



11 Things State and Local Governments Can Do to Build Worker Power

By Malkie Wall and David Madland | February 9, 2021

American workers do not have the rights and protections they need and deserve in the workplace or in the U.S. democratic system. Despite public support for policies that promote good jobs, the COVID-19 pandemic has repeatedly underscored how decent pay, health insurance, paid family and medical leave, and safety on the job are still far from guaranteed—even for workers deemed essential to their communities and the nation’s economy. Moreover, pandemic-induced economic trends have only served to deepen existing inequalities, including long-standing racial disparities.¹ Confronting these challenges will take more than simply raising minimum standards. Policymakers must also work to reestablish worker power in the economy, including by strengthening unions.

Unions help their members negotiate with employers for decent wages and pay as well as ensure that working people have a voice in U.S. democracy by promoting progressive priorities and mobilizing voter turnout.² Unfortunately, decades of attacks against organized labor by conservative lawmakers and the courts, together with a changing economy and shifting employment structures, have made it difficult for workers to join unions.³ Today, just under 11 percent of workers in the United States belong to a union.⁴ Researchers find that declining union power explains one-fifth to one-third of the growth in U.S. wage inequality in recent decades.⁵ As union membership declines, so does middle-class prosperity.

Federal reforms are necessary to fix many of the structural issues currently facing workers, but state and local lawmakers can play a significant role too. By supporting workers’ rights, strengthening protections for workers in nontraditional employment structures, giving workers a voice in setting job standards, and involving worker organizations in efforts to improve training, benefits provision, and standards enforcement, state and local policymakers can strengthen workers’ power and map a way forward for future federal policy reforms.

This issue brief details 11 strategies that state and local officials can implement in 2021 to rebuild power and raise job quality for working people.

1. Strengthen public sector unions

Government agencies—which are more constrained in their ability to offer competitive compensation packages—often find it difficult to recruit and retain staff, but strong public sector unions can help employees bargain for family-supporting wages and benefits and grant them a voice on the job⁶ while also increasing the quality of public services.⁷ During recessions, for example, unions can help ensure that government budget decisions are equitable. In 2019, more than one-third of public sector workers belonged to a union.⁸

However, laws governing public sector unions vary significantly across states. Several states prohibit all government employees from organizing or only allow certain groups of public sector workers—such as police and firefighters—to unionize, while excluding teachers and other public employees.⁹ Moreover, federal and state-level attacks on public sector collective bargaining rights have weakened the ability of public sector unions to advocate for government employees and their families.¹⁰ Now, with state and local governments facing major budget shortfalls due to the COVID-19 pandemic and the resulting economic recession,¹¹ public sector bargaining could again come under threat.¹² Strong public sector unions will play an important role in fending off layoffs and safeguarding public pension funds.¹³

To help combat threats to public sector employment, state and local policymakers should give all public sector workers—including employees of state and local governments—the right to join a union and collectively bargain. Recent wins for public sector collective bargaining in Colorado, Nevada, and Virginia show that there is an appetite for these reforms across the country.¹⁴ In addition, policymakers should take steps to make it easier for unions to communicate with workers through convenient means such as company email, strengthen workers' bargaining power with employers, and modernize the collection of dues.¹⁵

Policymakers can also use public sector training partnerships to benefit workers, support equity, and provide good value for the government.¹⁶ The state of Oregon, for example, has collaborated with Service Employees International Union (SEIU) Local 503 to train workers on health insurance and retirement plans.¹⁷ This model can help both workers and states get a better deal by ensuring that workers chose the retirement and health benefits that best fit their needs, improve employee retention, and teach employees about the benefits of unionization. In addition to these efforts to encourage public sector collective bargaining, state governments should work to preserve public sector jobs and benefits, including protecting and expanding defined-benefit pension coverage, which has been under attack for some time.¹⁸

2. Repeal ‘right-to-work’ laws

So-called right-to-work laws weaken unions by allowing workers to benefit from a union contract—for example, by receiving higher wages and benefits—without being required to pay the costs of negotiating or administering it.¹⁹ By allowing some workers to free ride, these laws reduce workers’ power to negotiate on an even footing with employers.²⁰ According to research, right-to-work states have lower wages, lower union density, and even lower voter turnout.²¹ Moreover, despite proponents’ claims, research finds that right-to-work laws have no positive impact on job creation.²²

3. Allow workers not covered under the NLRA to unionize and collectively bargain

The United States’ hallmark federal labor legislation—the National Labor Relations Act (NLRA) —excludes millions of workers, including farm workers, domestic workers, and independent contractors, from its coverage. This means that, under federal law, these workers do not have the basic legal right to join together and bargain collectively. State policymakers can take steps to provide workers excluded from NLRA coverage with the right to join a union. California, for example, has long allowed agricultural workers to bargain collectively,²³ and in 2019, farm workers in New York state won similar rights.²⁴ Some states, including Oregon and Washington, have taken steps to ensure that home care workers—who can face legal and institutional barriers to joining unions—have the right to unionize and collectively bargain for wages and benefits.²⁵

4. Protect workers in nontraditional work arrangements

A significant portion of the U.S. workforce is engaged in alternative work arrangements as gig workers, independent contractors, on-call workers, online platform workers, and workers for temp agencies.²⁶ These nontraditional workers face a number of challenges including more volatile hours and lower rates of health insurance coverage.²⁷ Workers labeled—or mislabeled—as independent contractors are also excluded from core minimum wage, overtime, paid leave, anti-discrimination, and collective bargaining protections.²⁸ These types of work structures shift power away from workers toward corporations, and employers often use them as a way to avoid complying with labor laws.²⁹

Policymakers should clarify the employer-employee relationship and ensure that employees are not wrongly labeled as independent contractors. They can do so by strengthening tests for employee status, as a number of states have done,³⁰ and by fighting the attempts of online platform companies to carve out their workforce from minimum wage, unemployment insurance, and workers’ compensation require-

ments or otherwise classify their workers as independent contractors.³¹ Such classification strips workers of their right to paid sick days, overtime pay, and coverage under occupational safety and health laws.³² In addition, it is important that employers that franchise or otherwise contract out work can be held legally responsible as joint employers for their shared control over employment conditions.³³

Finally, policymakers can raise standards for nontraditional workers by creating worker-led platforms to deliver needed benefits. For example, Washington state considered legislation to create a universal portable benefits fund for independent contractors and gig workers.³⁴ Philadelphia's Domestic Workers Bill of Rights created a portable paid sick day program for domestic workers including house cleaners and nannies.³⁵ New York state established the Black Car Fund—which provides workers' compensation for drivers who are independent contractors—in order to protect contractors who are injured on the job.³⁶ And Seattle created a deactivation appeals panel and funds a nonprofit driver resolution center to handle claims of unwarranted deactivations of drivers by transportation network companies. At the same time, Seattle also ensures coverage under a minimum compensation standard, which guarantees that drivers will earn at least the city's minimum wage—now \$16.69 per hour—after accounting for expenses.³⁷

5. Create workers' boards to establish industrywide standards

Policymakers should establish workers' boards, also known as wage boards.³⁸ These tripartite bodies bring together representatives of workers, businesses, government, and the public to recommend wage standards, training, paid time off, and other workplace standards for occupations and industries. Because workers' boards can set pay levels above state or local minimum wage floors and provide pay differentials for workers with additional skills or experience, they are better positioned to increase compensation for middle-income earners than a single minimum-pay standard.³⁹ More generally, research indicates that broad-based standard setting, of which workers' boards are an example, is a useful strategy to close racial and gender pay gaps, reduce economic inequality, and encourage companies to compete based on greater productivity rather than lower pay.⁴⁰

Workers' boards can ensure that workers in industries with low union density or those in which outsourcing makes it difficult for workers to engage in worksite-level bargaining are still covered by high standards and have a voice in setting the standards that govern their industry.⁴¹ A handful of states and localities already have laws that allow for workers' boards.⁴² New York City, for example, used a wage board to raise the minimum wage for fast-food workers to \$15 per hour in 2015,⁴³ and Seattle has a standards board for domestic workers.⁴⁴

6. Ensure that government spending creates good jobs

Each year, state and local governments fund millions of jobs through spending on contracts, grants, and loans, as well as through tax breaks and economic development subsidies. This spending can fund many things, including the construction of new roads and bridges, maintenance of public buildings, and in-home care for the elderly and people with disabilities. Policymakers should attach standards to all forms of government spending to ensure that taxpayers and workers get the best results. For example, state and local governments could use prevailing wage laws to ensure that government spending levels the playing field for employers who take the high road by paying good wages and benefits, upholding industry standards, and not undercutting union wages;⁴⁵ they could also encourage the use of registered apprenticeships by setting targeted hire requirements and establishing preapprenticeship initiatives.⁴⁶ In addition, governments can help prevent labor disputes and encourage equitable access to high-road employment by requiring project labor agreements and community workforce agreements on large public works projects as well as labor peace agreements on key projects that are at risk for labor disruption.⁴⁷ Compliance with these and other workplace laws should be required before contractors can receive government funding. For example, governments should employ responsible bidder laws, require contractors to submit detailed cost breakdowns in proposals to discourage artificially low bids, and—when necessary—temporarily debar contractors who fail to comply.

7. Give workers a voice in setting and enforcing public health standards

More than 400,000 Americans have died from COVID-19. In many cases, workers contracted the virus while on the job, highlighting the urgent need to reform workplace health and safety standards.⁴⁸ Under the Trump administration, the federal Occupational Safety and Health Administration (OSHA) largely abdicated its responsibilities to set and enforce workplace health safety standards during the pandemic.⁴⁹ The Biden administration has promised significant changes, such as issuing an emergency temporary OSHA standard.⁵⁰ However, states can also take important steps to further safeguard worker health by providing workers with a voice in setting and enforcing public health standards for their workplace, which would help address the current public health emergency as well as make workers safer in the future.⁵¹ For example, state governments could partner with unions and worker organizations to train workers on safety standards and require employers to create worker health and safety committees to communicate safety procedures.⁵²

Policymakers should also provide workers with the right to refuse to work under dangerous conditions, allow workers to collect unemployment insurance if they quit their job or strike due to unsafe working conditions, and issue guidance that workers who contract COVID-19 should be presumed to have an occupational disease and

therefore can access workers' compensation.⁵³ In addition, it is important that laws guarantee protections for whistleblowers who raise health or safety concerns and provide workers with a private right of action to enforce safety standards.

8. Take actions to enforce workplace standards

In addition to workplace safety hazards, evidence suggests that violations of employment standards—including minimum wage, overtime, and sick leave standards—are a widespread problem.⁵⁴ Robust enforcement of workplace standards is particularly important during an economic recession such as the one the United States is currently experiencing, as workers already fearful of losing their jobs may be particularly hesitant to come forward to report violations.

To encourage employer compliance with the law, policymakers should increase funding for state and local labor agencies that investigate and enforce labor laws. Cities and states can also bolster activities to enforce standards by including community and worker organizations in enforcement efforts. Under a co-enforcement model, government agencies partner with unions and worker organizations to expand their on-the-ground capacity and improve compliance.⁵⁵ These “co-enforcers” act as intermediaries between workers and government to educate workers on their rights and provide guidance to workers seeking to redress issues in their workplaces. In addition, co-enforcers can directly alert government agencies to violations, making it easier for agency inspectors to collect back wages and bring bad actors into compliance. Co-enforcement also gives workers an opportunity to interact with worker representatives, ensuring greater exposure for unions and the benefits they provide.

Several jurisdictions use this approach to enforce minimum standards in hard-to-reach workplaces. For example, the city of San Francisco's Office of Labor Standards Enforcement funds worker centers and other community-based organizations to conduct education and outreach about local labor laws in low-wage immigrant communities and communities of color;⁵⁶ the Los Angeles Unified School District trains trade unions to enforce prevailing wage laws on school district projects;⁵⁷ and California's Division of Labor Standards Enforcement has pursued co-enforcement efforts at the state level.⁵⁸

Policymakers should pair government enforcement programs and fines with a private right of action so that workers can bring lawsuits in court to recover unpaid wages and hold employers accountable for violations.⁵⁹ Since the cost of retaining legal representation can be prohibitive for low-wage workers, it is also important that workers and their organizations' representatives are able to recover attorney's costs and fees. Private enforcement mechanisms ensure that workers will always have an avenue through which to protect their rights, even as public agencies' enforcement priorities shift over time.

9. Protect workers who speak up about violations

Workers who come forward to report violations of labor and employment laws often face retaliation from their employers. This issue is especially pervasive among women, immigrants, and low-wage earners.⁶⁰ Anti-retaliation protections help ensure that employers cannot threaten, demote, fire, or otherwise retaliate against workers who speak out about violations in their workplace. Yet a majority of states fail to provide these necessary legal protections.⁶¹ Furthermore, in most states, employers have the discretion to discharge workers for any reason, excluding those that are explicitly proscribed by law.⁶² This creates a power imbalance between employees and employers.

State and local policymakers can protect workers by passing strong whistleblower and anti-retaliation laws that include four key elements: government-imposed fines, monetary damages, recovery of attorney's fees, and a private right of action.⁶³ In addition, policymakers can pass “just cause” laws—which require employers to demonstrate a good reason for disciplining or terminating an employee—to place workers on a more even playing field with their employers. Just cause is starting to gain traction among state and local lawmakers: For example, the New York City Council recently considered such protections for the city's essential workers during the pandemic.⁶⁴

10. Involve worker organizations to improve workforce training

Current workforce training programs are of variable quality and too often fail to lead to good jobs, and on-the-job training from private employers is becoming less common.⁶⁵ Research shows, however, that involving unions in joint labor-management programs can lead to more training and better results.⁶⁶ Worker organizations and businesses in joint labor-management programs should work together to ensure that employers share in the cost of workforce training programs and that these programs focus on fast-growing occupations and industries; lead to high-quality, local jobs with family-supporting wages and benefits; and provide people of color and women with equitable access to job opportunities.⁶⁷

Policymakers can help support these goals by promoting registered apprenticeships,⁶⁸ increasing the share of worker representatives on state and local workforce boards to ensure that they are truly tripartite, and directing funds and programmatic support toward labor-management partnerships.⁶⁹ In addition, policymakers can raise standards by instituting training requirements or certifications. The most notable example is Washington state's SEIU 775 Training Partnership, which aims to improve job quality and care outcomes in the state's fast-growing home care industry by structuring “training standards to improve recruitment, retention, and professionalization.”⁷⁰ State and local governments across the country, including in Arizona and Florida, have also used public sec-

tor training partnerships to boost the quality of public services, address issues of retention and recruitment, increase workplace diversity, and create career ladders for positions in high-demand occupations such as information technology (IT).⁷¹ Fostering these sorts of partnerships has the potential to raise standards for workers as well as build trust among workers, unions, and employers.

11. Partner with unions to ensure that workers understand and can access workplace benefits

State and local governments can also involve worker organizations in benefits provision to ensure that government programs reach the people who need them. Currently, many benefits programs such as unemployment insurance and workers' compensation can be hard to navigate alone, which leads to underutilization.⁷² For example, less than half of unemployed workers in 2019 applied for unemployment insurance benefits and even fewer received them.⁷³ To boost uptake rates for this and similar programs, governments could fund unions and workers' organizations to raise awareness of benefit programs, help workers complete application forms, and protect workers from retaliation. These "navigators" could connect workers with unemployment insurance and workers' compensation benefits as well as train workers on health insurance and retirement benefit programs. Oregon's state government, for example, collaborates with SEIU Local 503 to train public sector workers on health insurance and retirement plans.⁷⁴ Partnering with trusted worker organizations can help ensure that workers both understand and utilize the workplace benefits provided to them.

Conclusion

Too many American workers struggle to earn a living and stay healthy on the job. As the United States recovers from the COVID-19 pandemic and recession, it is particularly important that policymakers take steps to recognize the important roles that all workers play in making U.S. economies function, whether their workplace is a fast-food restaurant, hospital, school, or warehouse.

Working people across the country want and need a greater voice on the job, and experience shows that states and cities can lead the charge. In November 2020, states successfully backed efforts to raise the minimum wage to \$15 per hour⁷⁵ and create a paid family and medical leave program.⁷⁶ At the same time, gig economy companies such as Uber and Lyft won policy fights that will make it harder for workers to collectively bargain.⁷⁷ To ensure that workers are afforded the dignity they deserve, state and local officials can and should act now to strengthen worker power in the workplace and beyond.

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