

Access Denied: Sex workers' exclusion from COVID-19 relief in the United States

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Abstract

This short article provides an overview of the US government's response to COVID-19 and the exclusion of sex workers from pandemic relief. It details the impacts of this exclusion, including how sex workers and advocates were forced to prioritise emergency service provision over longer-term policy goals. The article concludes that the exclusion of sex workers from COVID-19 relief is part of the US government's broader history of discriminating against people involved in the sex trades and hindering advancements in policies to protect sex workers' human rights.

Suggested citation: M Grant, 'Access Denied: Sex workers' exclusion from COVID-19 relief in the United States', *Anti-Trafficking Review*, issue 21, 2023, pp. 145-150, <https://doi.org/10.14197/atr.2012232110>

On 13 March 2020, the United States (US) government declared a national emergency in response to COVID-19. Throughout the country, pandemic measures came into effect, including lockdowns that fundamentally changed public life. These social isolation efforts were meant to minimise the spread of the virus and save lives, but not everyone was protected equally. At the Sex Workers Project of the Urban Justice Center (SWP), we provide free immigration legal services to people involved in the sex trades as well as advocate for changing policies throughout the US to decriminalise and destigmatise sex work. As both a direct service provider and national policy advocacy organisation, we had a unique vantage point from which to assess COVID-19's impact on sex workers and the harms caused by the government's intentional exclusion of sex workers from pandemic relief.

There is no universal healthcare in the US, which means that millions relied on health insurance only available through an employer.¹ Therefore, a person's job significantly affected their health outcomes during these early months of the pandemic. While the federal government set up some additional safety nets,² including free COVID-19 treatment regardless of insurance status, stimulus checks, unemployment insurance expansions, and loans to employers to cover employee wages during lockdowns, access to this assistance was also significantly tied to one's job. For sex workers, the ability to benefit from COVID-19 relief was severely limited both within the criminalised and legalised sectors.³

The provision of most in-person sexual services, defined legally as prostitution, is criminalised in all US states except select counties in Nevada where the work is legal within brothels. As a result, for sex workers doing criminalised labour, employer-based COVID-19 relief was inaccessible. The discrimination against these workers resembled what workers in other informal labour sectors experienced: with no formal employment relationship, they were left to fend for themselves.

For sex workers, however, even working within legal sectors did not guarantee assistance. Sex workers and businesses related to adult industries were specifically excluded in the *Coronavirus Economic Stabilization Act* and subsequent federal relief packages.⁴ As such, employers, like adult film companies as well as freelance adult content creators operating through a limited liability company, could not apply for relief loans through the US Small Business Administration.⁵ The exclusion of sex workers and the businesses they work for meant their survival during the pandemic was not limited to avoiding COVID-19, but also entailed finding a way to sustain themselves financially.

¹ The Professional Society for Health Economics and Outcomes Research, Inc., 'US Healthcare System Overview-Background', n.d., retrieved 18 November 2022, <https://www.ispor.org/heor-resources/more-heor-resources/us-healthcare-system-overview/us-healthcare-system-overview-background-page-1>.

² US Department of Labor, 'Unemployment Insurance Relief During COVID-19 Outbreak', n.d., <https://www.dol.gov/coronavirus/unemployment-insurance>.

³ E Nolan Brown, 'U.S. Sex Workers and "Prurient" Businesses Excluded From COVID-19 Disaster Loans', *Reason Magazine*, 1 April 2020, <https://reason.com/2020/04/01/u-s-sex-workers-and-prurient-businesses-explicitly-excluded-from-covid-19-disaster-loans>.

⁴ Public Law 116–136, Division A, Title IV, §4001, 134 Statute 469, 'Coronavirus Economic Stabilization Act of 2020', 27 March 2020, <https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter116&edition=prelim>.

⁵ G Turner, 'Debate Over SBA Loan's "Sex Business Exclusion" Hinges on Obscure Word "Prurient"', *XBIZ*, 1 April 2020, <https://www.xbiz.com/news/251245/debate-over-sba-loans-sex-business-exclusion-hinges-on-obscure-word-prurient>.

To address this need, sex workers and sex worker organisations worked together to set up mutual aid funds and other forms of rapid assistance.⁶ Many of these efforts were location-specific, responding to the needs of sex workers within certain cities; national and regional organisations supported these efforts by providing referral services and setting up resource webpages to help sex workers find and connect to mutual aid groups in their area.⁷ This type of support was a lifeline for sex workers who could no longer safely conduct their work and were also denied government relief.

Mutual aid also filled a need for sex workers who faced new financial challenges due to COVID-19 but feared seeking non-pandemic government assistance for which they might have been eligible, such as housing. Such fear was (and remains) justified. Even with some types of sex work being legal in the US, there is still significant stigma directed at people working within the sex trades. For that reason, sex workers must engage in harm reduction tactics with regard to the decision to whom they disclose their work, which limits the government support systems with which they are willing or able to interact. Sex workers who are parents or migrants may be particularly reluctant to seek government support for fear that their work will be used against them in custody disputes or immigration proceedings. Therefore, mutual aid was a necessity not just due to adult industry-specific restrictions on COVID-19 government relief, but also because of pre-existing structural barriers to seeking any type of government assistance due to stigmatisation and criminalisation.

At SWP, clients accessing legal services are all migrants with sex trades experience seeking various forms of immigration relief. Due to their immigration status and occupation, they were dually disadvantaged in receiving government pandemic assistance and had to rely heavily on mutual aid from community groups. Since SWP's services are limited to immigration assistance, we too relied heavily on these community groups to meet the needs of clients throughout the pandemic while also, at times, providing emergency assistance beyond the scope of immigration relief. Many of our clients' experiences exemplified how US government policy choices caused harm and potential long-lasting trauma. This included Manuela (not her real name), a transgender woman who migrated from Mexico and was doing street-based sex work due to language barriers, limited formal education, and the absence of a work authorisation. She could not receive a government stimulus check because she lacked a social security number and the necessary

⁶ Global Network of Sex Work Projects, *Community-led Responses to COVID-19*, 3 November 2022, https://www.nswp.org/sites/default/files/sg_to_community-led_responses_to_covid-19_prf03.pdf.

⁷ Point Source Youth, 'Emergency Funds for Sex Workers During COVID-19', n.d., retrieved 26 July 2023, <https://www.pointsourceyouth.org/blog/blog-post-title-three-847yp>.

bureaucratic fluency to obtain a federal taxpayer number. To survive, she sought support from community groups, including TransLatin@ Coalition and Colectivo Intercultural TRANSgrediendo, for cash to cover daily expenses, access to food pantries, and group therapy to address stress and fear brought on by the pandemic.

Because of the sudden increase in sex workers needing support, many individual advocates and groups had to shift operations to use all or most of their rapid response resources to fulfil requests for aid.⁸ Additionally, sex worker-led organisations and groups relying on volunteers faced diminished capacity as their personal financial situations were increasingly constrained. At SWP, this meant shifting policy advocacy priorities to those related to COVID-19 relief and helping clients navigate bureaucratic systems oftentimes designed to exclude them. For one client, Raimunda (not her real name), who came to the US as an undocumented immigrant and was subsequently trafficked into the sex trades, SWP provided support after the death of her spouse from COVID-19. Raimunda lacked funds to pay for a funeral service at a time when New York City's funeral homes were overwhelmed. To give her spouse a dignified burial, she had to resort to crowdfunding money online and SWP's assistance in locating a funeral home outside the city.

The need to rely on community resources was due in part to the limited resources available to organisations supporting sex workers in the US. Just as workers in the sex trades face stigmatisation, so do advocacy groups when seeking funding. This situation is the result of decades of messaging by sex trade prohibitionists using a sex worker-exclusionary form of feminism and distorted definitions of trafficking to influence public perception and policy. A clear example of this is codified in the US *Trafficking Victims Protection Act* (TVPA), which requires grantees of federal anti-trafficking funds to sign a pledge that they will not 'promote, support, or advocate the legalization or practice of prostitution'.⁹ While this language does not necessarily preclude all organisations assisting sex workers from accessing federal funds, it creates uncertainty in some as to their eligibility, and unwillingness by others to seek funding that comes with the requirement of ignoring sex workers' voices.

⁸ D Gentile, 'SF Sex Workers Forced to Make Tough and Risky Choices During Pandemic', *SF Gate*, 13 April 2020, <https://www.sfgate.com/characters/article/SF-sex-workers-weigh-in-on-working-through-the-15177239.php>.

⁹ S Baskin, 'Fence-sitting and Its Discontents: The fear of taking a stand on sex work in the US', *Open Democracy*, 30 August 2021, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/fence-sitting-and-its-discontents-fear-taking-stand-sex-work-us>.

The US government's denial of COVID-19 relief to sex workers is in line with prior policy decisions to make life more dangerous for sex workers, including by limiting funding sources for advocacy groups. This context is necessary to understand the hostile spaces sex workers and advocates must navigate when pushing for policies to defend sex workers' human rights. Yet, despite the roadblocks, advocates and organisations still achieved important victories since the beginning of the pandemic. This included repeals of laws related to loitering for the purposes of prostitution in New York¹⁰ and California¹¹ that police frequently used to target trans women, particularly Black and Brown trans women. Local gains also included repeals of city ordinances that criminalised sex work in Vermont¹² and district attorneys in multiple jurisdictions¹³ implementing non-prosecution policies¹⁴ for sex work-related charges.

At this moment in the US, as human rights protections are rolled back for increasing segments of the population, including people seeking abortions and LGBTQ+ youth seeking equal access to education, sex workers and sex worker rights organisers should be looked to as leaders and experts in circumventing discriminatory government systems that deny them aid and infringe on their human rights to choice of employment, freedom of expression, bodily autonomy, and even life itself.

Acknowledgments

I am grateful to our Immigration Legal Services team, Clement Lee, Molly Cohen, Abigail Anzalone, and Nneka Okpara as well as our Research and Policy Interns, Shakirat Saba and Avii Van Praagh, and Research Consultant, Francesca Maviglia, for their contributions to this article.

¹⁰ New York Civil Liberties Union, 'Statement on the Repeal and Seal of the Walking While Trans Ban', 2 February 2021, <https://www.nyclu.org/en/press-releases/nyclu-statement-repeal-and-seal-walking-while-trans-ban>.

¹¹ B Migdon, 'California Governor Rolls Back Law Criminalizing "Loitering for the Intent to Engage in Sex Work"', *The Hill*, 5 July 2022, <https://thehill.com/changing-america/respect/equality/3546490-california-governor-rolls-back-law-criminalizing-loitering-for-the-intent-to-engage-in-sex-work>.

¹² R Mann, 'Montpelier City Council repeals sex work measures', *WCAX News*, 26 August 2022, <https://www.wcax.com/2022/08/26/montpelier-city-council-repeals-ordinances-banning-prostitution/>.

¹³ J Battaglia, 'Baltimore Will No Longer Prosecute Drug Possession, Prostitution and Other Low-level Offenses', *CNN*, 27 March 2021, <https://www.cnn.com/2021/03/27/us/baltimore-prosecute-prostitution-drug-possession/index.html>.

¹⁴ E Savit and V Burton-Harris, *Sex Work Policy*, Prosecutor's Office Washtenaw County Michigan, 14 January 2021, <https://www.washtenaw.org/DocumentCenter/View/27201/Sex-Work-Policy>.

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