



LEGISLATIVE BRIEF | OCTOBER 2017

Fighting Back, Fighting Forward

An Agenda for State & Local Pro-Worker Reforms



Introduction

Though it is easy to look at what is happening in Congress and our federal government these days and feel despair, now is the time for advocates across the country to double-down on their efforts to fight for progressive reform at the state and local level wherever possible. In states with leadership open to progressive reforms, advocates should be looking for every opportunity to introduce and work toward passing either this year or in the near future the kinds of reforms that will help low-wage workers gain a foothold in the economy and be more economically secure. Even in states where the policy terrain is less favorable, finding legislators to champion progressive policies is both a messaging victory demonstrating to the electorate what is possible, but also can be an effective weapon to fight off ill-advised proposals aimed at taking power and rights away from workers and giving more to corporate employer interests.

The fact is that our nation's low-wage and middle class workers are more vulnerable than they have been in most of our lifetimes, and this is particularly true for immigrant workers and people of color. The tone and tenor of so much of the national dialogue these days is deeply negative and divisive. But bringing together community based organizations, their members, advocates and legislators at the state level can help turn the tide toward the positive. We can work together to present an alternative vision of what this nation should be about and how it should value its working people.

To be sure, progressive advocates are fighting defensive battles on many fronts in the states whether it be attempts to preempt cities and localities from passing reforms such as raising the minimum wage or enacting paid sick leave laws; so-called "right to work" laws; attempts to erode employee status and the rights that come with it in order to cater to the on-demand economy; and a myriad of other attempts to roll-back the hard-fought rights workers have earned in the past. NELP has tools and resources to help in all of those fights as well and we do encourage you to reach out to us for assistance with all defensive battles.

The legislative proposals discussed below present advocates with a menu of options they can explore with state legislators and allies. Any one of them would represent a significant step forward to marginalized and low-income workers, and NELP staff are able to provide campaigns with technical assistance to help get off the ground and build for success.

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Raising the Minimum Wage and Building Robust Enforcement Systems

With income inequality and wage stagnation such severe problems in our country, we must use every tool at our disposal to raise wages for those workers struggling to get by, ensure that workers take their higher pay home, and hold employers accountable for retaliation against workers who attempt to assert their rights. This is particularly true for immigrant workers, who are most likely to suffer wage theft and retaliation for asserting their rights. Though Congress continues to abdicate its responsibility to raise the federal minimum wage, the Fight for \$15 has galvanized workers and advocates across the country and spurred a wide swath of state and local jurisdictions to enact gradual yet robust increases to their minimum wages for all workers, including those who work for tips. NELP has played a central role in this [movement](#), providing legal and policy research and support as well as communications assistance and strategic consultations to campaigns throughout the country. Given the inevitability of continued Congressional inaction on this issue, now is the time for states and cities that have the authority to do so to raise their minimum wages and build robust public enforcement systems to tackle rampant wage violations in order to ensure that higher minimum wages do improve the lives of workers and their families.

CONTACT

If you are interested in raising the minimum wage or advancing a model for effective enforcement of labor standards in your state or locality, please contact Tsedeye Gebreselassie, tgebreselassie@nelp.org, and Laura Huizar, lhuizar@nelp.org, for technical assistance.



Removing Barriers to Employment for People with Records

While many occupational licenses are important safeguards for ensuring just and safe working conditions and consumer protections, a large number of licensing laws go too far by imposing unfair barriers to employment for the nearly one-in-three U.S. adults who have an arrest or conviction record. Especially impacted are large numbers of low-wage workers and workers of color seeking careers in health care, transportation, child care, and other growing industries that require a license or certification for the more desirable positions. Many unreasonable barriers exist in state laws that protect neither consumers nor workers, but rather, act as deterrents to good career paths.

NELP issued an extensively researched report on this issue, [“Unlicensed and Untapped: Removing Barriers to State Occupational Licenses for People with Records;”](#) its Appendix includes model legislation for states to consider. This issue has the added bonus of being one that generates substantial bi-partisan support and provides opportunities to build coalitions across the political spectrum that can continue to work on criminal justice reform and employment issues beyond the licensing campaigns.

Moreover, NELP is a national leader in Fair Chance hiring, including the Ban the Box movement, and has a [toolkit](#) for states and localities to explore.



CONTACT

If you are interested in licensing or fair chance hiring reform, please contact Beth Avery, bavery@nelp.org, or Phil Hernandez, phernandez@nelp.org, for technical assistance.



Strengthening Protections for Unemployed Workers

Poor financing decisions that caused more than 40 states to bankrupt their unemployment insurance (UI) trust funds during the Great Recession, combined with a backlash against the unemployed who struggled so long to find work, led many states to slash their UI programs in a misguided effort to pay back their loans solely on the backs of workers. Even before the Recession, the UI safety net was fragile, and today it is even more so, with only about 1 in 4 unemployed workers receiving UI benefits.



NELP has developed an extensive [toolkit](#) that details the full range of UI reforms that states should be implementing. Your choices should be guided by either how badly your state has decimated its UI program, or how robust it is and where it can be shored up to be even stronger. NELP experts are on hand to help with that determination.

Though the toolkit has a thorough list of suggested reforms, here are a few we wish to highlight:

- If your state offers less than a uniform 26 weeks of benefits, working to restore this standard should be a top priority.
- Work-sharing programs are one of the most effective ways to preserve jobs in times when companies are struggling or when we are going through a recession. If your state doesn't have one yet, now is the time to enact them so that they can be in place before the next recession.
- Workers are increasingly holding part-time jobs either by choice or necessity, yet many states' UI programs don't adequately address the income needs of unemployed part-time workers.

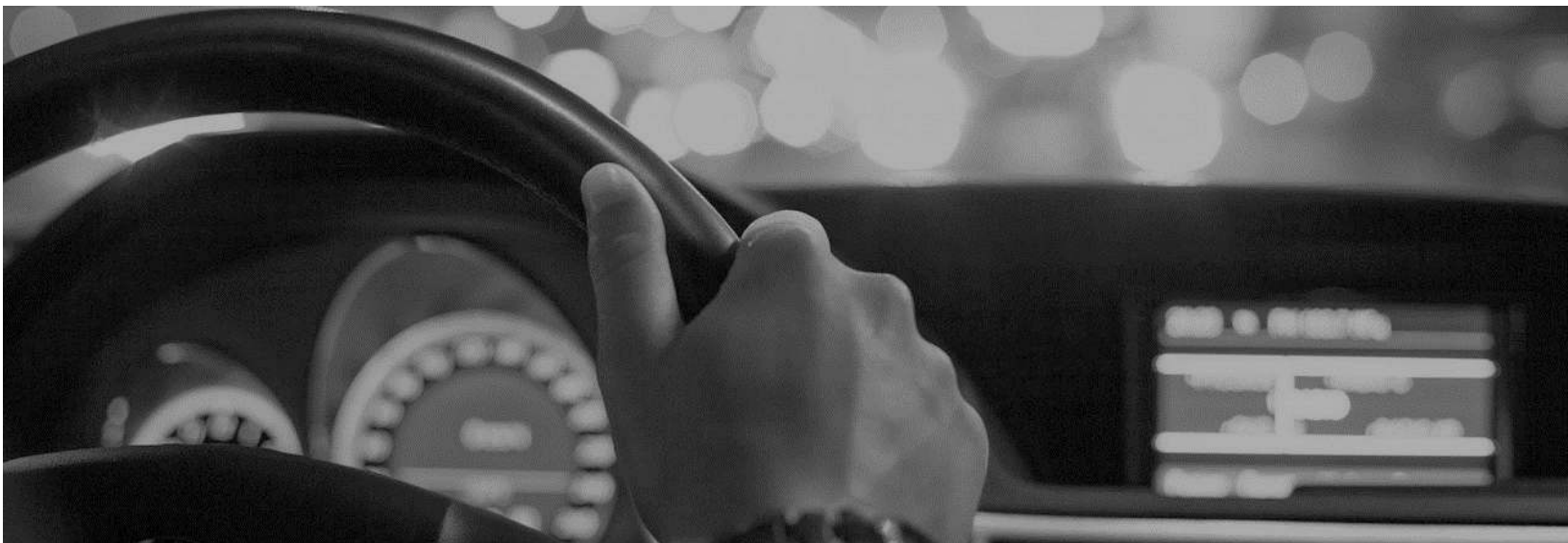
- When workers lose hours of work but not their jobs, many states don't allow them to collect UI for this partial unemployment, even though they need assistance to make ends meet. This is an easy reform that states can explore.
- Low wage workers are often ineligible for benefits because of outdated formulas for calculating earnings. The "Alternative Benefit Period" is crucial to making sure that those with low-wages aren't shut out of the UI system.



As a final note, if you are in a state or U.S. territory that was impacted by any of the recent hurricanes, or the California wildfires, there are state-based reforms that will make Disaster Unemployment Assistance work much better for those who lost their jobs as a result of the hurricanes or fires. NELP's [fact sheet](#) about DUA reforms has more information.

CONTACT

If you are interested in pursuing any UI reforms in your state, please contact Maurice Emsellem, emsellem@nelp.org, and Rebecca Dixon, rdixon@nelp.org, for technical assistance.



Turning “Gig” Jobs into Good Jobs

The so-called “gig” or “on-demand” is here to stay. Unfortunately, however, the ease of using a smartphone app to locate a worker to deliver food, run errands, or drive us around obscures a significant downside of the on-demand economy: many on-demand businesses are misclassifying workers as independent contractors and/or not offering them the type of employment rights and social insurance benefits that render a job a “good job.”

Fortunately, a number of states and cities are fighting back, adopting measures that, for example, allow transportation network drivers to organize and bargain over the terms and conditions of their work. At the same time, though, many legislators (including some who mean well) have introduced and championed legislation that ease restrictions for on-demand companies, even though doing so undermines employment rights for workers. It is important for advocates and legislators be on the lookout for the proverbial wolf in sheep’s clothing when it comes to proposals aimed at creating special rules and carve-outs for gig jobs.

NELP has developed a menu of policy solutions that will help make sure that gig jobs are good jobs. A few are highlighted below and you can read more in [“Rights on Demand: Ensuring Workplace Standards and Worker Security in the On-Demand Economy.”](#)



- Allow on-demand workers to organize and bargain with their employers
- For purposes of state unemployment insurance and workers’ compensation programs, mandate that on-demand workers be considered “statutory employees.” That would mean businesses would pay into these systems and workers could access the safety nets when needed.
- For purposes of state civil rights laws, mandate that gig workers be considered “statutory employees” and eligible for all the protections against discrimination and harassment that the state bestows on employees.

CONTACT

If you are interested in on-demand workers, please contact Nayantara Mehta, nmehta@nelp.org, and Becki Smith, rsmith@nelp.org, for technical assistance.



Fighting Wage Theft and Ensuring Employer Accountability

Under our nation's laws dating back as far as the early 1900s, companies that share control with their subcontractors over employees' working conditions may also share accountability for violations of those workers' rights, such as wage theft. It's been uncontroversial for decades that more than one employer can be found to be jointly responsible with another so that companies provide better oversight of working conditions, and in doing so, ensure broader compliance with basic labor and employment laws.

But today, corporate lobbyists are exaggerating the scope of joint employment to try to help companies escape their responsibilities when they hire workers through temp agencies or outsource their work to smaller firms. In particular, there is a [federal legislative attempt](#) to dramatically weaken the FLSA's joint employer doctrine and legitimize a corporate rip-off of workers. State allies can fight back by enshrining a strong joint employer doctrine in state labor standards legislation.

CONTACT

If you are interested in fighting wage theft and ensuring employer accountability, please contact Cathy Ruckelshaus, cruckelshaus@nelp.org, and Ceilidh Gao, cgao@nelp.org, for technical assistance.



Fighting for Improved Worker Health and Safety

The promise of economic opportunity means nothing if workers don't have safe and healthy workplaces. Each year, workers who are solidly in the middle-class, or working their way toward economic security, are pushed into poverty by workplace injuries that leave them and their families without any real recourse to remedy. And every worker killed on the job leaves behind loved ones and families who struggle to go on without them. Not surprisingly, immigrant workers remain particularly vulnerable to unsafe workplaces. We must do better and fortunately, we have the tools to do so.

There are some innovative ideas for cities and states to step into this space and help make up for the void in OSHA enforcement that we're already seeing. Here are just a few examples:

- Boston passed an ordinance requiring contractors applying for permits in the city to submit their health and safety violations history as part of the permitting process. Those companies with a clear history of unsafe practices will be denied permits.
- Massachusetts is considering a bill that would require all contractors and subcontractors bidding on state funded projects to submit their health and safety violations history. Only those businesses with a satisfactory record will receive contracts.
- In states with a state run health and safety agency, there is opportunity to improve worker safety and health. For example, the California legislature passed a bill allowing workers and their representatives to access documentation filed with the state agency about the injury and illness prevention programs that all employers must develop and implement. In so doing, the workers and their representatives can act as a reality check on whether the programs will actually accomplish these goals.

- States can strengthen their workers' compensation laws by adding stronger anti-retaliation provisions, narrower drug testing provisions that place responsibility on the employer to demonstrate there is some nexus between the injury and suspected drug use, and provisions that provide for the payment of medical care even when a claim is disputed and still being adjudicated.

CONTACT

If you are interested in making strides toward better worker health and safety, please contact Debbie Berkowitz, dberkowitz@nelp.org, for technical assistance.



Improved Rights for Home Care Workers

Home care workers perform some of the most important and intimate jobs in our entire workforce. They care for older adults so they can age in place; people with disabilities so they can remain independent in their communities; and children with disabilities or complex medical conditions so that they can stay at home with their families. The value of the work they do is inestimable, but sadly, they aren't paid nearly the wages they deserve.

Though the U.S. Department of Labor finally extended minimum wage and overtime protections to home care workers in 2015, many are not covered by their state's more expansive laws. In states that offer higher minimum wages, broader health and safety coverage, or better labor laws, home care and domestic workers deserve to have those rights. Whether through legislative, regulatory, or ballot initiatives, state coverage can help to improve wages and working conditions for a workforce in ever-growing demand.

CONTACT

If you are interested in working to improve the quality and wages of home care and domestic jobs, please contact Caitlin Connolly, cconnolly@nelp.org, and Ceilidh Gao, cgao@nelp.org, for technical assistance.



Overtime Reform

Low-wage and middle-class workers know that they are working harder than ever before, yet struggling more and more to make ends meet. One of the most effective tools we have to combat the epidemic of overwork and underpay is vigorous enforcement of the 40-hour work week. The Obama Administration attempted to strengthen the federal regulations that govern the so-called “white collar” exemptions from overtime coverage to make up for the weak ones that the Bush administration promulgated in 2004. The Bush regulations set the standards for overtime exemption so low that employers can give a worker a title and a few stray managerial responsibilities, and pretend that they’re an executive or professional worker. In doing so, they can force them to work far more than 40 hours per week with no extra pay at all for all those hours. There’s nothing dignified about being forced to work long hours without any pay for the extra time. Workers don’t need fake prestige – they need good wages and time off for their personal lives.

Unfortunately, the Trump Department of Labor plans to roll back the reforms the Obama Administration tried to put in place. Though advocates will fight tooth and nail at the federal level, states have a multitude of options at their disposal in terms of regulations, executive action or legislation to help guarantee workers the benefits of a 40-hour work week, and overtime when their week exceeds those hours. This is one of the single most effective policies a state can adopt to help raise wages for a multitude of workers, and it will have the collateral effect of helping to spread work among more people, thereby creating jobs.

CONTACT

If you are interested in enacting overtime reform, please contact Paul Sonn, psonn@nelp.org, and rnayak@nelp.org, for technical assistance.



Protecting Temp Workers

Temporary jobs are often the way that people enter or re-enter the workforce, but unfortunately, the ways in which temp workers are employed are often rife with abuse. The Illinois legislature recently passed innovative and landmark legislation to protect temp workers and it was signed into law by Governor Rauner.

Under the new law, temp staffing agencies are now required to:

- report demographic information about the workers they hire;
- never charge workers for background checks, drug tests, and credit checks;
- notify temp workers about the types of equipment, protective clothing and training needed to perform the job as a means to reduce workplace injuries;
- provide transportation back from a job site if transportation was provided to the job site; and
- place their temporary workers into permanent positions if such positions become open.

CONTACT

NELP provided assistance to the advocates who fought this successful campaign, and we would love to see more states enact similar legislation to ensure that temp jobs are good jobs. If you are interested in protecting temp workers in your state, please contact Becki Smith, rsmith@nelp.org, for technical assistance.

Conclusion

Perhaps more than at any time in our recent history, now is the time for progressive workers' rights advocates to be fighting for every reform we can achieve at the state and local level. These campaigns can help shift the national narrative away from one that devalues work and workers, to one that shows what's ultimately possible on a national scope. NELP looks forward to working with our allies to shift the narrative back toward the needs of working people; we are committed to using all the tools available to us to fight for good jobs.

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