 17418, at *2-*3 (E.D. Pa. Nov. 21, 1996) (holding that brief episode of flu-like symptoms is not disability within meaning of ADA).

51. Rinehimer v. Cemcolift, Inc., 292 F.3d 375, 381 (3d Cir. 2002) (asserting that pneumonia is a temporary condition and is not protected by the ADA).

52. *Sutton*, 527 U.S. at 481-82.

53. 1 ROTHSTEIN ET AL., *supra* note 41, at 482.

54. *See* California Fair Employment and Housing Act (FEHA), CAL. GOV'T CODE § 12900 note (West Supp. 2007) (construction with federal law).

55. CAL. GOV'T CODE § 12926(d) (West 2005).

56. CAL. GOV'T CODE § 12926.1 note (West Supp. 2007) (physical disability).

57. 42 U.S.C. § 12201(b) (2000).

individuals remains doubtful. This is the case because an individual must still prove a current physical or mental impairment.

B. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) was enacted to allow employees to take leaves of absence from work for family or medical reasons.[58] The FMLA requires employers with fifty or more employees and state and local government agencies to grant eligible employees up to twelve weeks of unpaid leave during any twelve-month period for one or more of the following reasons: (1) birth of a child; (2) placement of a child for adoption or foster care; (3) care of an immediate family member with a serious health condition; or (4) medical leave when the employee is unable to work because of a serious health condition.[59] Employees are not eligible for leaves of absence under FMLA unless they have worked for the employer for twelve months and worked a minimum of 1,250 hours in the twelve months preceding the leave.[60]

The application of the FMLA to quarantine is not clear. Under the FMLA, a "serious health condition" is defined as "an illness, injury, impairment, or physical or mental condition that involves . . . continuing treatment by a health care provider." [61] The United States Department of Labor, the agency that enforces the FMLA, has promulgated regulations to address the specific conditions that can qualify as "continuing treatment by a health care provider."[62] To qualify, one must be receiving (1) inpatient care—for example, an overnight stay—in a hospital, hospice, or residential medical care facility; or (2) continuing treatment by a health care provider.[63] A serious health condition involving continuing treatment by a health care provider includes: (1) a period of incapacity for at least three days involving treatment by a health care provider; (2) any period of incapacity due to pregnancy of prenatal care; or (3) any period of incapacity or treatment for such incapacity due to a chronic serious health condition.[64] An asymptomatic quarantined individual would not be incapacitated or receiving treatment from a physician and so would not meet the standard for "serious health condition" set out by the FMLA regulations. State family and medical leave laws contain similar definitions of a "serious health condition."[65]

---

58. 29 C.F.R. § 825.100(a) (2006).

59. 29 U.S.C. § 2612(a)(1) (2000).

60. 29 C.F.R. § 825.110(a)(1)-(2).

61. 29 U.S.C. § 2611(11).

62. 29 C.F.R. § 825.114(a)(2).

63. *Id.* § 825.114(a).

64. *Id.* § 825.114(a)(2)(i)-(iii).

65. *See* ALASKA STAT. § 39.20.550(5) (2006); CAL. GOV'T CODE § 12945.2(8) (West 2005); CONN. GEN. STAT. § 31-51kk(10) (West 2003); D.C. CODE ANN. § 32-501(9) (2001); FLA. STAT. ANN. § 110.221(1) (West 2002); HAW. REV. ST. § 398-1 (2004 & Supp. 2006); ME. REV. STAT. ANN. tit. 26, §

C. *Common Law*

Another possible basis of legal protection for the job security of individuals in quarantine is the common law doctrine of wrongful discharge. A 2006 report by the Congressional Research Service suggests that a claim for wrongful discharge in violation of public policy might arise if an employee were terminated because of absence from work due to quarantine or isolation during an influenza pandemic.[66] The report, however, overestimates the likelihood of success of such an action and ignores the practical limitations inherent in applying the common law to quarantined individuals who lose their jobs.

Employees "at will" are employees working without a collectively bargained or individual contract of stated duration who generally may be terminated without notice for any reason, except where doing so violates a specific statute, such as laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, disability, or other proscribed criteria. There are also common law exceptions to the employment at will doctrine. Most states prohibit "wrongful discharge" in violation of public policy, which gives rise to a legal action in tort or contract.[67] There are four types of public policies generally recognized by the courts: (1) refusing to commit an unlawful act; (2) exercising a statutory right; (3) fulfilling a public obligation; and (4) reporting an unlawful act.[68] The public policy exception has been recognized in every state except Alabama, Florida, Georgia, Louisiana, Maine, New York, and Rhode Island.[69] Arizona statutorily specifies limitations to employment at will.[70] Montana is the only state with a comprehensive statute prohibiting wrongful discharge.[71] The public policy exception is rarely applied to adverse employment actions short of discharge.[72]

State court decisions provide that a "public" policy is one designed for the benefit of the general population. The most common sources for public policy

---

843.5 (Supp. 2006); N.J. STAT. ANN. § 34:11B-3.1 (West 2000); R.I. GEN. LAWS § 28-48-1(7) (2003); VT. STAT. ANN. tit. 21 § 471(5) (2003); WIS. STAT. ANN. § 103.10(g) (West 2002 & Supp. 2006); ARIZ. ADMIN. CODE § R2-5-412 (2007); 4 COLO. CODE REGS. § 801-1-69 (2007); FLA. ADMIN. CODE ANN. r. 60L-34.0051 (2007).

66. NANCY LEE JONES & JON O. SHIMABUKURO, CONG. RESEARCH SERV., QUARANTINE AND ISOLATION: SELECTED LEGAL ISSUES RELATING TO EMPLOYMENT 2-3 (2006), *available at* http://www.opencrs.cdt.org/rpts/RL33609_20060807.pdf.

67. 2 ROTHSTEIN ET AL., *supra* note 41, at 438-39, 493.

68. *Id.* at 439.

69. *See id.* at 438; Salter v. Alfa Ins. Co., Inc., 561 So. 2d 1050, 1053 (Ala. 1990); Hartley v. Ocean Reef Club, Inc., 476 So. 2d 1327, 1329-30 (Fla. Dist. Ct. App. 1985); Eckhardt v. Yerkes Reg'l Primate Ctr., 561 S.E.2d 164, 165-66 (Ga. Ct. App. 2002); Quebedeaux v. Dow Chem. Co., 820 So. 2d 542, 545-46 (La. 2002); Bard v. Bath Iron Works Corp., 590 A.2d 152, 156 (Me. 1991); Horn v. N.Y. Times, 790 N.E.2d 753, 759 (N.Y. 2003); Pacheco v. Raytheon Co., 623 A.2d 464, 465 (R.I. 1993).

70. ARIZ. REV. STAT. ANN. § 23-1501 (LexisNexis Supp. 2006).

71. MONT. CODE ANN. § 39-2-904 (2005).

72. 2 ROTHSTEIN ET AL., *supra* note 41, at 439.

exceptions are state constitutions, statutes, and regulations, as well as federal laws and regulations.[73] Although early cases dealing with the public policy exception involved broad statements as possible sources of public policy, more recent cases tend to require constitutional, legislative, or regulatory sources.[74] Some non-legislative sources, however, are occasionally recognized, including case law, codes of professional ethics, and even, in rare instances, unwritten policies beneficial to society as a whole.[75]

Although complying with quarantine is arguably "fulfilling a public obligation," the cases asserting a public obligation have had little success; they fall into a few recognized categories in which employees are legally compelled to engage in certain types of conduct.[76] These categories include serving on a jury, obeying a subpoena, testifying in a legal proceeding, and reporting suspected abuse of children, elderly persons, patients, or institutionalized individuals.[77] No court has ever held that it violates public policy to discharge an individual because he or she missed work due to quarantine. In fact, in almost all jurisdictions, it is not unlawful to discharge an employee for missing work, as long as the employer is applying a uniform and neutral absenteeism rule.[78] Furthermore, even if the public policy exception were applicable to quarantine, it would not protect employees from other adverse employment actions, such as demotion or pay reduction.[79]

There are also practical reasons why common law wrongful discharge is an inadequate basis for protecting the employment rights of individuals in quarantine. First, courts may well condition protection of individuals in quarantine on the issuance of a judicial or administrative order. However, requiring the issuance of numerous quarantine orders to provide job security for quarantined individuals

---

73. *Id.* at 441.

74. *See, e.g.*, Green v. Ralee Eng'g Co., 960 P.2d 1046, 1050 (Cal. 1999) (finding public policy includes federal regulations intended to protect public safety); Gantt v. Sentry Ins., 824 P.2d 680, 687-88 (Cal. 1992) (concluding public policy exception must be "tethered to" either constitution or statute); Parnar v. Americana Hotels, Inc., 652 P.2d 625, 630-31 (Haw. 1982) (discussing the extension of the public policy exception based on antitrust laws); Luethans v. Washington Univ., 894 S.W.2d 169, 171 n.2 (Mo. 1995) (requiring the public policy exception to be grounded in constitution, statute, or regulation); Wieder v. Skala, 609 N.E.2d 105, 109 (N.Y. 1992) (rejecting the Code of Professional Responsibility as a source of public policy); Winkelman v. Beloit Mem. Hosp., 483 N.W.2d 211, 215 (Wis. 1992) (holding that public policy may be based on an administrative rule, in addition to a statutory or constitutional provision).

75. *See, e.g.*, Gardner v. Loomis Armored, Inc., 913 P.2d 377 (Wash. 1996). In *Gardner*, the Court recognized that the public policy exception was useful in "encouraging heroic conduct" and thus extended it to protect individuals from resulting discharge. *Id.* at 386.

76. *See* McKay v. Ireland Bank, 59 P.3d 990, 995 (Idaho Ct. App. 2002) (concluding that running for or holding public office is not a public duty).

77. ROTHSTEIN ET AL., *supra* note 41, at 452.

78. *Id.* This applies as long as there is not a statute explicitly prohibiting the firing or employer retaliation for the employee's conduct, such as under the ADA or workers' compensation laws. *Id.*

79. *See id.* at 439 (demonstrating that the public policy exception regulates employee termination with no mention of demotion or pay reduction).

would be burdensome on public health departments and judicial systems in an emergency.[80] In fact, it would contravene public policy to adopt a job security mechanism necessitating the issuance of quarantine orders. The question of whether a discharge was lawful would also require litigation and individuals would be forced to wait, possibly foregoing any income for months or even years, in the hope that a court might eventually rule in their favor. Finally, the uncertainty of recovery and the relatively small amounts in dispute might make it difficult for potential plaintiffs to find lawyers willing to provide representation. Thus, relying on the common law to deal with job security in the event of quarantine is not the best approach. The practical limitations of using the common law further highlight the need for a statute.

D. State Statutes

During the last five years, and particularly as a result of the 2003 SARS outbreak, eight states enacted laws giving a measure of job security to quarantined employees.[81] These laws, attempting to better prepare for public health emergencies,[82] were enacted as amendments or additions to state public health laws. The laws vary in coverage and protection and range from one-sentence statutory subsections to multi-sectioned, detailed statutes. All but two of these state laws apply only to employees who are unable to work because of a public health measure directed towards them. The exceptions, Kansas and Maine, have laws that also cover employees with an immediate family member under quarantine or isolation.[83] Most of the state laws require that an employee be under quarantine or isolation by order of a state official or judge and do not cover employees who simply comply with official requests for quarantine or isolation. The laws in Delaware and Minnesota include protections for employees quarantined by the "directive" of a public health official.[84] The Maine law applies to a broad range of situations where employees would be protected without the issuance of orders, including situations in which individuals during a public health emergency are unable to work because they are under public health investigation, supervision, or treatment related to the public health emergency, or because they have been directed not to work by their employer because of concern for exposure to others.[85]

---

80. *See* ROTHSTEIN, *supra* note 2, at 125.

81. *See* DEL. CODE ANN. tit. 20, § 3136(6)(d) (2005); IOWA CODE § 139A.13A (2007); KAN. STAT. ANN. § 65-129d (2002); ME. REV. STAT. ANN. tit. 26, § 875 (2006); MD. CODE ANN., HEALTH-GEN. I § 18-906(e) (2005); MINN. STAT. § 144.4196 (2007); 2005 N.J. Laws 1581-82; 2003 N.M. Laws 2042.

82. 2005 Me. Laws 756-61; 2005 Minn. Laws 1341-46; 2005 N.J. Laws 1562; 2003 N.M. Laws 2042.

83. KAN. STAT. ANN. § 65-129d (2005); ME. REV. STAT. ANN. tit. 26, § 875(1)(E) (Supp. 2006).

84. DEL. CODE. ANN. tit. 20, § 3136(6)(d) (2005); MINN. STAT. ANN. § 144.4196(1)(i)-(ii) (West Supp. 2007).

85. ME. REV. STAT. ANN. tit. 26, § 875(1) (Supp. 2006).

A majority of these state laws only protect employees from discharge or termination.[86] The laws in Iowa and Minnesota specifically protect employees from other adverse employment actions, including failures to promote, decreases in wages, or changes in work conditions.[87] Statutory remedies for discharged employees also vary. The laws in Delaware and New Mexico make it unlawful to terminate a quarantined or isolated employee, but do not provide specifically for reinstatement.[88] The law in Kansas imposes criminal sanctions, whereas the law in Maine imposes a civil penalty on employers that discharge quarantined employees, but neither of these laws makes a provision for reinstatement.[89] The Iowa law allows an employee to petition for reinstatement.[90] The laws in Maine and Minnesota require employees to seek reinstatement through a civil action,[91] leading to the problems discussed previously related to bringing a wrongful discharge suit.[92]

Although the enacted state laws provide some protection to employees, and other states have considered legislation, the laws are inconsistent in remedies and procedures. A more comprehensive, consistently applied federal statute or a model state law would better protect quarantined individuals and thereby promote public health.

II. JOB SECURITY PROPOSAL

In the United States, some laws already require employers to provide unpaid leave for employees engaging in certain socially desirable activities. The two best examples are laws dealing with federal jury service and military duty. The federal Jury System Improvement Act of 1978 prohibits employers from discharging, threatening to discharge, intimidating, or coercing employees because of employees' obligations to participate in federal jury service.[93] Under the statute, employees may be entitled to reinstatement and damages for lost wages and other benefits.[94] The Uniformed Services Employment and Reemployment Rights Act

86. *See, e.g.*, DEL. CODE. ANN. tit. 20, § 3136(6)(d) (2005); IOWA CODE § 139A.13A (2006); KAN. STAT. ANN. § 65-129d (2005); MD. CODE ANN., HEALTH-GEN § 18-906(e) (LexisNexis 2005).

87. IOWA CODE § 139A.13A (2006); MINN. STAT. ANN. § 144.4196(2)(a) (West Supp. 2007).

88. DEL. CODE. ANN. tit. 20, § 3136(6)(d) (2005); N.M. STAT. ANN. § 12-10A-16 (LexisNexis Supp. 2003).

89. KAN. STAT. ANN. § 65-129d (2002); ME. REV. STAT. ANN. tit. 26, § 875(6) (Supp. 2006).

90. IOWA CODE § 139A.13A (2006).

91. MINN. STAT. ANN. § 144.4196(2)(b) (West Supp. 2007).

92. *See supra* Part I.C.

93. 28 U.S.C. § 1875 (2000). State jury service is generally protected by the public policy exception to the employment at will doctrine. LEX K. LARSON ET AL., LARSON ON EMPLOYMENT DISCRIMINATION § 174.04[2][b] (2006).

94. 28 U.S.C. § 1875(b)-(c) (2000); *see, e.g.*, Shea v. County of Rockland, 810 F.2d 27, 28-29 (2d Cir. 1987) (holding that an employee may recover for lost wages and other benefits, but limiting other benefits to those related to employment, such as commissions or insurance benefits).

(USERRA) protects employees enrolled in the military from discrimination based on, among other things, absence due to service in the military.[95] Employees are entitled under USERRA to reinstatement and benefits as long as advance written or verbal notice is given to the employer; the cumulative length of the absence and all previous absences due to service duties does not exceed five years; and, under most circumstances, the person reports to, or submits an application for reemployment to the employer in accordance with the law.[96]

A comparable law could mandate leaves of absence and job protection for all individuals subject to quarantine and isolation, as well as for individuals who provide services to family members in quarantine and isolation. The purpose of such a job protection law would be to relieve apprehension about job loss and reassure individuals that compliance with quarantine and aiding quarantined individuals would not jeopardize their jobs. Affording protection to caregivers is as important as protecting individuals in quarantine. If caregivers cannot provide these services without risking their job security, they will be reluctant to provide care. Not only will more assistance be needed from governmental and private sources, but quarantined individuals might be tempted to break quarantine to deal with their own needs.

To achieve optimum coverage, a law providing job security to quarantined individuals should apply to all employers, regardless of size.[97] Remedies for violations of such a law should include injunctive relief, reinstatement, back pay, and attorney fees. Additionally, civil penalties comparable to those that may be assessed pursuant to the Jury System Improvement Act[98] also should be available, especially in cases of widespread patterns of noncompliance.

Although the initial legislative enactments addressing protections for quarantined individuals have been at the state level, federal legislation is encouraged because it would be simpler and more comprehensive. In the absence of congressional action, however, model state legislation should be drafted for extensive consideration and enactment.

III. INCOME REPLACEMENT

Some employees work under contracts that provide for paid leaves of absence; other employees may be able to use paid vacation time in the event of a quarantine. Public and private disability insurance would not apply to quarantine

95. 38 U.S.C. § 4312 (2000); *see* Velázquez-García v. Horizon Lines of P.R., Inc., 472 F.3d 11 (1st Cir. 2007); Francis v. Booz, Allen, & Hamilton, Inc., 452 F.3d 299 (4th Cir. 2006).

96. 38 U.S.C. § 4312.

97. By contrast, the Family and Medical Leave Act of 1993 only covers employers with fifty or more employees. 29 U.S.C. § 2611(2)(B)(ii) (2000).

98. The Jury System Improvement Act provides for penalties up to $1,000 for each violation. 28 U.S.C. § 1875(b)(3).

because quarantined individuals are not disabled. Thus, for the millions of Americans who live paycheck-to-paycheck, foregoing ten to fourteen days of income could cause economic hardship.[99] Unless an alternate source of income can be identified, there is a substantial risk that many individuals will disobey quarantine requests or orders and instead attempt to earn money for themselves and their families. This part reviews the possible alternate sources of income and concludes that new income replacement legislation is needed.

A. Workers' Compensation

Workers' compensation provides medical benefits and income replacement for workers with employment-related injuries or illnesses. Each state has its own workers' compensation laws, but they are generally similar, protecting employees from accidental injuries and illnesses arising out of and occurring during the course of employment.[100] These laws are unlikely to help quarantined individuals because individuals who are quarantined, but never develop the disease, have no compensable injury or illness.[101] If current workers' compensation laws were amended to allow for the eligibility of healthy quarantined employees, quarantined individuals would only be eligible if they were able to prove that they were exposed to or contracted the disease at work.[102] Even for those who become ill, past cases show that establishing eligibility is difficult where the disease is one to which the general public is exposed.[103] Several courts have refused to award compensation based on inadequate evidence of causation because there was not a considerably greater risk of illness in the workplace than within the general public,[104] or lack of accidental occurrence because contracting such a widespread disease would not be considered sudden or unexpected.[105]

---

99. It is beyond the scope of this article to address the potential repercussions of lost income, such as repossessions and evictions. For a discussion of these topics, see ROTHSTEIN, *supra* note 2, at 125, 139.

100. *See, e.g.*, CAL. LAB. CODE § 3208 (West 2003); KY. REV. STAT. ANN. § 342.0011 (1), (3) (West 2006 & Supp. 2006); MASS. GEN. LAWS. ANN. ch. 152, § 1(7A) (West 2005); OHIO REV. CODE ANN. § 4123.01(C), (F) (LexisNexis 2001 & Supp. 2006).

101. Even before a person tests positive for the disease, if a person has been exposed to a communicable disease and medical care or testing is required, the exposure can be considered a compensable injury under workers' compensation. *See* Doe v. City of Stamford, 699 A.2d 52, 56-57 (Conn. 1997) (holding that a police officer can recover for the expense of medical testing and treatment when he has been exposed to, but has not yet contracted, a disease).

102. *See, e.g.*, CAL. LAB. CODE § 3208; KY. REV. STAT. ANN. § 342.0011 (1), (3); MASS. GEN. LAWS. ANN. ch. 152, § 1(7A); OHIO REV. CODE ANN. § 4123.01(C), (F).

103. *See, e.g.*, Stevens v. Vill. of Driggs, 152 P.2d 891 (Idaho 1944) (pleurisy); Allith-Prouty Co. v. Indus. Comm'n, 185 N.E. 267, 269 (Ill. 1933) (pneumonia); Indus. Comm'n v. Brumm, 198 N.E. 863 (Ohio 1935) (an extreme cold); Cardwell Mfg. Co. v. Thomas, 134 P.2d 562 (Okla. 1943) (pneumonia).

104. *See Allith-Prouty Co.*, 185 N.E. at 269; *Cardwell Mfg. Co.*, 134 P.2d at 563; ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 5.05 (2006). However, where the circumstances do evidence a greater risk of infection caused by work, courts have allowed workers'

B. Unemployment Insurance

Unemployment insurance, a joint federal and state compensation program, is designed to provide financial assistance to individuals who are temporarily out of work due to a lawful reason and who are actively looking for employment.[106] The majority of state unemployment insurance programs are funded exclusively by taxes imposed on employers.[107] To qualify for benefits, unemployed workers need not be ill, but they must meet multiple eligibility requirements that vary by state.[108] Most states require: (1) evidence of sufficient wages in the past year; (2) evidence of work for a sufficient period of time; (3) evidence of involuntary separation from employment; and (4) availability to work.[109]

Unemployment insurance may offer some income relief, but its provisions would effectively exclude many quarantined individuals. First, individuals are only eligible for unemployment insurance if they have actually lost their job and are actively seeking work. Therefore, it would not provide compensation to the many quarantined individuals who are still employed but are simply not "available" for work. Second, certain types of workers, such as those who are self-employed—approximately seven percent of United States workers[110]—are excluded from coverage and would not be eligible for benefits. Third, minimum employment time requirements and minimum earnings requirements exclude other types of workers, particularly those who are new to or who are reentering the workforce, and part-

---

compensation claims. *See* Travelers Ins. Co. v. Donovan, 125 F. Supp. 261, 262-63 (D. D.C. 1954), *aff'd*, 221 F.2d 886, 888-89 (D.C. Cir. 1955) (finding tuberculosis contracted by a Red Cross worker in Japan is compensable when the probability of contracting the disease is higher than in her former station, the District of Columbia); Engels Copper Mining Co. v. Indus. Accident Comm'n, 192 P. 845, 847 (Cal. 1920) (affirming award of compensation for influenza contracted by an employee who, at the employer's direction, cared for several other employees suffering from the disease); City & County of San Fran. v. Indus. Accident Comm'n, 191 P. 26, 30 (Cal. 1920) (holding that influenza contracted by a steward in a municipal hospital during an epidemic is compensable); Sacred Heart Med. Ctr. v. Carrado, 579 P.2d 412, 414 (Wash. Ct. App. 1978), *rev'd* 600 P.2d 1015, 1019 (Wash. 1979) (finding hepatitis compensable by a hospital nurse that contracted the disease on the job).

105. *See, e.g.*, *Stevens*, 152 P.2d at 893; *Brumm*, 198 N.E. at 864. *But see* MacRae v. Unemployment Comp. Comm'n of N.C., 9 S.E.2d 595, 600-01 (N.C. 1940) (finding accident where co-employee coughed into claimant's face and claimant latter contracted tuberculosis); Bobertz v. Township of Hillsdale, 15 A.2d 796, 797 (N.J. 1940) (holding that a sewer inspector's disease was compensable because there was probable cause that the disease was contracted by the splattered sewage when he slipped and fell).

106. EMPLOYMENT & TRAINING ADMIN., U.S. DEP'T OF LABOR, STATE UNEMPLOYMENT INSURANCE BENEFITS, http://www.workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited May 11, 2007).

107. *Id.*

108. *Id.*

109. *Id.*

110. *See* Press Release, U.S. Census Bureau, Facts for Features, Labor Day 2006: Sept. 4, *available at* http://www.census.gov/Press-Release/www/2006/cb06ff-12.pdf (demonstrating that approximately seven percent of the workforce is self-employed by dividing the total number of workers, 151 million workers, by the total number of self-employed workers, 10.5 million).

time workers. Thus, unemployment insurance, like workers' compensation, is ill-suited to provide income replacement for individuals in quarantine.

IV. INCOME REPLACEMENT PROPOSAL

As this discussion demonstrates, a large percentage of individuals who will need to be quarantined in the event of a large-scale infectious disease outbreak will be left without any income replacement. Because maximal compliance is vital to halting the spread of disease, economic protections must be in place to encourage maximal compliance.

The proposed Emergency Flu Response Act of 2004 included, among other provisions, a National Quarantine Compensation Program.[111] This program would have provided for the replacement of lost wages during quarantine, afforded employees the right to their position after quarantine, and protected employees from employment discrimination. The Act was intended primarily to address concerns about the adequacy of annual influenza vaccine supplies. Consequently, as the 2004-2005 flu season elapsed, so did the perceived urgency of enacting the legislation. Yet, the need to provide income replacement and job security to quarantined and isolated workers persists.

On December 19, 2006, President Bush signed into law the Pandemic and All-Hazards Preparedness Act.[112] The law, intended to improve the coordination of federal and state responses to pandemics and other public health emergencies, contains provisions dealing with health surveillance, meeting the demand for health care personnel, and development of vaccines and pharmaceuticals.[113] It neither contains provisions relating to quarantine and isolation, nor protections for job security or income replacement.

The simplest and most efficient way to provide income replacement would be to institute a flat-rate payment system. During the SARS outbreak, Canada and its province most affected by SARS, Ontario, instituted income replacement programs. The Canadian government amended its employment insurance regulations to allow any person required or recommended to be in quarantine by a public health official, an employer, a doctor or nurse, or any other person of authority, to receive employment insurance benefits for the ten-day quarantine period. In addition, because most health care workers are not eligible for the employment insurance program, the Canadian government also created an income relief program for health care workers. This program provided weekly payments of Can$400 for full-time workers and Can$200 for part-time workers, with eligible recipients having

111. S. 2968, H.R. 5409, 108th Cong., 2d Sess. (2004).

112. Pub. L. No. 109-417, §§ 101-406, 120 Stat. 2831 (2006); *see* James G. Hodge, Jr. et al., *The Pandemic and All-Hazards Preparedness Act: Improving Public Health Emergency Response*, 297 JAMA 1708, 1708 (2007).

113. Hodge, Jr. et al., *supra* note 112, at 1708.

the ability to receive a maximum of Can$6,000 for a maximum of fifteen weeks.[114] Ontario also created a compensation program for health care workers and a program for those who were isolated or quarantined, or who cared for someone who was isolated or quarantined. The program provided for payments of Can$500 for full-time workers and Can$250 for part-time workers, with the ability to receive up to Can$6,000 with proof of greater loss.[115] The Canadian SARS Commission concluded that these compensation programs made a significant contribution to Canada's success in combating the SARS outbreak.[116] The Canadian programs could provide an effective model for quarantine compensation programs in the United States. A weekly payment model requires a minimum number of days in quarantine and a maximum number of weeks of available compensation, with an increased amount, up to a maximum, if greater loss is proven. The Canadian model meets basic needs, provides an incentive for compliance, and allows for flexibility to meet different degrees of loss.

The specific amount of compensation to be provided will require economic analysis. It is difficult to predict exactly how much money will be needed to fund an income replacement program, but it is clear that because the potential for a national outbreak exists, federal funding will be necessary and should be a part of any plan to prepare for a future pandemic. A major pandemic would eventually empty any fund created, but quarantine is most effective, and, therefore, best utilized before the widespread transmission of a disease. By the time a disease spreads extensively within the population and the quarantine compensation funds begin dwindling, the effectiveness of quarantine as a method of preventing disease transmission will likely be declining.

CONCLUSION

An effective quarantine requires that economic issues, including job security and income replacement, be addressed to achieve voluntary compliance rates capable of slowing or halting the spread of infection. In general, current United States laws would be ineffective in protecting the employment security and income replacement needs of individuals in quarantine. The ADA would not apply to individuals in quarantine because they have no current disability. Similarly, the FMLA would not apply because individuals in quarantine are asymptomatic and, therefore, lack a "serious health condition." The applicability of common law

---

114. THE SARS COMM'N, *supra* note 36, at 254.

115. *Id.*

116. *Id.* at 256. The SARS Commission quoted Dr. James Young:

> "One of the important ways of getting people to abide by [quarantine] was by offering financial compensation so they would in fact abide by it and stay in quarantine if and when they were ordered by the medical officer of health. . . . [The compensation program] resulted in us being able to manage the quarantine in an effective manner."

Id.

wrongful discharge actions is too uncertain and impractical to be considered useful to individuals in quarantine. State workers' compensation and unemployment insurance laws also would be inapplicable. Some recently enacted state laws address job security for individuals in quarantine, but they are inconsistent and provide insufficient protection in terms of remedies and procedures.

The legislative remedy proposed in this article would address the inadequacy of current federal and state laws to meet the needs of individuals in quarantine. The proposed quarantine compensation legislation, modeled after the successful Canadian program, would provide weekly payments to prevent economic hardship. Likewise, federal legislation based on the federal jury service and military service laws would provide the necessary job security in a simple, practical manner.

Recent experience with SARS worldwide confirms that the lack of adequate job protection and income replacement could lead to poor compliance with quarantine measures during a future pandemic. Comprehensive legislation is needed to ensure the effectiveness of quarantine, and these measures need to be enacted immediately. Waiting until a pandemic strikes will be too late.