



# Building a Just and Inclusive Recovery for All Workers

## How States and Cities Can Respond to Workers' Demands for Economic Security, Health and Safety Protections, and Workplace Democracy

A project of EARN and the [National Employment Law Project](#)

### Executive Summary

As COVID-19 continues to surge across the country, most states still lack the protections necessary to keep workers and the public safe, the supports workers need to weather the current health and economic crises, and the policies needed to ensure a just recovery with expanded access to good jobs.

We must envision a just recovery that will get us to the other side of the current crises with stronger labor, economic, and public health systems that work for Black, Indigenous, Latinx, women, and immigrant workers. These workers have suffered the most from the pandemic as a result of generations of racially unjust labor, public health, and economic systems. Systems and policies that target these workers will, in practice, work better for *all* workers.

In the midst of the ongoing pandemic and long-predicted economic downturn, workers are demanding that government at all levels respond to the needs of underpaid, unemployed, and underemployed workers. Frontline workers of color are calling for action to provide the economic supports and workplace protections all workers need to survive the crisis.

While the Biden administration and Congress must take on bold structural change and reverse [the damage to workers that has taken place during the Trump years](#), state and local governments must also take action. Especially with the prospect of a divided Congress, states and cities have a vital role to play and should act swiftly to complement federal action by establishing the protections and supports that workers need now and in the coming months and years.

This policy agenda outlines four broad categories of action that states, and in many cases cities, should take to protect working families and promote a just and fully inclusive recovery.

## **1. Guarantee strong workplace health and safety protections and support for unemployed people**

Worker health is public health, and the pandemic has proven just how interdependent we are. Workers and the public must feel safe, and workers whose jobs have disappeared or only partially returned must have support if our society is to weather the current crisis. But many states still have not established adequate worker health and safety protections or offered the unemployment and paid leave benefits workers need to quarantine when necessary and to put food on the table when their employers shut down. It is urgent that state policymakers, in partnership with federal leaders, implement additional protections and enforcement actions to meet the urgent needs of *all* workers. To support the health, safety, and financial security of workers and their families, states and cities should:

- Adopt and aggressively enforce the new emergency temporary standards (ETS) that the Biden administration's Occupational Safety and Health Administration (OSHA) is expected to issue to protect workers from the virus that causes COVID-19.
- Protect worker whistleblowers who sound the alarm when employers are endangering them with stronger safeguards against retaliation.
- Fight corporate immunity proposals that would allow businesses to escape punishment for cheating or endangering their workers.
- Rebuild unemployment insurance programs to ensure adequate benefits of sufficient duration for workers during the recession and beyond.
- Create an excluded workers' relief fund to provide financial assistance for unemployed immigrant workers and other jobless workers shut out of unemployment insurance programs.
- Expand COVID-19 leave protections so that workers—particularly the Black and brown workers hardest hit by the pandemic—can care for themselves or family members without fear of losing pay or their jobs.

## **2. Promote good jobs to help frontline workers and families weather the pandemic and thrive**

A just and inclusive economy is possible if we can transform precarious work into good jobs offering workers the opportunity to thrive. Upgrading the quality of jobs is more urgent than ever during the pandemic as the frontline workers carrying our society through the crises are among the most exploited in our economy. And Black workers, undocumented workers, and immigrant workers in particular are relegated to the most unsafe and lowest-paid jobs by discriminatory employer practices and institutionalized racism. Together

we must ensure that all workers have access to higher wages, traditional employment rights, and bedrock benefits, and that workers can exercise collective power. To help create the good jobs that undergird strong communities, states and cities should:

- Jump-start stalled paychecks for frontline workers by raising the minimum wage to \$15 an hour, restoring overtime pay, and guaranteeing recognition pay for essential workers during declared emergencies.
- Enable workers to balance work and family demands by guaranteeing paid sick days, paid family leave, and fair work schedules (thereby ending last-minute shift changes and other abuses that leave workers unable to balance family demands and, in some cases, pay their bills).
- Restore worker bargaining power by strengthening public-sector bargaining rights, repealing “right-to-work” laws that deprive unions of funds for the services they provide workers, and extending unemployment insurance to striking workers.
- Adopt sectoral standards boards that ensure fair working conditions for workers in essential industries by bringing employers, workers, and community stakeholders together to establish wages, benefits, and job protections for essential jobs.
- End arbitrary and retaliatory firings with “just-cause” employment protections, replacing the “at-will” system that gives employers inordinate control over workers’ livelihoods.
- Fight wage theft and enforce minimum wage laws, overtime laws, and other labor standards and protections.
- Protect workers placed in jobs by so-called “platform companies” and other workers who are deprived of basic protections such as the minimum wage and unemployment insurance when they are mislabeled as independent contractors. Fight measures (such as California’s Proposition 22) that carve out exemptions from protections for such platform workers, strengthen public enforcement of misclassification penalties, and enact legislation creating “ABC” tests, which clearly define when workers must be considered employees.
- Protect contracted temp and staffing workers in our fissured economy by issuing clear guidance stating that the businesses that control their work are “joint employers” and thus responsible for their working conditions, and by adopting temp and staffing agency worker protection laws.
- Fight forced arbitration requirements and other coercive waivers that prevent workers from enforcing their rights by adopting “qui tam” laws (giving workers or organizations the ability to bring enforcement actions on behalf of the state), and ban noncompete agreements, no-poaching requirements, independent contractor waivers (purporting to waive an individual’s employment status), and COVID-19 liability waivers.
- Establish worker rights related to data, electronic monitoring, and algorithmic management to combat intrusive workplace monitoring and surveillance practices that worsen inequities and magnify power imbalances between workers and employers.

- Protect immigrant workers from exploitation by prohibiting retaliation against immigrants who report wage theft and other abuses, preventing employer abuses of the employer verification process, and expanding access to driver's and professional licenses.

### **3. Fight for a racially just recovery by promoting equitable access to jobs for Black and Latinx workers hardest hit by the pandemic and unemployment**

The recession triggered by the pandemic has been one of our nation's most unequal, impacting Black and Latinx workers the hardest. These workers are disproportionately represented in service industries that still have not fully reopened, and they are often the last to be hired when jobs finally return. For Black workers—especially Black women—this impact is compounding the effects of longstanding structural labor market discrimination and occupational segregation that have consigned them to jobs with low wages and bad working conditions and left them with the highest levels of joblessness. There is an urgent need for states and cities to respond with policies to ensure fair access to good jobs for workers of color. To fight for a racially just recovery, states and cities should:

- Promote targeted local hiring in Black and brown communities to fill jobs funded by public COVID-19 relief and other programs.
- Fight racial and gender discrimination and occupational segregation with stronger civil rights protections and data gathering.
- Promote fair hiring for people with arrest or conviction records by adopting fair chance hiring and clean slate reforms (which prevent early disclosure of records in the hiring process, and expunge records after a certain period), removing occupational licensing barriers, and ending unfair fees and fines imposed by the criminal justice system for traffic and other violations that trap workers in endless cycles of debt.

### **4. Reject austerity politics by advocating for the resources states and cities need to fight the pandemic and sustain vital services**

State and local governments are on the front lines of the dual health and economic crises and provide the critical services needed to manage the pandemic and improve economic security. Government needs to be adequately resourced to meet collective needs, from helping schools reopen safely to staffing testing and tracing programs to processing unemployment insurance claims. But when states and cities are forced to cut services and jobs, they are no longer able to fulfill these crucial roles—and it is Black and brown workers and families who are hurt the most. Resources to finance needed government services are abundant in our wealthy nation. As states and cities struggle with growing deficits, they should reject austerity politics and maintain vital public services and jobs. Following are some of the actions states and cities must take to fight the pandemic and sustain vital services:

- Adopt progressive taxation (whereby top earners and the extremely wealthy face higher tax rates) to replace lost revenue and sustain vital services and jobs.
- Crack down on wasteful corporate giveaways by restricting taxpayer-funded incentives to businesses and development projects that produce specific, negotiated community benefits such as affordable housing and family-sustaining jobs for local residents.
- Empower local communities by rolling back “preemption”—state laws that block local governments from taking action to address pressing needs. State legislatures across the country have increasingly abused their authority to preempt local policies that raise worker wages, guarantee paid leave, or provide other pro-worker protections. States can and should reject excessive preemption and empower local governments to address local priorities.

# 1.

## Guarantee strong workplace health and safety protections and support for unemployed people



Workers and the public must feel safe, and workers whose jobs have disappeared and whose workplaces have not reopened must have support if our nation is to weather the current crisis. But many states still have not put in place adequate worker health and safety protections during the pandemic or implemented the public health responses necessary to control the virus by keeping workers and the public safe. Nor have states offered the unemployment or paid leave benefits workers need to quarantine when necessary and to put food on the table when their employers shut down. While the Biden administration is expected to begin addressing these and other urgent needs—needs that the Trump administration largely ignored—an effective response at the scale of the problem requires a concerted federal–state effort that centers the needs and leadership of workers of color to ensure that no workers are left behind in the recovery. Especially with the prospect of a divided Congress limiting federal action, it is urgent that state policymakers in partnership with communities build on their initial pandemic responses with additional protections and with implementation and enforcement actions that address workers’ urgent needs and seed long-term economic resilience for working families.

## **a. Protect workers' health and safety during the pandemic and beyond**

Even before the pandemic, Black, Indigenous, and Latinx workers, including immigrants, worked in the most dangerous jobs, suffering higher fatality rates than other workers. The deadly impacts of this segregated workforce have been further compounded during the pandemic—only 19.7% of Black workers and 16.2% of Latinx workers [work in occupations that allow them to telework](#). With their lives at stake, workers have been banding together and using their collective power to demand health and safety protections, whether it be by walking off the job, fighting through their union, or providing support to one another.

The new administration's Occupational Safety and Health Administration (OSHA) should act swiftly to adopt a [COVID-19 Emergency Temporary Standard \(ETS\)](#) mandating binding precautions that all employers must take to keep their workforces safe. But even assuming that OSHA finally takes this critical step to protect workers, there will still be a pressing need for states—especially those with OSHA-approved workplace safety and health programs, i.e., [“OSHA State Plan” states](#)—to significantly strengthen their enforcement systems for implementing it. Moreover, there are a wide range of other actions to safeguard worker health and safety during the pandemic and beyond that all states can and should take.

**Adopt any new federal OSHA Emergency Temporary Standard and aggressively enforce it.** Assuming that the new OSHA issues a federal COVID-19 Emergency Temporary Standard, OSHA State Plan states should: (1) immediately adopt it; (2) start enforcement of the standard for COVID-19-related hazards in the workplace, focusing on complaints and workplaces with reports of escalating spread of COVID-19; (3) backfill all open OSHA inspector and other positions to give agencies the staffing they need to keep workers safe; (4) enable workers to file complaints online with the agency; and (5) undertake targeted proactive enforcement with community group partners.

**Shield worker whistleblowers with stronger protections against retaliation.** To protect the public from the spread of COVID-19, we must control the spread in workplaces. But unless workers feel safe sounding the alarm when employers are endangering them or the public, such protections are hard to enforce, putting all of us at risk. A 2020 survey found that almost [one in five Black workers reported fear of retaliation in their workplaces](#) for reporting COVID-19 risks. Federal and most state laws do not adequately protect workers from retaliation for speaking up. As a result, employers ranging from [Amazon](#) to major hospitals have been punishing workers who complain about COVID-19 risks at work, or who notify co-workers or the public about dangers. In many cases, workers of color are leading the fight against their employers' dangerous actions, as is the case with the [Staten Island Amazon fulfillment center](#) and poultry plants across the country. States should support workers' calls for bolstering public health and safety and [strengthen their](#)

whistleblower anti-retaliation laws by: (1) incorporating private rights of action (i.e., allowing workers to take employers to court when they violate their workers' rights); (2) increasing penalties; (3) extending protection to cover not just when workers file a formal complaint but also when they notify fellow employees or the public of workplace hazards; and (4) guaranteeing a right to refuse to work under dangerous conditions without being fired. To ensure that any protections against retaliation can be effectively enforced, cities and states should also take the further step of adopting a just-cause standard for termination so that employers cannot use arbitrary reasons to mask retaliatory firings. (See Section 2(e) below.)

**Fight corporate immunity proposals.** In many states, corporate lobbyists are pushing for business immunity legislation that would prioritize maximizing corporate profit at the cost of people's lives and safety. Such legislation would prevent corporations from being held accountable for cheating or endangering their workers, customers, or the public during the pandemic. Corporate lobbyists claim immunity is necessary to prevent a flood of COVID-19-related lawsuits that still has not materialized. With no evidence of a wave of frivolous legal actions, the real impact of these proposals would be to remove incentives for businesses to protect workers and the public from the spread of COVID-19, and to prevent those injured from seeking redress. Many of these anti-safety measures would undercut business incentives to comply with state OSHA standards that protect workers from COVID-19 and with any future federal OSHA COVID-19 standard. Several proposals may even restrict workers' limited rights under workers' compensation programs (which already prohibit most lawsuits against negligent companies for worker injuries). States should do what Virginia did in 2020 and reject these sweeping proposals, which would undermine public health and safety.

**Strengthen workers' compensation programs.** Workers' compensation provides a crucial source of health care coverage and income support for sick and injured workers and is available regardless of immigration status. Governors and legislatures should clarify and expand workers' compensation coverage by adopting a presumption that the COVID-19 illness is work-related. State workers' compensation laws should also be strengthened with strong protections against retaliation, expanded coverage to include agriculture and domestic workers (whose exclusion disproportionately impacts workers of color), prohibitions against drug testing where there is no nexus between the injury and impairment, and broader coverage for work-related illnesses such as musculoskeletal disorders.

**Protect workers against dangerous heat exposure.** As our climate warms, heat exposure is one of the most serious health and safety threats workers face—whether they are working outdoors on farms or construction sites, or indoors in warehouses or production plants. Because federal OSHA has no heat exposure standard, states—both those with OSHA State Plans and those without them—can and should act to adopt and enforce new protections against heat exposure.

## b. Rebuild unemployment insurance programs for all workers

Our nation is facing a protracted and profoundly unequal recession. [Black and Latinx workers lost more jobs \(as a share of their total employment\) during the pandemic and have recovered fewer of them than white workers.](#) Many major industries from tourism to live entertainment realistically will not fully reopen until the pandemic abates. And the current levels of unemployment are likely to worsen as infection rates rise this winter. But Senate Majority Leader Mitch McConnell has blocked urgently needed extensions of unemployment benefits and other COVID-19 relief, and the prospect of a divided Congress creates great uncertainty about what further unemployment insurance (UI) assistance Congress will approve and when. To sustain workers and state economies through the economic crisis and prepare for the next recession, states must make long-overdue reforms in their UI programs. Jobless workers are demanding that states strengthen benefits to make their UI programs adequate to sustain workers through the crisis and to address deep racial disparities in how they operate.

**Create an excluded workers' relief fund for workers shut out of the UI system.** Millions of workers are out of work but are entirely shut out of our UI system. This includes immigrant workers, as well as formerly incarcerated people, people who recently reentered the workforce, caregivers, students, and others. This inhumane exclusion is causing extreme hardship for millions of workers and families, hurting state economies, and worsening efforts to control the pandemic, as sick unemployed workers struggle to support their families. Immigrant communities and groups of other excluded workers are organizing [across the country](#) to urge states to establish excluded workers' relief funds to provide long-overdue assistance. States should act swiftly to establish such programs—funded by progressive taxes on high earners and corporations.

**Reform UI programs to ensure adequate benefits during the recession.** Although Black workers had the highest unemployment rates and longest unemployment spells during the Great Recession, they had the [lowest rate of UI receipt](#). For workers to survive this recession, it will be crucial that states make long-overdue reforms in UI program eligibility rules and benefits to ensure adequate support for jobless workers—particularly [Black](#), Indigenous, and [Latinx](#) workers, who are disproportionately underpaid, unemployed, and exposed to unsafe working conditions—regardless of what Congress may do. Moreover, the way UI system financing operates, the costs associated with such changes are not borne by state budgets, but rather by UI trust funds—which in the short term will use low-interest federal loans to cover costs that, once the recession is over, can be repaid with moderate UI tax-rate adjustments. Thus, strengthening UI benefits is one of the few forms of fiscal stimulus that states can extend during a recession without immediately needing to raise revenue.

Key UI reforms states should implement to promote access and benefits for all workers, particularly workers of color, are: (1) providing at least 26 weeks

of benefits; (2) raising benefits levels to replace at least 60–70% of income for most workers; (3) adopting an “alternate base period” option for calculating earnings to ensure coverage for underpaid and intermittent workers; (4) raising the “income disregard” to ensure that workers whose hours have been cut to part time, or who can only find part-time work, can receive UI benefits; (5) eliminating “waiting weeks” to allow laid-off workers to begin receiving UI benefits immediately; (6) eliminating occupational exclusions such as those for agricultural and seasonal workers; (7) increasing the taxable wage base (the portion of worker earnings on which UI taxes are paid) to stabilize funding of the UI system and make it more fair by ensuring that high-wage workers and industries pay their fair share; and (8) adopting an optional trigger—a measure of economic distress (like the unemployment rate)—that, when exceeded, quickly turns on the Extended Benefits program and sustains additional weeks of benefits until economic conditions improve.

**Reform UI program implementation to expand access.** In addition to making statutory changes to UI program eligibility and financing, states should update UI system implementation rules and systems to ensure that benefits are equitably and effectively delivered. Key reforms—most of which can be made by agency administrative actions, are: (1) issuing misclassification guidance or regulations (see Section 2(h) below) clarifying that gig workers are included in the definition of an “employee”; (2) clarifying and expanding rules for when workers have “good cause” to quit a job and still receive UI so that benefits are not denied to workers who leave jobs because they experience unsafe working conditions, are at elevated risk of contracting COVID-19 because they are older or have health conditions or have household members in those categories, have caregiving responsibilities, move too far away from the workplace to reasonably commute in order to accompany a spouse whose job relocated, need to escape domestic violence, are experiencing harassment in the workplace, or are subject to erratic scheduling at work; (3) similarly clarifying the definition of “suitable work” to allow workers to still receive UI if they decline to return their old positions or to accept new job opportunities that present an unreasonable health and safety risk (either because the employer is not implementing adequate COVID-19 safety precautions or the worker or family member of the worker is older or has a health condition associated with elevated risk) or that offer substantially lower pay than the previous job; (4) [modernizing IT systems based on feedback from workers who frequently have difficulty accessing current systems](#), including Black, Latinx, Indigenous, and immigrant workers as well as non-English-speaking workers and people with disabilities; (5) reviewing policies to improve performance if state reciprocity rates are below average; (6) reviewing and reporting on access to benefits for Black, Latinx, Indigenous, and immigrant workers as well as non-English-speaking workers and workers in other demographic groups and, [where reciprocity rates are particularly low](#), working with affected communities and the U.S. Department of Labor to increase access; (7) updating work-search rules to ensure that the rules are reasonable and recognize that a diversity of activities constitute job-search activities; (8) eliminating wasteful drug-testing requirements; (9) ensuring that types of misconduct that trigger UI ineligibility are narrowly defined; and (10) updating “program integrity” rules to ensure that triggers of audits include not just erroneous grants of benefits, but also erroneous

denials and delays in benefits to eligible people who need benefits. Erroneous denials have doubled in the past decade while many workers have been falsely flagged for fraud, and while such flags do not even catch the most common form of fraud by international fraud rings.

**Adopt work sharing.** Every state should adopt and publicize [work sharing](#), a key bipartisan and employer-supported strategy for avoiding layoffs and managing pandemic-related business reopenings. Work sharing provides an alternative to layoffs to employers faced with a temporary decline in business demand. Instead of laying off a portion of its workforce to cut costs, an employer may reduce the hours and wages of all its workers or a particular group of employees, who then become eligible for prorated UI benefits to supplement their paychecks. Conversely, as businesses are reopening, they can bring back their entire staff at reduced hours. Because work sharing is voluntary, employers can make decisions about participation in the program based on their unique circumstances. The many states that have not yet adopted this important UI program should do so immediately. The states that have adopted it should actively promote it to increase employer participation.

### **c. Strengthen the public health response and COVID-19 leave protections**

To control the pandemic, states must continue to require social distancing and mask wearing and, with support from the federal government, significantly expand their public health programs by investing in testing, tracking, and treatment as well as in mechanisms to equitably distribute a vaccine. As discussed below, states must also center Black and brown communities hardest hit by the pandemic in their response by investing more resources in these communities and by hiring people from communities with the highest rates of unemployment to fill new public health jobs. A [strong public health response at the state level](#) also requires expanding health care coverage through Medicaid and health insurance exchanges and [protecting coverage for those with employer-based plans](#).

**Expand COVID-19 leave protections.** Emergency federal legislation enacted in the spring of 2020 granted workers in businesses with fewer than 500 employees job-protected paid sick leave if they or someone in their household was infected by the coronavirus, advised to quarantine, or if a child's school or care facility was closed due to coronavirus exposure. However, these provisions [expire at the end of 2020](#). States should quickly enact similar paid COVID-19 leave protections for workers at businesses of all sizes and guarantee ample and immediate paid leave for infected and exposed workers and for workers caring for family members. Such measures also should include anti-retaliation protections to ensure that workers who are exposed to the virus can self-quarantine without fear of losing their jobs. These measures must also be accompanied by clear, accessible information

about responses and resources for the public, [available in multiple languages](#).

## 2.

### Promote good jobs to help frontline workers and families weather the pandemic and thrive



A just and inclusive economy is possible if we can transform precarious work into good jobs in which workers can thrive. Some of the most exploited workers—Black, undocumented, and immigrant workers—are relegated to the most dangerous, lowest-paid jobs by discriminatory employer practices and institutionalized structures. But workers across the country are mobilizing to demand jobs with dignity and decent conditions—and to argue that the pandemic’s uneven burden on underpaid workers and [communities of color](#) calls for immediate action. Together we must counter the race to the bottom in job quality by ensuring that all workers have access to higher wages, traditional rights, and bedrock benefits, and that workers can exercise collective power.

#### a. Jump-start stalled paychecks for frontline workers

Rising inequality and [stagnant wage growth](#) have been defining features of the U.S. economy for decades. Since 2000, wages of the typical U.S. worker have grown only 8%—compared with growth of 31% for workers at the top of the pay scale. When wage data are disaggregated by race and gender, we see persistent wage gaps—the results of historical and discriminatory labor

exclusions for women and workers of color. At the median, Black and Latinx workers are paid just 75% of the typical white worker's wages and women's wages are only 85% of men's. The inequities in the U.S. labor market were brought into stark relief in 2020, as many workers deemed "essential" were required to work under dangerous conditions, often for exceedingly low pay. To help these frontline staff, and the millions of other workers who have struggled to get by on inadequate and stagnant paychecks since long before the pandemic hit, states and cities should adopt policies that foster strong, broad-based wage growth.

**Raise the minimum wage to \$15 an hour and eliminate discriminatory exemptions.** At the federal level and in 21 states, the minimum wage has been stuck at a paltry \$7.25 since 2009, leaving tens of millions of U.S. workers—including many considered "essential workers"—struggling to make ends meet. Even worse, the subminimum wage for tipped workers has been stuck at \$2.13 since 1993, and some farmworkers and domestic workers are still deprived of any federal minimum wage protections whatsoever. These antiquated, racist exemptions to federal labor law were designed to exclude jobs that were predominantly held by workers of color.

As the economy builds back from the recession, it is critical that all workers have basic paycheck protections. Higher minimum wages will strengthen pay for underpaid workers, whose bargaining power is sapped when unemployment is elevated, and will get more dollars circulating in local economies as these workers spend their increased earnings, helping bolster the recovery.

But with the prospect of a divided Congress, states and cities cannot wait for Washington to act. States representing 42% of the U.S. workforce are already gradually ramping up their minimum wages to \$15 an hour—which is what single workers will soon need to afford the basics everywhere in the U.S. The rest of the states and cities should do the same—and where legislatures won't act, states should let voters choose to raise the minimum wage on their state ballots, as voters in Arkansas, Missouri, and Florida did in 2018 and 2020.

**Restore overtime pay and extend it to excluded agricultural workers.** It used to be that if workers were asked to put in extra hours on the job, they got overtime pay in return—regardless of whether they were a salaried or hourly worker. But the share of salaried workers guaranteed overtime pay when they work more than 40 hours a week plummeted from almost 63% in 1975 to less than 7% in 2016. This happened because the salary threshold under which workers are guaranteed overtime when they put in long hours wasn't meaningfully updated for decades.

States should restore overtime eligibility so that salaried workers with limited bargaining power are paid fairly when they're asked to work long hours. A strong overtime rule would raise the salary threshold under which salaried workers are guaranteed overtime and index the threshold to inflation to keep pace with overall wage growth, as California and New York have done with their overtime rules.

In 2019, the Trump administration abandoned a modest proposal by the Obama administration to raise the annualized salary threshold from \$23,660 to roughly \$51,000 in 2020—and \$59,000 by 2026. Instead, the Trump Department of Labor issued a much weaker rule that set the salary threshold at \$35,568. In doing so, it denied automatic federal overtime protections to more than [8 million workers—of which, more than 4 million \(half\) are women and nearly 3 million are workers of color. If left unchanged, the Trump rule will cost workers who would have newly gained access to overtime \\$1.8 billion in lost wages over the next decade.](#) However, governors and legislatures in [California](#), [Colorado](#), [Michigan](#), [New York](#), [Pennsylvania](#), and [Washington](#) have already acted to restore more reasonable overtime salary thresholds for workers in their states, and in many states governors can expand overtime pay on their own through their state labor agencies without need for action by the legislature. While it is hoped that the Biden Labor Department will replace the Trump overtime rule with a stronger rule, such regulatory action cannot happen overnight. In the meantime, states should continue to restore overtime pay to protect workers in their states and build momentum for bold federal action.

States must also end the unfair exclusion of agricultural workers—and, in many states, domestic workers—from state minimum wage and overtime protections. In particular, states must guarantee these workers the same rights to overtime pay when they work more than 40 hours in a week that most other workers have enjoyed since the New Deal. [California](#) and [Washington](#) have both recently extended 40-hour overtime protection to agricultural workers. More states should follow their lead.

**Guarantee recognition pay for essential workers during declared emergencies.** Throughout the coronavirus pandemic, millions of “essential” workers—[disproportionately women and workers of color](#)—were required by their employers to come to work, often [jeopardizing their health and the health of their families](#). Yet despite shouldering that risk, [few essential workers received any additional compensation](#). For those that did, pay premiums were often just a dollar or two an hour, and [most were rolled back in the spring of 2020](#), long before the pandemic and the threat to workers’ welfare was over.

Just as overtime laws require workers be paid a premium for working more than 40 hours per week, state and municipal recognition pay laws would require employers to pay additional compensation when workers are required to work under dangerous circumstances during a declared emergency. Where workers are asked to put themselves or their families in harm’s way—whether from a pandemic, a natural disaster, or a similarly dangerous event—they should be compensated for the additional risk they bear. *Such laws should never exempt employers from taking adequate steps to protect workers’ health and safety.* But, recognizing that not every risk can be eliminated, recognition pay laws would reward workers asked to take on that risk and discourage employers from requiring staff to work when doing so is not essential. States and cities should enact these laws. States can also provide subsidies to employers, particularly small employers, to help offset the cost of these pay increases, [as Vermont’s legislature did](#).

## **b. Enable workers to balance work and family demands by guaranteeing paid sick days, paid family leave, and fair work schedules**

The U.S. [lags far behind the rest of the world](#) in ensuring the basic protections of earned paid sick days and paid family leave, which protect public health and help workers balance the demands of work and family life. The coronavirus pandemic has highlighted the need for these protections, as workers' inability to take time off when feeling sick [affects the community transmission of communicable diseases](#). And the expansion of irregular and unpredictable work schedules, fueled by new scheduling technology, is posing serious hardship for working families.

Governors and legislatures should follow the lead of the growing numbers of states and cities that are guaranteeing paid sick days and paid family leave and adopting fair workweek/fair scheduling legislation.

**Guarantee paid sick days.** Emergency federal legislation enacted in the spring of 2020 granted job-protected paid sick time to [an estimated 87 million workers](#) specifically if they or someone in their household was exposed to the coronavirus, or if a child's school or care facility was closed due to coronavirus exposure. Yet this legislation did not cover all workers and it applies only in cases of COVID-19-related illness. Lacking a universal federal paid sick leave law to protect them, more than 34 million private-sector workers in this country [don't have a single paid sick day](#)—when they take needed time off, they risk their families' economic security, and when they go to work sick, they jeopardize the public's health. Governors and legislatures should join the [13 states and dozens of cities](#) that have adopted paid sick days laws to ensure that all workers have access to this most basic of protections.

**Instate paid family leave insurance programs.** Sixty percent of the U.S. workforce [lacks access to paid family leave](#) to take time off from work after the birth or adoption of a child or to deal with a serious illness in the family. As a result, millions of workers either cannot take the time they need or must take it with no pay—and with no guarantee that their employer will hold their job for them until they return. In response, more and more states are [establishing paid family leave insurance programs](#) to provide workers with a share of their wages when they need time off to care for a family member with a serious health condition, bond with a new child, or deal with their own serious medical issue. Governors and legislatures should follow the lead of these states and adopt paid family leave for their residents.

**Adopt fair workweek laws.** There is growing recognition that unpredictable, unstable, and often insufficient work hours [are a key problem for many U.S. workers](#), particularly those in [low-wage industries](#). Volatile hours not only lead to volatile incomes, but also [add to the strain working families face](#) as they try

to plan ahead for child care or juggle schedules to take classes, hold down a second job, or pursue other career opportunities. The problem has been exacerbated by new scheduling technology that enables retail and fast-food employers to adopt just-in-time scheduling.

In response, states and cities are [starting to adopt fair workweek laws](#) that provide workers with greater stability, predictability, and flexibility in their work schedules. In many cases, the laws also require employers to give part-time staff members opportunities to increase their work hours before adding new staff members. Governors and legislatures should follow these jurisdictions' lead and push for fair workweek legislation to protect workers in their states.

### **c. Rebalance our economy by restoring worker bargaining power**

The public health crisis has highlighted how important it is [for workers to have a voice on the job](#). Unionized workers have been able to bargain for and win enhanced safety protections, additional premium pay, paid sick time, and a say in the terms of furloughs or work-share arrangements to save jobs—while workers without unions in some cases have been forced to go without personal protective equipment (PPE), job protections, and paid family and sick leave that would enable them to care for themselves and their families during the pandemic.

With inequality at record levels and wage growth weak for most workers, there is also a growing consensus for taking strong actions to restore worker bargaining power. By joining together through unions, U.S. workers built the middle class and expanded access to good jobs, especially for women and workers of color. Worker organizing [helps shrink the Black–white wage gap](#). And strong unions [raise pay and improve workplace standards](#) not just for their members, but across the economy.

Overwhelming majorities of workers say they want a voice in workplace issues ranging from scheduling to discrimination protections to compensation and training. In the midst of the pandemic and recession, public support for unions is high: a recent poll shows that [65% of adults support unions](#), including an overwhelming 70% of people of color and 71% of young adults.

While [federal labor law reform is urgently needed](#), state and local policymakers can and should use their power to protect and advance the right to organize and roll back past legislative attacks.

**Restore bargaining power for public-sector workers.** Public-sector workers from teachers to medical first responders deliver vital services that sustain our communities, but, in many states, struggle to afford the basics. Collective bargaining is the most effective strategy for improving public-sector jobs.

Because states directly regulate collective bargaining for public-sector workers, governors and legislatures have a significant role to play. Moreover, because women and Black workers are more likely to be employed in state and local government, allowing public-sector workers to organize and bargain collectively is a key step toward reducing racial and gender pay gaps. In the [25 states without comprehensive collective bargaining laws](#) on the books, policymakers should move swiftly to enact them. Governors and legislatures should also use their executive and legislative powers to reverse past state attacks that restrict the ability of public-sector workers to bargain collectively for fair pay, benefits, and treatment on the job: [Colorado](#), [Nevada](#), and [Virginia](#) recently enacted laws establishing or expanding collective bargaining powers for public-sector workers. Governors and legislatures should also adopt best practices to promote workable collective bargaining in the face of the U.S. Supreme Court's *Janus v. AFSCME Council 31* decision, which restricted the ability of public-sector unions to collect "fair share" fees for the representation they provide.

**Support union efforts to promote good jobs for private-sector workers.**

While states do not regulate collective bargaining for private-sector workers, they can still play a role in supporting efforts by unions in the private sector to promote good jobs. For example, states finance and regulate industry sectors such as [airports](#), [health care](#), and [subsidized caregiving](#) and have other formal relationships with the private sector through direct contracting, public-private partnerships, and investments by public employee pension funds. Governors and state agencies should use those ties to encourage companies to bargain with their employees and work together to implement workplace practices to improve jobs and access to opportunities.

**Repeal right-to-work laws.** So-called right-to-work laws, passed in 27 states, make it harder for workers to form strong labor unions through which they can organize and speak with one voice on the job. Right-to-work laws are designed to dilute unions' resources, by prohibiting requirements that all workers who benefit from collective bargaining pay a fair share of dues or fees for the services provided. These laws have led to declining union membership and [declining wages and benefits for union and nonunion workers alike](#). At a time of [extreme inequality in our country](#) and a global pandemic, governors and legislators should make it easier, not harder, for workers to unite. They should repeal state right-to-work laws currently on the books and fight any new right-to-work efforts—including efforts to adopt right-to-work measures at the local level.

**Expand collective bargaining rights for agricultural workers and other workers not covered by federal labor law.** The agricultural workers who grow the food that sustains our communities are some of the lowest-paid essential workers in our economy. Largely immigrants, they face not only high poverty rates but also grueling and dangerous working conditions. Agricultural workers have been joining together for decades to raise workplace and consumer safety concerns and to demand better working conditions. But century-old racist exclusions from the National Labor Relations Act—the law establishing workers' protected right to collective action—mean these workers are left out of the federal collective bargaining

system. States, however, may extend collective bargaining protections to agricultural workers and other workers excluded from federal protections, such as domestic workers and independent contractors. States should follow the lead of California, which more than 40 years ago adopted the California Agricultural Relations Act, and of New York, which [enacted collective bargaining rights](#) and other labor protections for farmworkers in 2019.

**Extend unemployment insurance to striking workers.** Throughout the course of the pandemic, there have been [numerous strikes](#) as workers protest unsafe working conditions and a lack of personal protective equipment. Workers who walk off the job because of unsafe working conditions that their employers refuse to address should not be disqualified from receiving unemployment benefits. Instead, states should be required to consider a worker's refusal to perform unsafe work, including by going on strike, as ["good cause" to not work](#), making the worker eligible for unemployment insurance. Especially because strikes can be effective and often necessary [to force action on safety and health](#), states should follow the lead of [New York](#) and [New Jersey](#) by allowing striking workers to receive unemployment insurance.

#### **d. Adopt sectoral worker standards boards to ensure fair working conditions for workers in essential industries**

Frontline workers in many industries face low pay, excessive work demands, and dangerous conditions. In many cases, setting standards to improve these conditions is best done at the industry level. However, in sectors with little union presence, or that are composed of large numbers of small employers, that is often difficult. States and cities can fill this gap and bring employers, workers, and public stakeholders together to improve job conditions by creating [sectoral worker standards boards](#) for problem industries.

Several states have had similar structures known as ["wage boards"](#) for decades. In recent years, New York has reinvigorated its use of wage boards to [raise wages for fast-food workers](#) and currently has a wage board convened to determine [overtime pay standards for farmworkers](#). Seattle has established a standards board to set [wages and benefits for domestic workers](#), and similar proposals are under consideration for platform ride service and delivery workers. Especially as workers and employers struggle with conditions such as excessive work pace demands and the growing use of technologies for surveillance and algorithmic management, sectoral standards boards can provide a means of negotiating industry-tailored policy solutions.

Such boards typically have processes for appointing representatives of workers, employers, and public stakeholders, who are then empowered to investigate conditions and develop recommendations for industry standards, which, if approved by the state or city agency overseeing the process,

become legally enforceable. More states and cities should adopt this promising approach by creating sectoral worker standards boards, starting with problem industries where abusive work conditions are receiving public attention, such as [e-commerce warehousing](#) and [delivery, fast-food](#), and [domestic work](#). Such boards should be vested with broad powers to develop workplace standards on issues including minimum wage rates, overtime pay, work pace, paid leave, scheduling, training standards, portable benefit contribution rates, and use of technology in the workplace.

## **e. End arbitrary firings with just-cause employment protections**

The U.S. is unique among industrialized nations in that employees can be fired abruptly—without notice, a chance to address employment problems, or even a stated reason—and left with bills due and no paycheck or severance pay. This hallmark of our system of employment law, known as at-will employment, wreaks havoc on the lives of U.S. workers and their families when the paycheck they depend on is there one day and is gone the next. The at-will relationship underlies a large and enduring power imbalance between U.S. workers and their employers, granting employers inordinate control over workers' livelihoods, undermining their bargaining power, and perpetuating longstanding racial and gender inequities in the workplace. Workers deserve to feel confident that if they do their jobs well, they will continue to draw a paycheck without fear of arbitrary or unfair terminations. The disruption and destabilization resulting from unfair firings are [felt most acutely by Black and Latinx workers](#), who are more likely than white workers to face an extended period of unemployment after losing a job—and who, on average, have less household savings or family wealth to fall back on while out of work.

At-will employment also makes it difficult to enforce our laws banning discrimination in the workplace and retaliation against whistleblowers because employers legally can give almost any reason—or no reason at all—for a firing. Without broad protections from arbitrary firings, workers have a much harder time speaking up on the job and organizing for their own well-being at work.

For the first time in decades, there is a growing grassroots movement powered by workers—including many Black and immigrant workers—organizing to replace at-will employment with just-cause protections. In 2019, [parking lot workers in Philadelphia](#) won a new law establishing just-cause protections for that industry. [Fast-food workers in New York City](#) are fighting for similar legislation. And [journalists at many leading publications](#) have successfully fought for and won just-cause employment protections in recent years under union collective bargaining agreements. Cities and states should follow their lead in adopting just-cause employment standards, starting with lower-paying industries where abusive treatment is widespread and workers

are organizing to demand change. And when public agencies contract work out to private companies, they should require that those employers adopt just-cause termination policies to ensure that protections against all types of discrimination are upheld, workers can exercise their right to organize, and whistleblowers feel safe in reporting malfeasance or poor contract performance.

## **f. Fight wage theft and enforce labor standards and protections**

For minimum wages and other employment standards to be effective, workers must see that their rights are enforced. Yet wage laws are routinely violated, [at great cost to workers](#), particularly those in lower-paying industries. The high rates of violations are the result of many factors. Enforcement is primarily complaint-driven, relying on individual workers to come forward and assert violations. But retaliation, limited remedies, and insufficient incentives for private attorneys to take workers' cases all discourage workers from coming forward. And workers' reluctance is compounded by insufficient damages and penalties assessed against law-breaking employers and [woefully under-resourced public enforcement agencies](#). States and cities can and should crack down on wage theft and other violations by taking action to remove these obstacles and ensure that workers receive the paychecks they earn.

**Amend wage theft laws to provide workers with stronger enforcement tools so they actually receive the protections to which they are entitled.** To promote compliance with bedrock wage laws, states must punish violators with monetary and other penalties that not only adequately compensate the workers who have been harmed but also deter employers from violating the law in the future. [Strategies to achieve compliance](#) include compensating workers with robust liquidated damages equal to unpaid wages plus two times the amount of unpaid wages so that the employer penalty is not just the unpaid wages that should have been paid in the first place, increasing civil fines for law-breaking employers, taking business licenses away from repeat violators, allowing workers to recover attorneys' fees and costs in litigation, lengthening the time limits within which workers must file their claims so that workers can recover all wages owed, and pausing deadlines for suing while worker complaints are being investigated.

**Strengthen anti-retaliation protections.** Employer retaliation is common, and it is a powerful deterrent to complaints about wage and hour violations. A [survey of retaliation laws in the 50 states](#) shows that the vast majority of state laws fail to provide the most essential mechanisms for legal protection against retaliation in the wage and hour context. At a minimum, a retaliation law must provide injunctive relief and a right to strong monetary damages for workers who suffer retaliation (in addition to lost pay), a right for workers who prevail in their retaliation case to recover attorneys' fees and costs so that

they can realistically find an attorney to represent them, a right to choose whether to bring a retaliation complaint to a government agency or go directly to court, and authority for the government to impose additional fines. A more comprehensive approach would also include creating “qui tam” public enforcement laws (discussed below) that give unions, worker centers, and other representative organizations the ability to bring enforcement actions in the name of the state—shifting the burden of enforcement off of workers who frequently face retaliation when they sue on their own behalf and supplementing limited public enforcement capacity. Finally, to ensure that any protections against retaliation can be effectively enforced, states and cities should take the additional step of adopting a just-cause standard for termination so that employers cannot use arbitrary reasons to mask retaliatory firings (see discussion of just-cause employment above).

**Strengthen public labor standards enforcement with more investigators, proactive enforcement, public disclosure of enforcement actions, and surety bonds for problematic employers and industries.** Public enforcement agencies are often the foremost access point for workers seeking to recover unpaid wages. But agencies generally have limited resources and must therefore use their resources strategically, with an eye toward incentivizing greater compliance. In addition to increased capacity and funding for investigators and staff, agencies should develop [strategic enforcement programs](#), including initiating investigations (even absent a worker complaint) in targeted high-violation industries. Agencies should engage in proactive enforcement, which would include going after full unpaid wages, damages, interest, and penalties allowed under the law; treating individual complaints as covering the entire workplace so that other workers who fear coming forward can benefit from the agency’s action; and seeking injunctive relief (including monitoring) in high-priority cases. Agencies should also consider requiring certain employers in high-violation, subcontracted, or typically undercapitalized industries to post a wage bond to cover potential unpaid wage claims. Such wage bonds would help ensure that employers have sufficient capital to responsibly engage in business, and that workers who are deprived of pay have an adequate pool of money against which to claim their wages.

## **g. Protect platform economy workers and workers labeled—and often mislabeled—independent contractors**

For decades, corporations have characterized workers as “self-employed” as a tactic for shifting economic risk onto workers while maximizing revenue for investors and CEOs. In the past, sectors such as home care, trucking, and delivery used these tactics. Today, the giant corporations that dominate the platform economy (sometimes called the “on-demand” or “gig” economy) are among those most aggressively seeking to shed responsibility for the workers whose underpaid labor drives their exorbitant corporate profits. By attempting to deprive their disproportionately Black and brown workforces of

unemployment insurance contributions, minimum wage and overtime protections, and anti-discrimination and health and safety protections, these companies are leaving our communities impoverished and vulnerable and [costing taxpayers billions in lost tax revenue](#).

As the platform economy matures, the public is gaining a clearer understanding of the poor quality of these jobs, and [workers are organizing to demand accountability and protections](#). States and cities are responding by clarifying that these workers are employees covered by our nation's baseline employment protections—and by promoting innovative solutions to improve wages and benefits for workers in sectors where work is dispatched both on- and off-platform, such as in transportation and domestic work. At the same time, the multibillion-dollar platform corporations are mounting an aggressive lobbying push to try to exempt themselves from responsibility for the well-being of their workers. Governors and legislatures should adopt the following best practices to protect this growing workforce, while fighting efforts to carve out exemptions from protection for platform economy workers.

**Fight employment-protection carve-out bills.** For the past several years, platform economy corporations have been pushing “[marketplace platform bills](#)” to carve their workforces out of basic protections such as the minimum wage, unemployment insurance, and workers’ compensation. In 2020, these giant corporations spent more than \$200 million to secure passage of California Proposition 22, which will [rewrite the state’s employment laws](#) to exempt their underpaid and disproportionately Black and brown workforces from basic protections. The same companies have launched a campaign to [push similar rollbacks in more states](#). The idea that it is excessive or burdensome for these multibillion-dollar tech giants to provide the same basic employment protections that all other employers must follow is outrageous and should be rejected everywhere.

**Strengthen public enforcement against misclassification.** Instead of carving platform workers out of basic protections, state labor departments and attorneys general should increase enforcement of existing employment laws. Platform companies should be required to properly classify their workers as employees and guarantee them basic protections such as unemployment insurance and the minimum wage. In states such as [New York](#), [New Jersey](#), and [Pennsylvania](#), state labor departments or courts have ruled that platform ride service and delivery drivers are employees entitled to state unemployment insurance. These rulings finally deliver this crucial benefit to a large workforce hard hit by the pandemic and require the platform economy giants to start paying their fair share of UI taxes.

State attorneys general in California and Massachusetts [have been leading enforcement actions](#) against large platform corporations that misclassify their workforces, including Uber and Lyft. City and district attorneys have also brought enforcement actions against [Instacart](#) and [DoorDash](#). Depending on the resolution of the ongoing enforcement actions, attorneys general in other states and cities should explore bringing similar enforcement against employers that misclassify their workers, even in states without an “ABC” test

(see below). In the Midwest, attorneys general of Illinois, Iowa, Michigan, Minnesota, and Wisconsin all signed a recent letter opposing the Trump administration's reinterpretation of the meaning of "employee" under the federal Fair Labor Standards Act, indicating that they are concerned about misclassification. In Illinois and Michigan, attorneys general have established labor enforcement units in their offices.

**Issue clear guidance on misclassification of independent contractors.** As part of cracking down on misclassification of platform workers and other mislabeled independent contractors, state labor departments can and should issue new regulations or guidance tightening up independent contractor definitions. A model for doing so is guidance that the Obama Labor Department issued in 2016 on [independent contractor misclassification](#) under the Fair Labor Standards Act. While the Trump administration withdrew it and initiated plans to replace it with an [anti-worker alternative](#), it is hoped that the Biden administration will reverse that effort and reissue the Obama guidance. But regardless what happens at the federal level, state labor agencies should protect workers in their states by adopting guidance or regulations similar to the Obama independent contractor guidance. New state guidance narrowing the circumstances under which workers can be classified as independent contractors would help agency personnel, businesses, and workers in interpreting coverage of state employment laws such as wage and hour, anti-discrimination, unemployment insurance, and workers' compensation laws.

**Adopt "ABC" tests via legislation.** The most effective way to fight misclassification of platform and other workers is by adopting a clear test for defining employees that is less easily manipulated: the simple ["ABC" test](#). This test has been used for years for unemployment insurance determinations in more than half of the states. And states such as Massachusetts, New Jersey, and California have adopted it for many or most of their employment laws, although the California law's application to platform-based delivery and transportation corporations was rolled back by 2020's Proposition 22. Other states should amend their laws by adding the simple ABC test to clarify that all basic employment protections, such as minimum wage, overtime pay, unemployment insurance, and workers' compensation protection, apply broadly to most workers.

**Promote sectoral standards for platform and other workers.** In addition to clarifying that platform workers are covered by employment laws, states and cities should promote sectoral solutions to raise labor standards for platform jobs. San Francisco amended its minimum wage protections to clarify that they apply to independent contractors and employees alike. New York City and Seattle have both passed laws [guaranteeing a \\$15 minimum wage to platform drivers](#). Seattle has [extended its paid sick days law to platform workers](#) and required that platform delivery workers receive premium pay during the pandemic. Portland, Oregon, has launched an initiative for a sectoral standards board to determine labor standards for platform drivers. Other cities and states should replicate these models to ensure fair work conditions for platform workers.

**Empower public task forces to aggressively pursue independent contractor misclassification.** Over the last decade, more than half of the states have established task forces focusing on independent contractor misclassification. States should empower these task forces with a broad mandate and extensive participation by state agencies with jurisdiction over employment and tax laws and should [adopt best practices to ensure robust enforcement](#).

**Boost employee misclassification penalties.** States should also amend their wage laws by increasing misclassification penalties to adequately deter lawbreaking. In 2020, [New Jersey](#) and [Virginia](#) passed laws that created new penalties for willful misclassification, up to \$1,000 and \$5,000 per misclassified employee, respectively. [New Jersey](#) also requires that employers post notices about employee classification in the workplace. And another [New Jersey](#) law allows the state to issue a stop-work order against any employer violating a state wage, benefit, or tax law. [Virginia](#) also passed a bill that creates a private cause of action for any individual to bring a civil action for damages against their employer for misclassification. Other states should follow their lead.

## **h. Protect contract workers in our fissured economy**

Today, much of the workforce of major corporations is employed indirectly through temp and staffing agencies and other contract firms. Such contract work is associated with low wages, few benefits, poor job security, workplace injury and deaths, and an inability to exercise workplace rights and seek redress from businesses. For example, full-time temporary staffing workers earn about 40% less than their counterparts in standard work arrangements and are less likely to have benefits like health insurance. And employees working for major companies indirectly through what are often thinly capitalized, fly-by-night contractors are left wondering who's the boss. Operating businesses through complicated networks of subcontractors and other arrangements to cut costs and generating "murkiness about who bears responsibility for work conditions" is known as *fissuring* (as described by David Weil in his book [The Fissured Workplace](#)). And the spread of fissured workplaces is especially hard on Black workers, immigrant workers, and other workers of color, who are disproportionately placed in some of the most unsafe, poorly paid positions by discriminatory employers and institutionalized practices and structures in the temp and staffing sector. States can and should respond to these manifestations of institutional and structural racism with policy solutions to hold the companies that are the real employers of these workers accountable for how their workers are treated.

**Issue clear guidance on "joint employment" responsibilities.** As with independent contractors (discussed above), state labor departments can protect subcontracted workers by issuing new regulations or guidance. Under existing state employment laws, companies that use contracted

workforces to staff their operations can already be held responsible as “joint employers” for how those employees are paid and treated and held liable when workers’ rights are violated. State labor agencies should clarify and tighten up joint employer standards, using as a model the [joint employer guidance](#) that the Obama Labor Department issued in 2016 under the Fair Labor Standards Act. While the Trump administration withdrew it and [replaced it with an anti-worker substitute](#), the Trump administration’s narrowed joint employer test was later [invalidated by a federal court](#). While it is hoped that the Obama guidance will be reissued by the Biden administration, governors and state labor agencies should equally protect workers in their states by adopting similar guidance and applying it to state employment laws in such areas as wage and hour protections, anti-discrimination protections, unemployment insurance, and workers’ compensation.

**Adopt temp and staffing agency worker protection laws.** In 2017, Illinois adopted [model temporary agency worker protection legislation](#). It ensures that temp and staffing agencies 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; provide transportation back from a job site if transportation was provided to the job site; and, perhaps most significantly, place their temporary workers into permanent positions when they become open. Other states should emulate Illinois—and build on its model legislation with additional key protections to ensure that temp and staffing agency workers receive wages and benefits comparable to those received by direct employees at the companies that employ them.

**Make host companies responsible for labor violations by contractors.** In 2014, California tackled mistreatment of workers by fly-by-night labor contractors, passing [new protections making host companies jointly responsible](#) when their contractors fail to comply with minimum wage, health and safety, and workers’ compensation laws. Other states should replicate this best practice for cracking down on wage theft in our fissured economy.

## **i. Fight coercive waivers that deprive workers of their rights and that lock them in poverty-wage jobs**

Corporations that mistreat their employees are increasingly using forced arbitration requirements and other coercive waivers of worker protections to mask wrongdoing and block working people from vindicating their rights before judges and juries. [More than 60 million U.S workers](#) are required to arbitrate any claims that their legal employment rights have been violated in secret proceedings before private arbitrators who are not accountable to the public. Employers typically include forced arbitration requirements in the boilerplate language of a worker’s employment agreement, which workers

have little if any power to negotiate. Women, Black workers, and workers in low-wage jobs are disproportionately impacted. An estimated one-fourth of workers in low-wage jobs who are covered by forced arbitration requirements [face wage theft](#)—yet are denied any effective means of recovering their unpaid wages. This employer-dominated process, where companion class-action waivers mean workers are barred from joining together to seek relief as a group and settlements are secret, effectively makes it impossible for most workers to enforce their rights and allows years of abusive treatment to remain hidden. In 2019 alone, individual forced arbitration requirements [enabled employers to steal \\$12.6 billion in wages](#).

Other types of coercive waivers imposed by employers—including noncompete agreements and nondisclosure agreements (NDAs)—similarly pressure workers to give up their employment law protections in order to keep their jobs. While ending some of these practices will ultimately require congressional action, states can begin the process of restoring workers’ ability to enforce their employment law rights.

**Adopt whistleblower or “qui tam” enforcement laws.** States should restore the ability of workers and members of the public to go before judges and juries to fight wage theft, racial and sexual harassment and discrimination, and other workplace violations on behalf of the state. States can restore this ability by adopting whistleblower or “qui tam” enforcement laws, as [California has done with its Private Attorneys General Act \(PAGA\)](#). These laws allow workers or representative organizations (such as unions and worker centers) to stand in the shoes of their state’s labor department and bring enforcement actions for violations of state employment laws. By allowing unions and worker centers to bring enforcement actions, these laws can shield individual workers from retaliation. Such laws provide a way to supplement limited public enforcement resources—and in the process generate millions of dollars in new revenue that state agencies can use to hire more staff. Importantly, qui tam enforcement actions can be brought even when workers are covered by forced arbitration agreements.

States and cities should incorporate qui tam enforcement into all new employment laws, as Colorado did this year when it authorized qui tam enforcement under [its new state law protecting whistleblowers](#) reporting health and safety violations from retaliation. And states should pass comprehensive laws authorizing qui tam enforcement under all state employment laws, as California has done, and as has been [proposed in New York](#), Oregon, Washington, Maine, Connecticut, and other states.

**Amend state arbitration statutes.** States should also amend state arbitration statutes to clarify that they do not apply to any forced arbitration requirements in employment, and that class action waivers are contrary to state public policy, when the Federal Arbitration Act does not apply. This would ensure that workers who are not subject to the Federal Arbitration Act—especially transportation workers engaged in interstate commerce, including many gig economy drivers—are not forced into arbitration under state law. Other revisions to state law that should be considered include penalties for an employer’s failure to pay the fees required to start an

arbitration (as enacted in [California's SB 707](#)), arbitration provider data disclosure requirements, and amendments to generally applicable contract rules that would give workers greater ability to challenge the enforcement of particularly unfair arbitration provisions under state contract law.

**Ban noncompete and no-poaching policies.** States should fight other coercive waivers of workplace rights, including the [noncompete and no-poaching requirements](#) affecting a wide swath of workers, including those in lower-paid jobs. These increasingly common practices—whereby workers can't seek employment with competitors—have come under [growing criticism](#) as unfair and unnecessary limits on job mobility that are contributing to stagnant wages across our economy. California, Oklahoma, and North Dakota have long prohibited non-compete requirements, and in recent years at least eight more states have banned or significantly limited them. The remaining states should prohibit noncompete and no-poaching requirements and include a private right of action to facilitate the enforcement of such prohibitions.

**Limit nondisclosure agreements and ban independent contractor and COVID-19 liability waivers.** States should also limit or ban other abusive waivers that employers are forcing on workers. First, states should limit employers' power to impose nondisclosure agreements (NDAs), which prevent workers from speaking out about discrimination, harassment, wage theft, and other experiences at the workplace. Second, states should amend state law to clarify that so-called independent contractor waivers that purport to waive an individual's employment status are invalid. Third, states should ban "COVID-19 liability waivers"—a new form of coercive waiver that purports to disclaim an employer's responsibility for protecting workers from the spread of COVID-19.

## **j. Establish worker rights related to data, electronic monitoring, and algorithmic management**

Today, workers across the economy are increasingly subjected to employer data collection, intrusive workplace [monitoring](#) and [surveillance](#), and unaccountable [algorithmic decision-making](#) and scoring. As a result, more workers are being hired, managed, evaluated, disciplined, and fired through processes that may involve [little human input](#) and can worsen existing inequities based on race, gender, and other dimensions. New forms of technological control also create information asymmetries, [magnify the power differential between employers and workers, intensify productivity demands, make jobs more precarious, and interfere with workers' right to organize](#). Over time, this power asymmetry can [reduce wages](#) in entire sectors. States and cities should adopt new workplace data and algorithmic accountability standards to protect workers, including on-demand platform workers and independent contractors, from these abuses. In particular, policies should strictly regulate the use of intrusive surveillance, data

collection, electronic monitoring, and algorithmic management for employment decisions such as hiring, termination, and discipline. Such policies should also establish guardrails in the form of robust transparency, accountability, and redress mechanisms. Before they deploy data-driven technologies, employers must validate them and disclose them to workers, and workers must have the right to review and challenge the use of these tools in employment decisions. Finally, government agencies will need strong regulatory and enforcement powers, including auditing, given the rapidly changing and untested nature of many of these technologies.

## **k. Make COVID-19 relief jobs good jobs**

As states scale up their public health response to the coronavirus pandemic with expanded testing and tracing programs, they should ensure that the new jobs created are good jobs with good wages, benefits, and working conditions. States and cities can ensure the quality of these jobs by making them unionized public sector jobs—for example, by basing them at county or city health agencies, as [Los Angeles County](#) and [New York City](#) have done. When jobs are contracted out to private entities, states should ensure they are good jobs by mandating strong labor standards such as prevailing wages and benefits, by banning contractors from imposing forced arbitration, and by requiring labor peace agreements to ensure that these essential services are not disrupted. And as detailed below, states should ensure that workers from Black and brown communities hardest hit by the pandemic and recession have access to these new jobs through targeted local hiring programs.

## **l. Protect immigrant workers**

Immigrant workers are a critical part of our communities, making up more than [17% of the U.S. labor force](#) and working in [six million essential jobs](#) on the front lines of the pandemic. Yet they face arbitrary exclusions from important benefits like unemployment insurance and employer abuses like unacceptably dangerous conditions in such industries as [agriculture and meat processing](#). Immigrant workers also have long faced wage theft at higher rates than other groups, and they are [especially vulnerable](#) to employer retaliation. State and local governments can and must implement policies to better protect immigrant workers and must ensure that immigrant workers can participate fully in organizing and in investigations of employer misconduct.

**Protect all workers from retaliation, regardless of immigration status.** A [2009 study](#) of wage theft in New York found that foreign-born Latinx workers were more likely to experience minimum wage violations than workers in any other racial or ethnic group—and at twice the rate of their U.S.-born

counterparts. And while all workers who assert their rights risk being fired, blacklisted, harassed, and more, immigrant workers also risk retaliation measures that can lead to detention and deportation. The current anti-immigrant climate has resulted in [more reports](#) of immigration-based retaliation, underscoring the urgency of state and local efforts to guarantee immigrant workers protection under employment and labor laws. Most state laws protecting workers from wage theft [fail to include](#) the necessary penalties and meaningful remedies to deter retaliation and compensate workers. To protect immigrants, these retaliation laws and other worker protections must go further, expressly prohibiting immigration-based retaliation and also ensuring that all workers, including undocumented immigrants, can recover meaningful damages and penalties. [California's approach](#) offers examples for how to expressly focus on anti-immigrant retaliation.

**Prevent employer abuse of the employment verification process.** Federal law requires employers to verify that employees are authorized to work in the U.S. at the time of hire. Law and regulations also outline the narrow and specific circumstances under which employers are required to reverify their employees—as well as when reverification is not required (for example, in the course of a labor dispute). However, employers commonly use the employment verification process to retaliate against and threaten workers—for example, by demanding more documents than are required, or by reverifying workers when federal law does not require it. This practice, known as [“document abuse,”](#) frequently occurs when workers speak up about working conditions or engage in protected activities like union organizing. Employers should know that taking such actions could put them in violation of federal law, and states can pass laws requiring that employers provide notice to their employees when a worksite enforcement action is taking place. States should inform employers of their [rights](#) and responsibilities with respect to federal employee verification requirements so they do not abuse the verification process to retaliate and discriminate against immigrant employees.

**Prohibit state and local police forces from engaging in immigration enforcement.** Immigration enforcement is entirely a responsibility of the federal government, and state and local governments are not required to assist in those efforts or expend resources on them. While the federal government has worked to dramatically increase detentions and deportations with the assistance of state and local governments—and made attempts to coerce and incentivize cooperation—state and local leaders have the power to reject federal efforts to co-opt local resources in this way, and they should do so. To support immigrant communities and immigrant workers' ability to exercise their rights, state and local officials should instead look to the expertise and experiences of sanctuary cities and states and pro-immigrant movements for important policy solutions. In particular, states and cities should prohibit their law enforcement agencies from detaining or transferring individuals to federal immigration authorities without a judicial warrant (i.e., based solely on a detainer or administrative warrant from U.S. Immigration and Customs Enforcement). State and local leaders can also, for example, prohibit joint operations between the Department of Homeland Security and

local law enforcement, protect data concerning individuals in local jails from federal immigration authorities, prohibit local law enforcement from inquiring about immigration status when interviewing complainants or witnesses, and issue municipal IDs to all residents regardless of status. [The Center for Popular Democracy](#), [National Immigration Law Center](#), and [Immigrant Legal Resource Center](#) are some of the organizations that have published resources on this topic.

**Allow undocumented individuals to obtain driver's licenses.** Ensuring that all residents, including undocumented individuals, can obtain a state driver's license brings about [numerous benefits](#), including increased road safety, reduced insurance premiums, and increased state revenue. It also promotes public safety and enforcement of state and local laws, including workplace standards, by ensuring that undocumented immigrants can cooperate with law enforcement without fear of exposing their immigration status. [Fifteen states and the District of Columbia](#) have enacted laws allowing undocumented immigrants to obtain a driver's license. Remaining states should do the same.

**Allow access to professional licenses, regardless of immigration status.** A [number of states](#) have passed laws permitting residents to [obtain professional](#) and [occupational licenses](#) regardless of immigration status, or to obtain licenses to work in specific occupations, for example as an attorney. These measures are needed because even immigrants with employment authorization obtained through temporary programs such as the Deferred Action for Childhood Arrivals (DACA) program are sometimes [not permitted](#) to obtain state licenses. Passing laws that allow all workers to contribute economically using the skills they have gained through their education—often obtained at state universities—is an easy way to boost economic growth through a more inclusive economy.

**Ensure prompt certification of U and T visas for workers who report employer misconduct.** [U visas](#) and [T visas](#) allow immigrants who have been victims of crime and trafficking to obtain a protective immigration status and work authorization if they assist law enforcement in holding lawbreakers (including employers) accountable. However, one of the major obstacles for immigrants seeking these visas has been the lack of clear standards and practices for state and local enforcement agencies, which play a key role in certifying to the federal government that a particular victim is assisting them and therefore should be granted a U or T visa. In some cases, state and local enforcement agencies may be an obstacle because they lack knowledge of the certification process or resources. In response, [some states have passed laws](#) that help immigrants by, for example, establishing clear procedures for making certification requests for U and T visas, mandating that enforcement agencies certify a request if an applicant is eligible, setting maximum time limits on responding to a request, and providing reimbursement to local agencies. More states should do the same.

**Train government staff on how to handle immigration enforcement situations.** In recent years, immigration enforcement activities have taken place at locations that were formerly regarded as off-limits, including at state

government sites such as [courthouses](#). Staff at these locations are unlikely to be familiar with their rights and responsibilities in the face of an immigration enforcement action. To assist them, states can publish guidance on appropriate actions to take—for example, explaining the difference between a judicial warrant and an administrative warrant, and what each requires under the law. States can also publish and require agencies to adopt [model policies](#) so that the proper protocols are followed by staff working in such places as courts, public hospitals, K–12 schools, labor standards enforcement agencies, libraries, and shelters.

### **m. Leverage state employment and contracting power to improve jobs and crack down on mistreatment of workers**

States have a significant impact on labor standards in their capacities as employers and through their contracting and purchasing programs. As employers, states should lead by example by adopting model employment practices around fair pay and benefits. And in contracting, states should leverage their vast economic footprint to ensure quality public services, improve jobs, and crack down on mistreatment of workers.

#### **Adopt labor standards for public employees and employees of contractors.**

Governors and legislatures should adopt model employment practices for their own direct employees, for employees of major state-linked institutions such as state universities, and for vendors performing state contracts. These standards should include: (1) a \$15 minimum wage for state employees, state university employees, and state contractors, as implemented in various forms by such states as [Massachusetts](#), [North Carolina](#), and [New York](#); (2) paid sick leave, as the [Obama administration required for federal contractors](#); and (3) other core employment standards such as “ban the box” fair hiring protections that prevent conviction history from disqualifying applicants too early in the process, just-cause employment protection, and prevailing wages. In addition, states should discourage the use of forced arbitration and other coercive waivers by state institutions and state contractors, adopt worker retention policies for contractors so that workers can keep their jobs when contracts change hands, and use labor peace requirements to avoid threat of disruption of contracts for sensitive services.

#### **Require public contractors to disclose employment and labor law violations, and adopt responsible and best-value contracting policies.**

Research has shown that [contractors that violate workplace laws often also break other laws](#) or otherwise fail to perform publicly funded work in a timely and responsible manner. States should ensure that the companies they do business with do not [violate employment and labor laws](#). Instead, public funds should be directed to companies with a demonstrated ability to hire and retain staff and to maintain morale and workplace engagement through fair compensation and workplace policies.

First, states should require companies seeking state contracts to disclose all recent federal, state, and local employment and labor law violations, ranging from wage and hour and workers' compensation violations to health and safety and worker organizing violations. Next, states should discourage agencies from awarding contracts to vendors with significant or repeated violations. Two types of policies that can help improve the contractor-selection process are [responsible contracting policies](#) and [best-value contracting policies](#). Responsible contracting policies require contractors and subcontractors that want to bid on a project to meet specific job access requirements and job quality standards. For example, the [Atlanta Beltline project](#) uses responsible contracting with specific requirements regarding wages and worker health and safety standards. Best-value contracting allows governments to evaluate competitive bids based on a range of factors, such as living wages, health and retirement benefits, and career advancement, not just the lowest cost.

## **n. Invest in the vital caregivers who are sustaining all of us**

Our nation is facing a care crisis. States are struggling to provide adequate access to quality affordable home care and child care services for seniors, people with disabilities, and working families. A big part of the problem is chronic underinvestment in the home care and child care workforces, which are some of the lowest paid in our economy. This underinvestment results in high poverty rates and workforce instability among these vital caregivers, who are disproportionately women of color and immigrants. These workers have been organizing and demanding better wages and working conditions. States and cities should meet their demands with new approaches that expand access to these vital services for all families, while investing in and truly valuing this work.

**Pass a domestic workers bill of rights establishing a sectoral standards board.** Many states and cities across the country have passed some version of a domestic workers bill of rights establishing minimum labor standards for this often-excluded workforce. [Seattle has passed an especially innovative version](#) that establishes both minimum labor standards for this workforce (a \$15 minimum wage, meal and rest breaks, and protection from retaliation) and a system for setting other industrywide standards. Under the sectoral standards board that the measure created, domestic workers themselves now have a seat at the table in developing policy solutions to improve their jobs. Other cities and states should replicate this model to ensure fair work conditions for domestic workers.

**Expand affordable child care and invest in quality early care and education (ECE) jobs.** Voters in Oregon's Multnomah County just approved a new [program to provide universal free preschool for all three- and four-year-olds](#) in the county while significantly improving pay for early care and education workers. Funded by a progressive income surtax paid by high earners, the

new program will create 12,000 new early care slots and 2,300 new early care jobs, while [raising pay for lead early care teachers](#) to the level of kindergarten teachers and for assistant teachers to about \$20 an hour. Other cities and states should replicate this promising model for addressing both the child care affordability crisis and the crisis of poverty wages among these essential teacher caregivers.

**Expand, enforce, and adequately fund minimum wage, overtime, and paid sick days protections for caregivers.** States finance and regulate a large swath of the home care workforce through state Medicaid long-term care programs. States should ensure that these vital caregivers receive an adequate minimum wage, overtime pay coverage, and paid sick days protections, along with any other benefits.

First, states should ensure that their Medicaid home care programs are implementing—and adequately budgeting for—state labor laws as well as the Obama Labor Department’s 2015 “companionship” rule. The rule answered decades of worker advocacy for basic labor protections by finally [extending federal minimum wage and overtime protections](#) to home care workers. In taking this first step, states should follow the lead of states such as California, which budgeted extra funding for its consumer-directed, Medicaid-funded home care program to account for overtime and travel time between consumers. States must also [ensure that consumers have access to quality and adequate home care services](#) that allow them to remain at home and within their communities.

Second, states should guarantee at least a \$15 minimum wage for Medicaid home care workers. Governors can implement this guarantee by taking executive action and [negotiating funding for wage increases as part of the state budget](#), as Massachusetts Governor Charlie Baker did.

Third, states should extend a \$15 minimum wage to workers in the state’s subsidized family child care provider program, as Massachusetts also did as part of a 2018 minimum wage package. Lastly, states should ensure that their state laws cover home care, child care, and other domestic workers—and include robust enforcement mechanisms to uphold workers’ rights.

**Raise caregiver wages by increasing Medicaid reimbursement rates for long-term care services.** The low rates at which Medicaid reimburses providers of long-term care services for seniors and people with disabilities in some states depresses caregivers’ wages. In these states, Medicaid reimburses home care expenses at hourly rates that limit wage growth. Increasing these reimbursement rates and requiring that those increases go directly to workers’ wages can help ensure that workers earn living wages and have benefits. States using the Managed Long Term Services and Supports (managed care) strategy should include wage floor requirements in contracts with managed care organizations. States should also ensure that their consumer-directed rates are adequate to provide home care workers with a living wage.

### 3.

## Fight for a racially just recovery by promoting equitable access to jobs for Black and Latinx workers hardest hit by the pandemic and unemployment



The recession triggered by the pandemic has been one of our nation's most unequal, [impacting Black and Latinx workers the hardest](#). These workers are disproportionately concentrated in service industries that still have not fully reopened, and they are often the last to be hired when jobs finally return. For Black workers, this impact is compounding the effects of longstanding structural labor market discrimination and occupational segregation that have consigned disproportionate numbers of them to jobs with low wages and bad working conditions and left them with the highest level of joblessness. There is an urgent need for states and cities to respond with policies to ensure fair access to good jobs for Black and Latinx workers.

### **a. Promote targeted local hiring in Black and Latinx communities to fill jobs funded by public COVID-relief and other programs**

States and cities should address occupational segregation and the impacts of the COVID recession on Black and Latinx workers by adopting [targeted local](#)

[hiring or “first source” hiring](#) policies for new jobs financed under COVID relief programs, infrastructure programs, and other new city and state spending programs. Such policies, which can target workers from high-unemployment and high-poverty census tracts, and workers with arrest and conviction records, have been successfully used by cities across the country to ensure that workers from historically marginalized communities have access to jobs on publicly funded projects. For example, [San Francisco, which has one of the most comprehensive programs in the nation](#), requires employers on large development projects, receiving large city contracts, or operating on city land to target a share of their hiring at economically disadvantaged local workers. Other cities are encouraging [publicly linked “anchor institutions” like universities or hospitals](#) to enter into similar partnerships to fill health-sector and service jobs. And [Los Angeles is implementing targeted hiring for public-sector city jobs](#)—historically, a crucial source of secure employment for Black workers. A related priority strategy for states and cities is entering recruiting partnerships with Historically Black Colleges and Universities (HBCUs) and Hispanic Serving Institutions (HSIs).

To be successful, such programs should also include prevailing and living wage standards to ensure that the jobs created are good jobs, and funding to recruit, screen, train, and refer workers to jobs offered through partnerships with community-based organizations, unions, or apprenticeship and pre-apprenticeship programs. Apprenticeship and related training programs are key pipelines for jobs in construction as well as the health sector, where a range of high-growth, well-paid occupations such as medical technician require less than two years of training. Equally important are systems for monitoring and tracking specific goals, solving problems, and ensuring compliance (using frequent, publicly reported data and proactive investigations and enforcement).

## **b. Fight racial and gender discrimination and occupational segregation**

Our nation’s anti-discrimination laws are key tools for fighting racial and gender discrimination and harassment and occupational segregation. But these protections and state and local systems for enforcing them must be updated to make them effective tools for breaking down barriers.

**Strengthen civil rights enforcement.** State human rights agencies are a critical line of defense in the fight against discrimination on the job. But many have seen their budgets and staff slashed or held to inadequate levels and as a result have long backlogs and little capacity to engage in strategic enforcement. States and cities should rebuild their human rights agencies by restoring adequate staffing and budgets to conduct strategic, targeted enforcement of discrimination in hiring, promotions, and pay, as well as of workplace harassment. This rebuilding includes deepening partnerships with community-based organizations. In order to bolster enforcement of civil rights

laws, states should also ensure that localities are neither preempted from expanding protections beyond what the state law may provide nor prevented from enforcing local anti-discrimination laws consistent with the state protections.

**Fight unequal pay with stronger civil rights protections, bans on salary history questions, and requirements that job announcements include salary ranges.** Women, and Black and Latinx workers, continue to receive lower wages than white men with similar levels of training or education. States and cities should take action to close these unfair wage gaps. First, states and cities should [strengthen their equal pay laws](#) to require equal pay for “substantially similar” or “comparable” work and to prohibit unequal pay based not just on gender but also race and ethnicity, LGBTQ status, and other protected statuses, as growing numbers of states are doing. Second, they should prohibit [employers from basing employee pay in part on salary history](#), because the practice perpetuates unequal pay for women and workers of color. [Nineteen states and 21 cities have instituted such bans](#). Third, states and cities should [require compensation levels or ranges](#), as well as a description of benefits, in all job postings. Colorado has taken this step, which is critical to narrowing gender and racial pay gaps: Research shows that when women and workers of color are asked their pay expectations in salary negotiations for a new job, they sell themselves short, but that when they receive information about the pay for the position, the pay gap narrows.

**Ban employers from asking about credit history.** Consideration of credit history in employment decisions has a similar unfair impact on underpaid workers, and especially Black and brown workers, who, because of household income and savings inequality, frequently have high debt levels and poor credit ratings. States should follow the lead of places like [New York City, which banned employers from using credit scores in most employment decisions](#).

**Require employers to report data on occupational segregation and pay equity.** Access to data is crucial for combatting unequal pay and occupational segregation. States and cities should empower government enforcement agencies to fight unequal pay and occupational segregation, as California has done, by requiring companies to submit detailed racial and gender data on occupational segregation and pay inequality to enforcement agencies. Such data should be aggregated and published and used by government agencies for targeted enforcement.

### **c. Promote fair hiring for people with arrest or conviction records**

Roughly one in three adults in the U.S. has an arrest or conviction record that can show up on a routine background check for employment, undermining the job prospects of the 70 million men and women who have been caught

up in the criminal legal system. This legacy of mass incarceration has an especially devastating impact on the employment prospects of Black workers with a record, who are [40% less likely than white applicants](#) with a record to receive a positive response from a prospective employer. States and cities should adopt policies to dismantle the employment obstacles posed by arrest or conviction records.

**Adopt fair chance hiring.** Disclosure of an arrest or conviction record early in the job application process often means promising candidates can't even get through the door. Thirty-six states, including Georgia, Kentucky, Louisiana, North Carolina, Tennessee, and Virginia, have adopted [“ban the box” policies to open up job opportunities in state and local government](#) for people with arrest or conviction records and have set an example for private-sector employers. Fourteen states and more than a dozen major cities across the U.S. also [extend “ban the box” protections to private-sector employment](#). Governors from states that haven't yet joined them should start by issuing executive orders adopting this reform for all state hiring. And state legislatures should extend this best practice to the private sector, as more and more states and cities are doing.

**Remove occupational licensing barriers for people with records.** Onerous criminal background check restrictions [block people with a record from working in many occupations](#) that require a state license or certification. [About 25% of U.S. jobs require such a credential](#), and state licensing agencies often deny applications from workers with a record. With broad bipartisan support, [legislatures in over a dozen states](#) have started removing unfair exclusions for people with records from their occupational licensing laws. In 2018, for example, the governors of Michigan, New Mexico, and Pennsylvania took executive action directing licensing boards or other state entities to address unnecessary restrictions that limit qualified people from fairly competing for jobs in their chosen professions. Governors and legislatures should follow their lead with executive action and legislation to remove unnecessary licensing obstacles to employment for people with records.

**Adopt a clean slate policy for people with records.** Even a minor criminal record can create barriers to employment, housing, and education as employers, landlords, and colleges use background checks to screen out applicants with a criminal record. While many states allow people to petition to have certain records expunged or sealed, only a tiny fraction of people eligible ever get the relief to which they are entitled because they can't navigate the complex court petition process or afford to pay a lawyer or court fees. Many individuals are not even aware of the option. State legislatures should [adopt “clean slate” policies](#) that provide for automatic record clearing after someone remains conviction-free for a designated period of time. Research demonstrates that people who don't reoffend within four to seven years are no more likely than the general population to commit a new offense. Pennsylvania enacted clean slate legislation in 2018, followed by Utah in 2019 and Michigan in 2020, and several other states have [taken steps toward adopting a clean slate policy](#). A [majority of voters](#)—across party, racial, gender, and education lines—support the policy.

**End mandatory fines and fees and the use of driver's license suspensions as a collections tool.** Since the 2014 uprising in Ferguson, Missouri, following Michael Brown's murder by police, advocates and legislators alike have increasingly recognized that traffic and criminal justice financial penalties (including fines, fees, court costs, restitutions, and forfeitures) are an [unjust municipal revenue source](#). These court-imposed financial obligations are widespread nationally and are disproportionately extracted from Black and brown communities targeted by the criminal justice system. They trap workers in endless cycles of debt and jail through open warrants for failures to pay, predatory debt collections practices, and [debilitating driver's license suspensions](#). For example, [one in seven adults in New Orleans has a municipal warrant out for their arrest](#). States and municipalities should eliminate mandatory and minimum financial penalties and ensure that courts conduct meaningful hearings determining a defendant's ability to pay prior to imposing any penalties. These assessments should exempt persons with incomes less than 200% of the federal poverty level from financial penalties and should limit penalties to no more than 10% of the defendant's income. States should also end the ineffective and harmful use of license suspensions as a debt-collection tool, and take steps to significantly reduce traffic-related mandatory fines.

## 4.

### Reject austerity politics by advocating for the resources states and cities need to fight the pandemic and sustain vital services



State and local governments are on the front lines of the dual health and economic crises and play an essential role in providing the critical services needed to manage the pandemic and improve economic security. Government needs to be adequately resourced to meet collective needs: helping schools reopen safely with small class sizes, staffing testing and tracking programs on a scale sufficient to control the virus, and providing staffing for key programs like processing unemployment insurance claims. This is exactly what government is for—stepping in to protect the general welfare, especially during times of crisis. But when states and cities are forced to cut services and jobs, they are no longer able to play these crucial roles effectively—and it is Black and brown workers and families who are hurt the most. Resources to finance needed government services are abundant in our wealthy nation. As states and cities struggle with growing deficits, they should reject austerity politics by adopting progressive taxation to replace lost revenue and sustain vital services, while also cracking down on wasteful corporate giveaways.

## a. Maintain state and local spending to preserve vital public programs and public service jobs

Slashing state and local government budgets threatens not only vital public services but also the strength of the economy and public-sector jobs—historically, an important source of secure employment for [women](#) and [Black workers](#). States and cities already have [been forced to cut jobs during the pandemic](#)—far earlier in this cycle than occurred during aftermath of the Great Recession. And further deep, harmful cuts are likely on the horizon unless Congress or states step in to replace lost tax revenue. But cuts are the opposite of what our communities need to get through this recession. Communities struggling with the pandemic urgently need public services from education to public health. And with many private-sector jobs not yet returning, public-sector employment is a vital lifeline for Black and women workers. Moreover, the harmful effects of state and local budget cuts extend well beyond public employees and their families. The drop in spending has serious consequences for the private sector as well. Austerity delayed the last recovery by [more than four years](#)—needlessly keeping unemployment high and wages stagnant. States and cities must avoid repeating this harmful cycle by fighting to replace lost state and local revenue with both federal relief assistance and new state and local revenues raised through progressive taxation of the affluent and corporations.

**Advocate for significant federal relief.** To stave off austerity, state and local governments need substantial direct federal relief. Unlike the federal government, state and local governments are subject to balanced budget constraints. They now face a serious fiscal crisis as lower household and business incomes and reduced consumer spending cause a decline in tax revenue. As a result, the same economic crises that warrant such critical government intervention are pushing state and local governments to cut their budgets. While the federal government provided some relief in the CARES Act, it was not enough to match the size of this crisis. Without additional aid, many [more jobs will be lost](#) in both the public and private sectors, and the economic recovery will be seriously stifled. States and cities in every state must join with grassroots groups such as the Movement for Black Lives that have been pushing back against austerity and demanding that Congress provide the long-overdue state and local relief necessary to stave off devastating cuts.

**Raise revenue through progressive taxation if federal relief is inadequate.** In the absence of adequate federal relief, state and local governments should turn to progressive taxation, rather than budget cuts, to balance their budgets. There is substantial room for improvement here. Most states and localities have tax structures that actually [worsen economic inequality](#) and [racial injustice](#). Rather than relying on regressive taxes—like sales taxes—that place a higher burden on lower-income residents, states and localities should focus on raising revenue from those who have been fairly unscathed by the pandemic: [the affluent](#) and corporations. Commonsense places to start are raising the tax rates on [top earners](#) and the [extremely wealthy](#). While the

current fiscal crisis makes progressive taxation particularly urgent, it should also be seen as a long-term policy solution for raising revenue and promoting equality.

## **b. In an era of tight budgets, end tax giveaways to corporations**

Each year, states spend [tens of billions of dollars in economic development subsidies](#) designed to lure businesses—and theoretically jobs—to their states. All too often, governments overspend on development deals, starving communities of critical public services. The pandemic-induced budget distress and record levels of unemployment make it more critical than ever that states ensure that economic development is equitable, transparent, and accountable to communities. States must avoid [using taxpayer dollars to subsidize big corporations \(e.g., Amazon or Google facilities\)](#) and instead direct critical resources toward improving public health, [investing in schools](#), maintaining affordable housing, [supporting retirement security](#), and funding other public services that support family-sustaining jobs.

**Report tax revenue lost to corporate tax breaks by adopting a unified economic development budget.** As a first step for ending wasteful tax giveaways, states should require state agencies and cities to [report tax revenue lost to corporate tax breaks](#) by adopting [Unified Economic Development Budget \(UEDB\)](#) requirements. States should also disclose the [state](#) and [local](#) incentives awarded to specific companies and track whether the companies produced the promised jobs. Such disclosures support transparency and provide the information that community members and policy advocates need to hold elected officials and corporations accountable for their commitments. In 2015, the Governmental Accounting Standards Board (GASB) issued [Statement 77 on Tax Abatement Disclosures](#), which requires most localities (including school districts) and states to disclose the amount of tax revenue they lose annually to economic-development tax-abatement programs. Governors should propose legislation, or when possible direct the state auditor, comptroller, or treasurer to improve compliance with Statement 77 and to [put the new disclosures online](#). UEDBs compile every kind of state spending for economic development, including tax expenditures, program and agency appropriations, grants, loans, and even workforce development spending. Company-specific disclosure is on the rise across the country, and states like [North Carolina](#), [Illinois](#), and [Iowa](#) are doing a good job disclosing subsidies provided to companies. But many states lag, including [South Carolina](#), Idaho, and Alabama, to name a few.

**Promote community benefit agreements.** [Community benefit agreements \(CBAs\)](#) are legally binding agreements between developers and community organizations that define the community benefits the developer promises to provide, such as the targeted local hiring and job quality standards discussed above, affordable housing, and environmental justice measures. Local

policymakers should insist on [strong community benefits](#) as conditions of government support for economic development projects, encourage negotiations between developers and community coalitions, and set minimum standards for local hiring, job quality, affordable housing, and other features that all development projects must meet. Community benefit agreements can also promote transparency and accountability in development deals, by requiring public disclosure of jobs created and wages paid, by establishing robust mechanisms for monitoring and enforcement of the terms of the agreement, and by including [clawback provisions](#) that allow the government to recapture incentives offered if the developer fails to meet its obligations. Job quality standards attached to incentive programs ensure that companies create good jobs. Among those job-related requirements are livable wages, health care benefits, long-term and direct employment, and local hiring. Clawbacks attached to those requirements ensure that companies do not receive, or need to repay, subsidies when the jobs created do not come with the standards.

**End taxpayer subsidies for large corporations.** State and local governments should stop subsidizing large companies that have made huge profits during the pandemic, especially but not limited to [tech giants](#) like Google and Facebook, large [retailers](#) like Walmart and Target, and [Amazon](#). States should end or significantly cap the “vendor discount,” an antiquated [program](#) put into place when shopkeepers kept records by hand. These programs allow retailers to keep a share of sales taxes: Currently [Illinois](#), [Colorado](#), and [Missouri](#) each lose over \$100 million annually through these programs. If states do make use of economic development subsidies, they should [target incentives to retain and support existing, locally owned businesses](#), rather than relying on branch plants and headquarters from outside the state, as these locally owned businesses [are typically more important](#) to the health of local economies. States and localities should also cap the amount of public assistance large companies can receive per job created and overall per year.

### **c. Empower local communities by fighting preemption**

Even in states that have adopted robust worker protections statewide, one size often does not fit all. The local government is often best positioned to address local needs and conditions, including costs of living, which vary across states and regions. Local governments also play an important role in innovating new policy responses, which, if successful, can be scaled up statewide. In particular, local governments, [many with Black and brown leadership](#), are often better positioned to elevate and address needs of communities of color—especially during the COVID-19 pandemic, whose human and economic costs have been particularly high for communities of color. States should support local authority to address community needs, especially those of workers, by rejecting excessive “preemption”—state actions that block local ordinances from taking effect or that dismantle local ordinances. State lawmakers should block attempts by their peers to legislate

limits on local power, repeal existing laws that preempt local authority, and modernize state systems of home rule to empower communities to meet local needs.

**Block new attempts to preempt local pro-worker policies and repeal existing limits on local policymaking.** State legislatures across the country have increasingly [abused their authority](#) to preempt local policies in recent years—deploying preemption in ways that have had [extensive, harmful consequences for communities of color and women](#), including by [halting billions of dollars in badly needed wage increases](#) for workers of color. An online preemption [tracker](#) shows the status of state preemption across various labor and employment issues. State and local officials must block any new attempts to preempt local authority around pro-worker policies and support efforts to repeal existing preemption laws that stand in the way of pro-worker policies. For example, in 2019, Colorado’s legislature became the [first legislature to repeal](#) an existing minimum wage preemption statute, paving the way for Denver’s minimum wage ordinance. Other states should follow Colorado’s lead.

**Strengthen local home rule and other local authority to ensure that local governments can respond adequately to the COVID-19 crisis.** The current system of state–local relations in which most states can preempt localities with almost no limits [has failed](#) workers, communities of color, and women in countless places. These restrictions are becoming even more dangerous during the COVID-19 pandemic. Local officials across the country are finding that their hands are tied when it comes to mandating precautions to slow the spread of the COVID-19 contagion, cracking down on retaliatory firings of workers who report unsafe conditions, and taking other steps to protect workers or the public. In addition to preemption, part of the problem is that in most states, systems of local government authority were adopted in the mid-20th century, when our cities faced very different challenges. The National League of Cities has recommended key [Principles of Home Rule for the 21st Century](#). States should adopt these recommendations to modernize their systems of home rule and empower local governments to more effectively meet local needs and build a more just future.

**Fight local efforts to adopt punitive worker measures (e.g., “right-to-work” or anti-immigrant policies).** While pushing back against new forms of preemption and moving toward structural reform that can better support local authority, state legislators must also be ready to counter abuses of either state or local power to harm workers. In particular, states and localities should fight efforts to adopt local [right-to-work laws](#) or [anti-immigrant policies](#). Anti-immigrant policies around [state and local cooperation with federal immigration enforcement](#) would make immigrant workers vulnerable to abuse and endanger communities by undermining trust in government and law enforcement.

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