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Secure Jobs, Safe Workplaces, and Stable Communities:

Ending At-Will Employment in Illinois

APRIL 2021

UGO OKERE, KARA RODRIGUEZ, PAUL SONN,
IRENE TUNG, AND SOPHIA ZAMAN

EXECUTIVE SUMMARY

In Illinois and most of the United States, our employment laws allow employers to fire workers abruptly—without notice or even a good reason—and leave them with bills due and no paycheck or severance pay.

This hallmark of our employment law system—at-will firing—wreaks havoc on the lives of workers and their families. In this time of profound economic insecurity, the rug can be pulled out at any time from under the vast majority of workers who depend on their paychecks to survive. 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 ability to speak out at work, and perpetuating long standing racial and gender inequities in the workplace.

Public enforcement agencies, such as the Illinois and U.S. Departments of Labor, rely on worker complaints to bring violations of workplace laws such as the minimum wage and health and safety protections to their attention—but under the at-will system these agencies have great difficulty protecting workers who speak up from retaliation. Many workers turn to poor quality jobs—underpaid, dangerous and/or temporary—as a last resort, and our tattered public safety net makes it nearly impossible for them to walk away from even an abusive or unsafe job. As a result, workers often accept working conditions that they know are bad, because speaking up comes with too great a cost—the risk of losing their paychecks and with them the ability to

support themselves or their families. And by leaving workers unable to speak up safely about mistreatment and law breaking, at-will employment compromises public agencies' access to the information they need to enforce our workplace and public health laws. This gap in our workplace enforcement system has received increased attention during the pandemic, as workers' inability to sound the alarm about hazardous job conditions puts all of us in danger.

This report presents findings from a January 2021 survey administered to a representative sample of Illinois workers (n=806), which shows that unfair firings are widespread in the state and are having harmful effects. It also presents background on the growing movement to replace at-will termination with “just cause” employment protections, and recommendations for policy reform in Illinois.

Key findings of the survey include:

Unfair and arbitrary firings are widespread in Illinois.

- Almost half of Illinois workers have been fired or let go at some point in their lives.
- More than a third (37 percent) have had the experience of being fired or let go for unfair reasons.
- Of workers who were fired, 42 percent said they weren't given a reason at all.

- Of workers who were fired, only one in four reported being given fair warning and a chance to improve before being terminated. Even fewer (15 percent) said they were offered more training.
- 71 percent of Illinoisans who had been fired or let go took on new debt to make ends meet.

Workers feel pressured to accept harmful workplace conditions because of fear.

- A third of Illinois workers (32 percent) say that fear of being fired or disciplined would prevent them from raising workplace health and safety concerns to their employer.
- More than two in three workers (68 percent) reported that they or a co-worker worked when sick or injured to avoid being fired.
- 41 percent report that an employer pressured them or a co-worker to accept wage theft (working extra hours without pay) in order to avoid being fired. Employees of the largest companies were the most likely to report this having happened.
- Two out of three workers also reported that they or a co-worker worked overtime when they preferred not to or skipped breaks in order to avoid being fired.

Many Illinois families are one paycheck away from hardship.

- About half of all Illinois workers said that if they lost their job today it would be difficult to make their next rent or mortgage payment.
- Women were twice as likely as men to report living paycheck to paycheck. One in four Illinois women report not having enough savings to cover even 2 weeks of expenses if they became unemployed today, compared to one in eight men.

At-will firings reinforce systemic racism in the workplace.

- Black workers are most likely to have experienced unfair discharges—41 percent as compared to 32 percent of Latinx workers and 35 percent of white workers.
- Latinx and Black workers were much more likely to have experienced unfair discipline at work, with 46 percent and 42 percent reporting such experiences, respectively, as compared to just 36 percent of white workers.
- Latinx workers are much more likely than other workers to report that they or a co-worker worked under harmful conditions out of fear of firing or discipline.

Retaliation against workers who speak up about job conditions is common, and workers report being afraid to file complaints with public agencies out of fear of being punished.

- One out of three workers who have been fired or let go (33 percent) report that they were terminated for speaking up about problems on the job.
- Additionally, many Illinois workers (31 percent) have witnessed a co-worker lose their job for speaking up about problems on the job.
- More than one in four (29 percent) Illinois workers say they or a co-worker has refrained from filing a complaint with a government agency about workplace problems for fear of employer retaliation.

These findings paint a vivid picture of the wide-ranging negative impacts of at-will firings in Illinois. **In the past two years, momentum has been growing across the country to replace the at-will system with “just cause” standards. Such standards would require that employers provide legitimate reasons and fair warnings before terminating workers.** In 2019, Philadelphia’s city council passed a new law guaranteeing parking lot workers just cause employment protections. In 2021, New York City passed similar protections for fast food employees—a sector where workers had complained about poor working conditions. Presidential candidates such as Senator Bernie Sanders included proposals for a national just cause law in their 2020 campaign platforms. Many polls show that voters of all parties and demographic groups strongly support just cause policies including a 2020 Data for Progress poll which found that just cause laws were supported by 67 percent of likely voters, including 73 percent of Democrats and 64 percent of Republicans.¹

State lawmakers have the opportunity to make Illinois a leader among states by adopting *The Secure Jobs Act (HB3530, SB2332)*, which would extend just cause employment protections to workers across the state. Doing so will help end unfair firings and protect workers, families, and communities in Illinois as we recover from the COVID-19 pandemic and rebuild our economy.

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1 Background: At-will Firings in the U.S. and Illinois

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. By contrast, Australia, Brazil, Japan, Mexico, the United Kingdom, and most of the European Union, among many other countries, require employers to provide workers with a sufficient reason for termination.

In the U.S., it is chiefly the states that regulate employment termination. Currently in Illinois, employment is presumed to be at-will, meaning that an employer may discharge a worker at any time, without any reason or cause so long as no other law or employment contract is violated.² While most states allow at-will firings, there are a range of exceptions. Montana, for example, has had a just cause law—albeit one with insufficient protections—since 1987, when the state legislature passed the Wrongful Discharge from Employment Act (WDEA). Puerto Rico and the U.S. Virgin Islands similarly have just cause discharge standards. And in other states,

the courts have at various times recognized a patchwork of wrongful termination protections; however, none of these protections gives workers comprehensive just cause protection from unfair firings.

Replacing the at-will system with a “just cause” termination standard would require that employers provide legitimate reasons and fair warnings before terminating workers. Just cause policies should also require employers to give advance notice to workers of performance problems and an opportunity to address them. They would also limit employers’ ability to punish workers differently for the same violation. And, when workers are fired, such policies would guarantee workers severance pay or, if they were terminated without just cause, a right to reinstatement. Finally, by requiring a good reason for terminations, just cause protections would make it much more realistic for workers to insist on compliance with their other workplace rights, by more effectively protecting them from retaliation for doing so.

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2 Unfair Firings Are Widespread and Harmful

A new statewide survey of 806 Illinois adults—demographically representative of the Illinois workforce—provides insight into unfair firings in the state, revealing how widespread the problem is, and the many negative effects for workers, families, and communities.

Our findings show that an alarmingly large share of workers in Illinois have experience with unfair terminations. As shown in Figure 1, almost half of all workers in Illinois (46 percent) have been fired or let go from a job at some time, and more than one in three workers (37 percent) report that they have been fired for no reason or an unfair reason.

While workers in the lowest paid category (making less than \$30,000 per year) report the highest rates (41 percent) of unfair terminations, such treatment affects all income groups. More than one in three workers making \$30,000 to \$74,999 (35 percent), and more than one in four workers making over \$75,000 (29 percent) also report having experienced unfair firings. Black workers are most likely to have experienced unfair terminations—41 percent as compared to 35 percent of white workers and 32 percent of Latinx workers.³

Of workers who were fired or let go, 42 percent said they weren't given a reason. Only one in four of workers who were fired or let go reported being given fair warning and a chance to improve before being terminated. Even fewer (15 percent) said they were offered more training. Of workers who were fired, less than one in three received severance pay (Figure 2).

FIGURE 1. SHARE OF ILLINOIS WORKERS WHO HAVE EVER BEEN FIRED OR LET GO

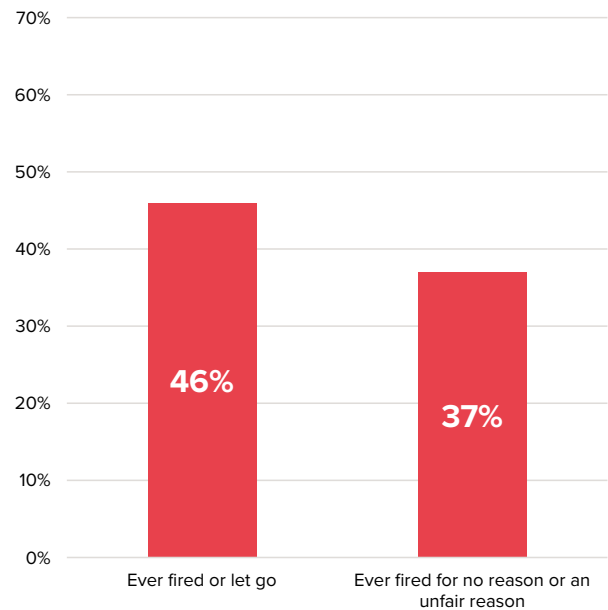
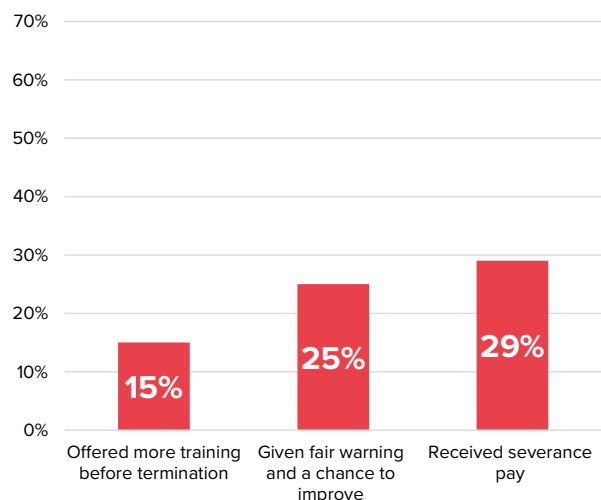


FIGURE 2. SHARE OF DISCHARGED WORKERS GIVEN TRAINING, WARNING OR SEVERANCE PAY



In addition to experiences with outright termination, many Illinoisans report being pushed out of a job. One in four workers in the state reports having been forced to quit by their employer, who either intentionally made their job conditions difficult or prevented them from doing their job successfully.

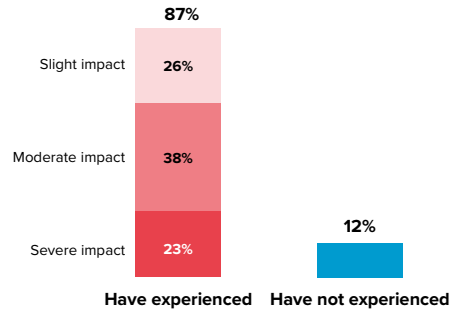
Job loss affects financial, emotional, and family well-being.

An overwhelming majority of Illinois workers who had experienced job loss (71 percent) stated that they had to borrow money or use credit cards as a result. Two out of three said they depleted all their savings after job loss. More than half said they were unable to pay bills on time.

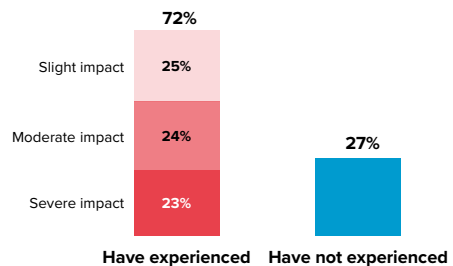
About 9 out of 10 workers reported stress and negative mental health impacts after job loss, including 61 percent reporting that it was moderate or severe. More than 7 out of 10 report negative impact on household and family relationships after job loss, including 24 percent reporting it was moderate and 23 percent reporting it was severe.

FIGURES 3 AND 4. JOB LOSS HAS NEGATIVE IMPACTS ON MENTAL HEALTH AND FAMILY RELATIONSHIPS

*Have you ever experienced **stress or negative mental health impacts** as a result of losing a job?**

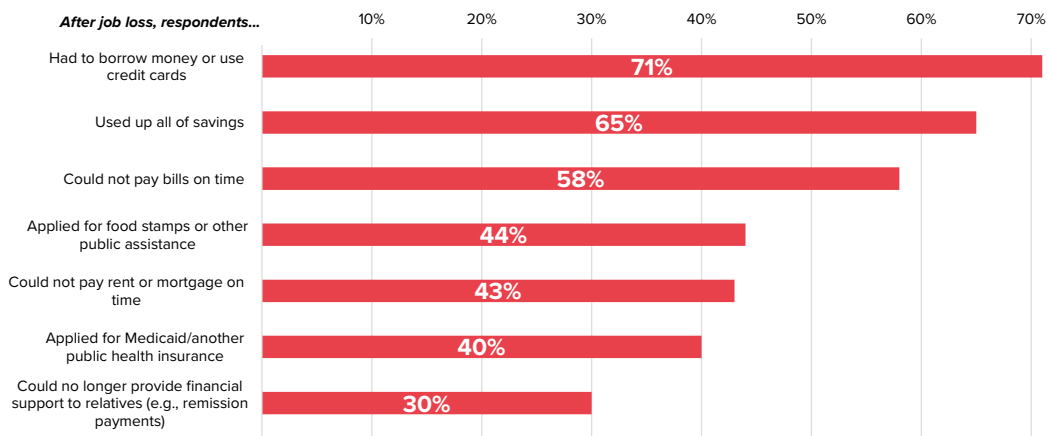


*Have you ever experienced a **negative impact on your household/family relationships** as a result of losing a job?**



*Among those who have lost a job

FIGURE 5. JOB LOSS HAS SERIOUS FINANCIAL CONSEQUENCES FOR ILLINOIS WORKERS



WORKER STORY - VERA

Gave Up Stable Job to Take a New Position Only to be Arbitrarily Fired Shortly Thereafter

In December 2014, Vera Randolph left a stable job with a public school district to pursue a position with Smokeball paralegal services. She gave the following description of what happened at the new job.

“After 11 days, the leadership team called a meeting to tell me that they were letting me go 15 minutes before shift ended. The reason they gave was that they could tell I didn’t enjoy the job because of my body language at the desk. When I asked them to explain what they meant by my body language, they couldn’t. A manager also said that no other department was a ‘good fit’ for me. I was very confused by all of this as these were the same individuals praising me just two weeks ago. I explained to them that I had just moved into a new home and Christmas was in three days. Their response: ‘Look on the bright side, you will be able to spend more time with your kids during the holidays.’

“Thinking of my children, I looked at the clock and realized I’d missed the train, and I was late picking up my son from childcare. I would have to pay the late fees immediately upon picking him up at \$5 per minute. The meeting ended and I was escorted out to the elevators, left with the question, ‘What do I do now?’ I’ll tell you what I did. I had no choice but to take most of my children’s Christmas presents back to the store. Losing my job cost me way too much.”



WORKER STORY - MARIO

Fired for Taking Sick Leave During COVID-19 pandemic

Mario worked for three years at a company that makes LED lights and power supplies. He describes his experience at the beginning of the COVID-19 pandemic.

“In March 2020, I told my manager that I needed some days off because I was concerned about coronavirus. One of my daughters has severe asthma. I sent a text to my boss letting him know, and he said it was fine. A few days later, I got a letter saying that I was fired because of an unexplained absence. My boss never even called me.

“If they had an issue with me taking time off, they should have worked something out with me, not just fired me. I worked there for three years. Nobody gave me the chance to show why I needed the time off. So, to me, it was an unjustified firing. I tried to contact the company, but they never responded. I only spoke briefly with a human resources person who said it was probably a misunderstanding and she would take care of it. I tried to keep in contact with her, but she never returned my calls. None of them did.

“Because I chose to protect my daughter’s health, I can’t collect unemployment. Right now, I’m still struggling. I had to use my small savings because I was out of work for about six to seven months. I got a job now, but I’m still behind on a lot because of the way they played me. I’m pretty sure I’ll deal with this for a couple of more years because I’m really behind.”

3 Workers Feel Pressured to Accept Harmful Workplace Conditions

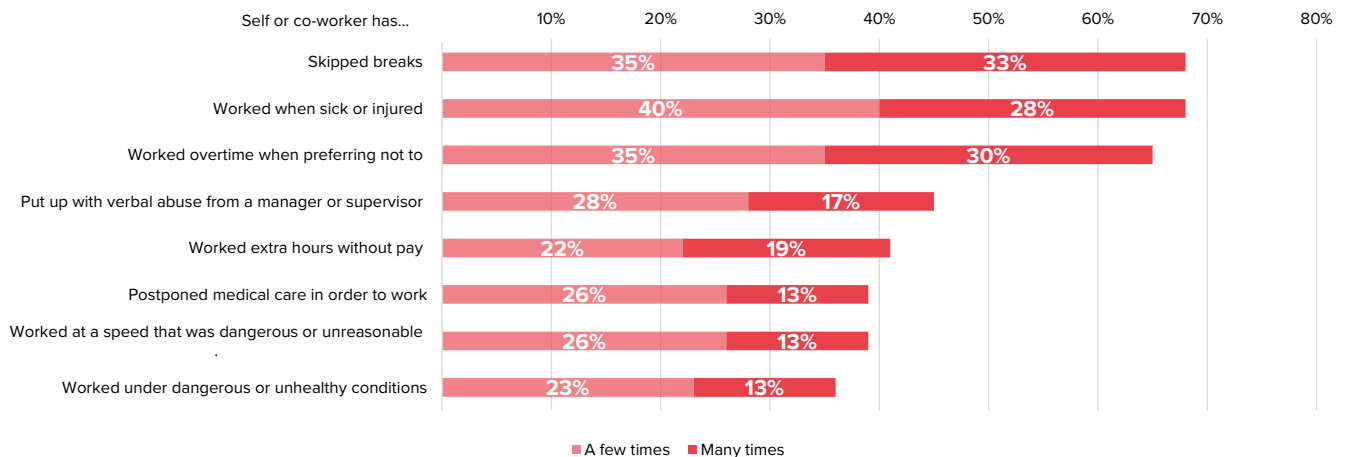
At-will firings fundamentally shape the employment relationship, amplifying the power imbalance between workers and employers and enabling employers to use the threat of termination as a form of economic coercion. Under the at-will system, if workers fear the threat of unfair discipline or dismissal from managers, they will be more likely to accept low pay, unfavorable terms of employment, and poor working conditions.

Our survey findings bears this out, with most Illinois workers saying there is pressure in their workplace to accept harmful and even illegal working conditions. More than two in three workers (68 percent) reported that they or a co-worker had the experience of working when sick or injured to avoid being fired. Forty-one percent report that an employer pressured them or a co-worker to accept wage theft—working extra hours without pay to avoid being fired. Employees of the largest companies were the most likely to report this having happened. Two out of three workers also reported themselves or a co-worker working overtime when they preferred not to, or skipping breaks to avoid being fired.

Additionally, more than one in three Illinois workers reported not asking for pay increases or benefits they felt they deserved because of fear of possibly losing their jobs. Thirty-one percent also said that they or a co-worker opted against joining with fellow employees to push for job improvements because of fear of being disciplined or fired.

These findings show in vivid detail how the ability of employers to fire workers at will goes hand in hand with exploitative working conditions.

FIGURE 6. WHAT WORKERS DO TO AVOID BEING DISCIPLINED OR FIRED

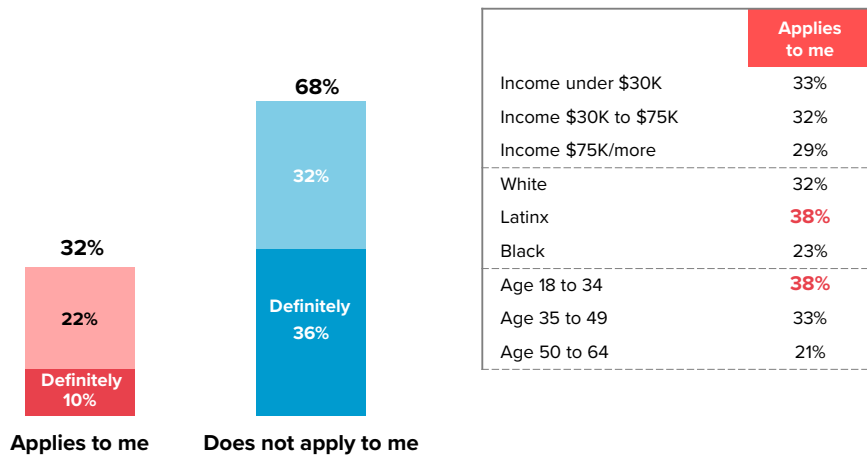


Lack of job security undermines public health efforts.

A third of Illinois workers surveyed said, “Fear of being fired or disciplined would prevent me from raising workplace health and safety concerns to my employer,” including 38 percent of Latinx workers, 32 percent of white workers and 23 percent of Black workers. The fact that almost a year into the COVID pandemic, so many Illinois workers reported reluctance to report health and safety concerns is troubling and has important implications for Illinois’ ability to adequately protect public health.

FIGURE 7. IN THEIR CURRENT WORK, A THIRD WOULD NOT RAISE HEALTH AND SAFETY CONCERNS FOR THEIR JOB

Fear of being fired or disciplined would prevent me from raising workplace health and safety concerns to my employer:



Workers employed at large companies see the most harmful effects of job insecurity.

The power differential between workers and employers is most acute at the largest employers, where individual rank-and-file workers may feel they have very little leverage against a big company. Our survey results show that employees of the largest businesses were the most likely to report pressure to work while sick or injured, with 73 percent of those working for companies with more than 500 employees reporting they or a co-worker had done so, compared to 64 percent of those working in companies with less than 500 employees. Similarly, 45 percent of employees of large businesses reported pressure for them or a co-worker to do unpaid work, compared to 38 percent of those working in smaller businesses.

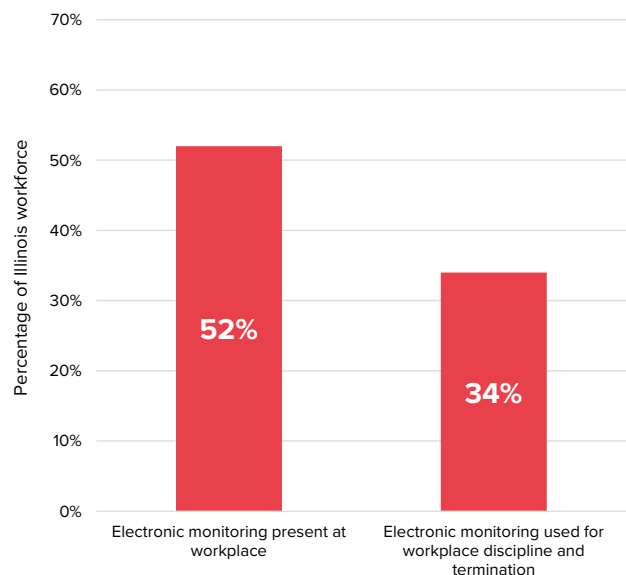
Employer use of electronic monitoring heightens the environment of fear and coercion in the workplace.

Introducing electronic monitoring in an at-will environment widens the power differential between workers and employers—worsening the kinds of fear and exploitation described above. Electronic monitoring refers to the use of computers and other technological tools such as video cameras, phone surveillance software, scanners, active badges, or digital ratings to observe, record, track, and evaluate employee activities. Today, workers across the economy are increasingly subjected to employer data collection, intrusive workplace monitoring, and surveillance.⁴ As a result, more workers are evaluated, disciplined, and fired through processes that may involve little human input.⁵ New forms of technological control also intensify productivity demands and make jobs more precarious.⁶

Our survey shows that workplace electronic monitoring is becoming widespread in Illinois. More than half of all Illinois workers report that their employers use electronic monitoring, and one in three say that it is used to make decisions about disciplining or firing workers.

Studies have described how intensive worker surveillance combined with at-will firings can result in high injury and turnover rates.⁷

FIGURE 8. ELECTRONIC MONITORING IS COMMONPLACE IN ILLINOIS WORKPLACES



WORKER STORY - MARIA

Fired After Contracting COVID-19 at Work and Taking Sick Leave

Maria worked at a grocery store where the manager made people work when they were sick, even with COVID-19. She describes getting COVID-19, recovering, and then being fired arbitrarily when she tried to return to work.

“When I used to work at a grocery store, the manager would make people work even if you got sick, and they would not give you time off. Many employees got COVID because there were no protocols in place to be safe. When I started to show symptoms, they made me stay because no one could cover my shift. I had a bad feeling about my symptoms, so I made sure to get tested. When I found out my test came back positive for COVID, I informed my supervisor so I could take sick time to recover. I stayed in contact with them, regularly sharing how I was doing so they knew I couldn’t come in.

“When I finished recovering, I brought my supervisor a doctor’s note proving I had no symptoms so I could return to work. I was told to return on Saturday at 9 a.m., but when I got there, they sat me down and told me the note was not enough and I needed something more specific. They said anyone could have tampered with the note, so I had to go back to my doctor.

“It took me a few days to get an appointment, so when I gave my supervisor the new note, they told me I no longer had a job because I took too long to get it.

“I told the manager what happened, and he assured me that I do have a job and there was plenty of work needed. Days later, he never called me. When I went into the store and asked to see the manager, I was refused. After three attempts, I stopped asking because I needed to move on and find more work.

“Being fired like that, it demoralizes you. I got sick because seven employees came in sick with COVID, working until their body gave out. I went to the doctor twice to just keep my job.”



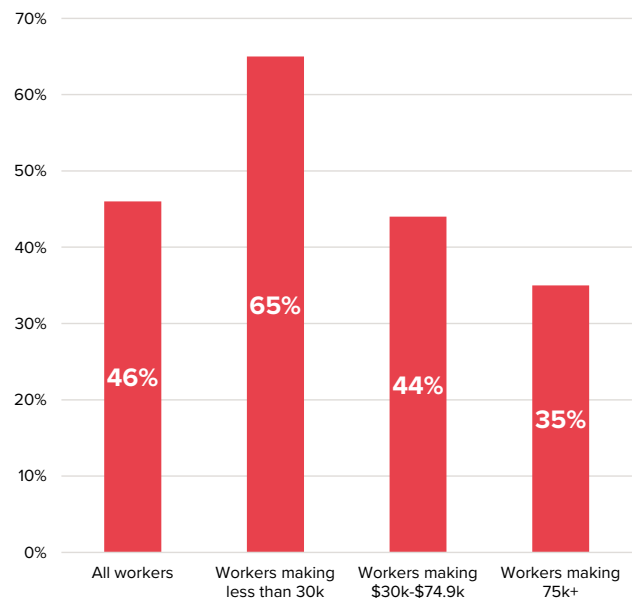
4 Many Illinois Workers Are One Paycheck Away From Hardship

The threat of job loss is powerful because of what is at stake for workers, including possible eviction or foreclosure. An alarmingly high percentage of Illinois workers (47 percent) said that if they lost their job today it would be difficult to meet their next rent or mortgage payment. Of workers making less than \$29,000 a year, two out of three would find it hard to make their next rent or mortgage payment if they lost their job today.

Seven out of ten Illinoisans (68 percent) could only cover up to three months of regular expenses with their savings. This is especially troubling given that national data from the Bureau of Labor Statistics show that more than a third of job separations result in workers not having a stable job for at least three months, even when the labor market is strong. During the last recession, from 2007 to 2009, this figure was even higher: 49.5 percent.⁸

The situation for women in Illinois is even more dire, with women twice as likely as men to report living paycheck to paycheck. Alarmingly, one in four Illinois women could cover less than 2 weeks of expenses with savings if they became unemployed today, compared to one in eight men.

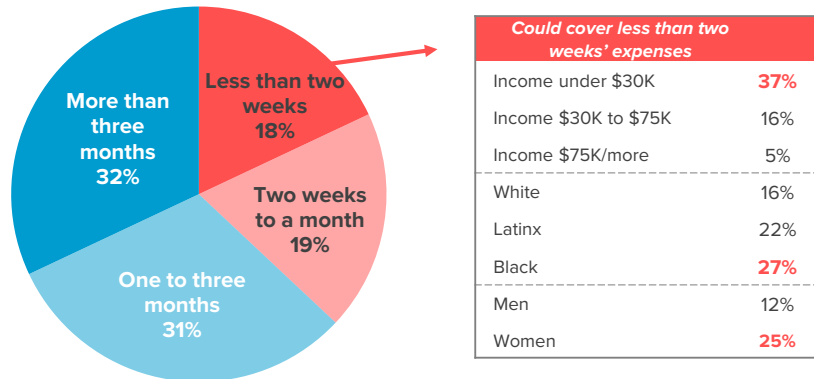
FIGURE 9. SHARE OF EMPLOYED ILLINOISANS WHO WOULD HAVE TROUBLE MAKING NEXT RENT OR MORTGAGE PAYMENT IF FIRED OR LAID OFF TODAY



THE THREAT OF JOB LOSS IS POWERFUL BECAUSE OF WHAT IS AT STAKE FOR WORKERS, INCLUDING POSSIBLE EVICTION OR FORECLOSURE.

FIGURE 10. LESS THAN A THIRD OF ILLINOIS WORKERS CAN COVER THREE MONTHS OR MORE OF EXPENSES WITH SAVINGS

If you were unemployed today, how many weeks of regular expenses could you cover with savings?



Workers' perceptions of their labor market prospects, apart from their current job, show heightened fears related to job insecurity. The January 2021 survey found that most employed Illinoisans (60 percent) believe it would be difficult for them to find another acceptable job if they had to look for one today. This was the case both for those with and those without college degrees.

THE SITUATION FOR WOMEN IN ILLINOIS IS EVEN MORE DIRE, WITH WOMEN TWICE AS LIKELY AS MEN TO REPORT LIVING PAYCHECK TO PAYCHECK.

WORKER STORY - MANUELA

Unfair Firing Takes a Toll Not Only on Finances but Also on Mental Health and Family Relations

Manuela Sepulveda worked as a home care worker for a non-profit agency in Chicago. She cared for individual elderly clients in their homes. Her employer did not provide PPE and disregarded many of Manuela's concerns about keeping workers like her and her clients safe. In April 2020, Manuela tested positive for COVID-19 and called her employer saying she needed to quarantine to care for her own health and to protect her clients. Luckily, she did not experience health complications or extreme symptoms.

After a two-week quarantine and approval from her doctor that she could safely return to her job, Manuela called the agency to get back to work. They disregarded her full quarantine time and doctor's note, and demanded she supply a negative COVID test with a short, arbitrary deadline. At the time tests were in extremely short supply, and most testing sites would not retest someone who had already tested positive and safely quarantined. She was finally able to secure an appointment for a test, one day after the arbitrary deadline. When Manuela informed her employer that she secured a test and the date, they fired her.

Manuela was impacted financially, worried about how to cover all her bills. With a low hourly rate, she described how "each check is already planned for, already spent before you get it." She says that even more difficult than the financial implications was the emotional and psychological impact. To be fired for doing nothing wrong, losing all income overnight, after putting her own and her family's life on the line every day by going to work under COVID took an extreme toll. Manuela fell into a depression, requiring psychological support. She still worries about her son seeing her in a depressive state. She stated, "After risking my life to go to work, to not be valued at all, that's what hurt the most. This kind of employer completely lacks any respect for human life. They don't value us as humans and don't think about how an unjust firing impacts not just the worker, but an entire family both economically and emotionally."



5 At-will Firings Reinforce Racism in the Workplace

Workers of color—especially Black and Latinx workers—face widespread systemic racism and segregation in the workplace and labor market, including the high prevalence of employment discrimination in the hiring process, on the job, and in disciplinary matters.⁹ These circumstances mean that workers of color must contend with heightened challenges in an at-will system employment system. Black workers—being the “last hired, and first fired”—especially bear the brunt of the constant job insecurity and precarity of at-will employment relationships.¹⁰

Our findings show that Latinx and Black workers were much more likely to have experienced unfair discipline at work, with 46 percent and 42 percent reporting such experiences, respectively, compared to 36 percent of white workers.

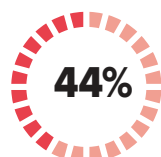
The findings also show that at-will firings have different but overlapping and related effects on Black and Latinx workers, respectively. As mentioned above, Black workers are most likely to have experienced unfair discharges—41 percent compared to 32 percent of Latinx

workers and 35 percent of white workers. Black workers were also more likely than white or Latinx workers to be in workplaces where a co-worker was unfairly let go. More than half (51 percent) of Black workers reported this experience as compared to 40 percent of white and Latinx workers. Meanwhile, Latinx workers are much more likely than other workers to report pressure to accept harmful conditions to avoid discipline or termination, such as working when sick or injured, working unwanted overtime, putting up with verbal abuse, or working at an unreasonable speed or under dangerous conditions.

In addition, Latinx workers were much more likely to report that their current employer would punish or fire someone for actions such as: taking sick leave (32 percent, as compared to 22 percent of white workers and 26 percent of Black workers); asking for a schedule change (26 percent, compared to 15 percent of white workers and 19 percent of Black workers); or filing a complaint with a government agency (32 percent, compared to 22 percent of white workers and 26 percent of Black workers).

Of workers who had been fired or let go...

- Black workers were most likely to report that they were discharged because of their race, gender, sexual orientation, or disability.
- Forty-four percent of Black workers that had experienced termination believed that the cause was their race, gender, sexual orientation, or disability, as compared to 15 percent of white workers and 20 percent of Latinx workers.



Of workers who had been fired or let go, Black workers were most likely to report that they were discharged because of their race, gender, sexual orientation, or disability. Forty-four percent of Black workers that had experienced termination believed that the cause was their race, gender, sexual orientation, or disability, as compared to 15 percent of white workers and 20 percent of Latinx workers.

Unfortunately, the lack of job security protections undermines the existing legal protections that workers of color do have against racial discrimination because employers can legally give almost any reason—or no reason at all—for a firing. Workers bear the legal burden of proving that they were fired for a discriminatory reason; the implied assumption is that the employer’s word is sufficient unless a worker can document intent. Evidence of discrimination is often circumstantial, and workers rarely have a “smoking gun” to prove their case. Very few workers alleging discrimination are successful in their efforts. Complaint data from the U.S. Equal Employment Opportunity Commission (EEOC) for fiscal years 2010 through 2017 show that the agency closes most cases without concluding whether discrimination occurred.¹¹

Latinx workers were much more likely to report that their current employer would punish or fire someone for actions such as:

- taking sick leave (32 percent, as compared to 22 percent of white workers and 26 percent of Black workers),
- asking for a schedule change (26 percent, as compare to 15 percent of white workers and 19 percent of Black workers), or
- filing a complaint with a government agency (32 percent as compared to 22 percent of white workers and 26 percent of Black workers).



6 Employer Retaliation Impedes Enforcement of Existing Workplace Laws

A startlingly high share of fired Illinoisans—one in three—report that they were terminated for speaking up about problems on the job. Additionally, this problem is not isolated to low-paid occupations. Thirty-one percent of the entire Illinois workforce has experienced a co-worker being terminated for this reason—a figure that is consistent across all earnings categories.

These experiences are troubling in the context of the current pandemic. National data have shown that employer retaliation against workers for raising COVID-related job concerns is widespread, especially for Black workers. In a nationwide survey of more than 1,100 workers conducted in mid-May of 2020, more than one in eight workers reported possible retaliation in their companies against themselves or co-workers for raising COVID-related workplace concerns. Black workers were more than twice as likely as white workers to have seen possible retaliation by their employer.¹²

Retaliatory firings stymie public agencies' ability to enforce the law.

Public agencies depend on workers to step forward to initiate the enforcement process. However, in an at-will situation, workers are less likely to voice dissatisfaction on the job, knowing that their employer can easily punish them for speaking out—making enforcement of laws such as those setting a minimum wage or protecting against discrimination, or sexual harassment difficult.

More than one in four (29 percent) of Illinois workers say they or a co-worker has refrained

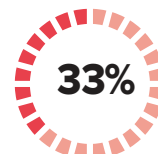
from filing a complaint with a government agency about workplace problems for fear of employer retaliation, including 33 percent of Latinx workers and 30 percent of Black workers.

Anti-retaliation laws require workers to prove when their employers retaliate against them, but employers can claim a range of justifications for retaliatory and discriminatory treatment, such as poor performance, downsizing, speaking too loudly, or not getting along with co-workers. For many workers, the burden to prove these justifications are false is too often impossible to meet.



More than one in four Illinois workers...

- Say they or a co-worker has refrained from filing a complaint with a government agency about workplace problems for fear of employer retaliation,
- This includes 33 percent of Latinx workers and 30 percent of Black workers.



The challenges facing workers in enforcing their rights are further evidenced in the findings we presented above in Figures 4 and 7, detailing how workers are reluctant to raise health and safety issues, challenge wage theft, or miss work while sick or injured. Thus, during the pandemic, when we all need workers to feel safe sounding the alarm when employers are not keeping their workforces safe from COVID-19, the at-will system leaves whistleblowers vulnerable and reluctant to come forward.

Additionally, national research has shown that one in three women workers in the U.S. respond “yes” or “maybe” when asked whether fear of retaliation would prevent them from reporting workplace sexual harassment.¹³ Troublingly, the most vulnerable workers are the most scared to report. Fifty-three percent of workers who report that they have ever experienced sexual harassment in the workplace also report that fear of retaliation would factor into their decision about reporting it, compared to 19 percent of workers who have not experienced sexual harassment.

Without protection from unfair firings, workers have a much harder time speaking up on the job and enforcing their rights.¹⁴ Establishing job security protections would bolster workers’ ability to speak out against mistreatment and aid public agencies in enforcing existing employment laws.



One in three Illinois workers...

- Has seen a co-worker be fired for speaking up about problems on the job
- Did not ask for a raise out of fear of being disciplined or fired.
- Say they or a co-worker have opted against joining with fellow employees to push for job improvements for fear of employer retaliation.

WORKER STORY - MARTHA

Pressured to Accept Wage Theft and Discrimination, then Fired in Retaliation for Speaking up

Martha worked as a custodian at a South Suburban school. She describes how she endured years of mistreatment, and how she was unjustly fired after she spoke up about the abuse.

“Our managers would make us work through unpaid lunches, and we were missing overtime pay. They would change the schedule a lot, and we didn’t get all of our paychecks on time. We were paid less than the time we worked. I would even work weekends without getting paid. They tried to make us accept the mistreatment. When we raised concerns, he threatened to fire us and hold our paychecks. One time, they tried to intimidate us by saying that the owner was richer than us and can afford a lawyer. We eventually noticed Latino workers got paid less and got more complaints about work even if we were doing well.

“The retaliation and discrimination went on for years. Managers would change classroom assignments for no reason and even trash the room before we would clean. They said we would have to clean it up or be fired.

“After [I spoke up about these problems], they wanted to make [me] desperate to quit. The workload got heavier and we experienced even more retaliation.

“When the company fired me, it felt like the world closed in. It was horrible. This was my only job for years. I was sad and angry after working there for so long, it didn’t make sense that we did more and more work, never receiving complaints from the school. In fact, one of the workers in our group was a supervisor, and she spoke that we were doing a good job. It was completely unjust that we would do more and more work. It was completely unjust.

“I was fired with seven of my co-workers. We organized picket lines, reached out to the school, and got legal support, and yet the company never returned our unpaid wages.

“All in all, it was a sad situation. I live so close to where this happened, built relationships with the school, and had a lot of passion for my work. Because I lost my job, I had a hard time making ends meet. I am a single mom and home-owner, and I was unemployed for 3 months. I had to borrow money to get by. My daughter graduated high school, and we could not afford to celebrate and go to a graduation event.”



7 Policy Recommendations

For the first time in decades, there is a growing grassroots movement powered by workers—including many Black and immigrant workers—organizing to replace the at-will system with just cause protections. In 2019, parking lot workers in Philadelphia won a new law establishing just cause protections for that industry.¹⁵ Fast-food workers in New York City won similar legislation in early 2021.¹⁶ And journalists at many leading publications have successfully fought for and won just cause employment protections in recent years under union collective bargaining agreements.¹⁷

Illinois should follow their lead by enacting legislation that establishes a just cause standard for termination. Such a law should include the following key protections:



- 1. Good reason for discharge** – The core of a just cause employment system is a requirement that the employer must show that there is a justifiable reason for discharging a worker—such as poor work performance that does not improve after feedback and coaching, violation of important employer policies, or employee misconduct. Just cause systems also allow employers to discharge workers for bona fide economic reasons, such as when business declines or a position is no longer needed, without a need to show just cause.



- 2. Duty on the employer** – Under a just cause system the employer is responsible for showing a good reason for discharging the worker—the reverse of the current system where employees must show that a firing was for an impermissible reason. Shifting that responsibility to the employer to demonstrate a justification for a discharge is widely recognized as key for protecting workers against arbitrary and unfair firings, including against firings that are currently illegal but where workers have difficulty enforcing their rights such as in cases of racial discrimination or retaliation against whistleblowers.



- 3. Certain activities categorically protected** – Just cause legislation should also clarify that certain reasons are categorically not grounds for discharge. Examples of categorically protected employee activities should include: (1) communicating to any person, including other employees, government agencies or the public about job conditions; and (2) refusing to work under conditions that the employee reasonably believes would expose him or her, other employees, or the public to an unreasonable threat of illness or injury on the job.



- 4. Fair notice to workers and opportunity to address problems** – Another key component is fair notice to the worker of any performance problems, and the opportunity to address them, before being discharged. This process, which is often called “progressive discipline,” is well-established. It also mirrors the process that many responsible employers already use: giving employees feedback and coaching on performance issues, and support in addressing them before getting to the point of possibly discharging them. However, a just cause policy should make clear that certain kinds of serious misconduct may trigger a bypass of the progressive discipline process and allow immediate employer action. These should include conduct that threatens the safety or well-being of other people, such as violence or harassment.



- 5. Equal coverage of temp and staffing employees** – Economic theory suggests that if it becomes more difficult for employers to discharge workers, they will shift employment to temp and staffing agencies if such employees are not subject to the same standards. Therefore, it is crucial that just cause employment protections apply equally to employees working for employers through temp or staffing agencies. A just cause policy should expressly address these issues—for example, by requiring the same showing of just cause for ending employment of employees working through temp or staffing agencies.



- 6. Limits on defined-term employment** – Another key question for a just cause policy is under what circumstances to allow employers to hire workers for defined projects or terms, after which their employment can end without a need to demonstrate just cause. Examples of reasonable defined-term employment might include short-term seasonal jobs in industries that need additional staffing during certain times of the year, and projects for which the need for employees or the funding to pay them will end once the project is completed. However, it is important that such authorization for defined-term employment be limited to clearly defined circumstances that prevent it from becoming a loophole by which employers can meet ongoing staffing needs through a succession of defined term positions. In addition, during the course of such defined-term employment, just cause protections against early discharge should apply.



- 7. Protections to ensure economic discharges are not a loophole** – It is important to ensure that economic (i.e., non-performance-based) discharges, when they are necessary, do not become a means for side-stepping just cause protections. Employers should be allowed to make economic discharges when business conditions warrant, but there should be standards for demonstrating their necessity to ensure they are not used to disguise otherwise impermissible discharges.



- 8. Protections against intensive surveillance and monitoring** – Just cause legislation presents an important place to begin to address the harmful and discriminatory impact of employers' growing use of electronic surveillance, algorithmic decision-making, and automated employee evaluation systems. Electronic monitoring and decision-making can result in employees being disciplined and even discharged with little human involvement in those assessments. Pervasive monitoring of workers also means that minor infractions can easily be found and used to side-step just cause protections. Just cause legislation should prohibit employers from making termination and disciplinary decisions based on worker data collected through electronic monitoring.



- 9. Severance pay** – When workers are discharged—whether for just cause or economic reasons—providing severance pay is crucial for mitigating the very harmful economic impacts of job loss. Without severance pay, workers and families face dramatic income cuts and extreme hardship, including families being unable to pay their rent or mortgage, potentially leading to eviction or foreclosure. To provide workers a cushion as they search for new employment, just cause protections should guarantee a basic amount of severance pay, such as four weeks. Guaranteeing severance pay is not only fair and broadly popular; it also helps insulate workers from the common employer practice of pressuring workers to sign away their rights in exchange for receiving any severance pay at all.



10. Strong remedies and relief – A just cause policy should include strong remedies for violations, including the right to reinstatement and money damages, together with additional penalties or liquidated damages that are sufficient to deter noncompliance. Money damages must reflect the full scope of damages that workers face. Without such meaningful sanctions for discharges without cause, any new just cause policy would not achieve the goal of ensuring fair process before workers are subjected to job loss.



11. Effective enforcement vehicles including qui tam – Government labor agencies simply do not have the capacity to adequately enforce employment protections on their own. Therefore, a just cause policy should include effective tools to allow workers to bring enforcement actions on their own. These should include a private right of action, authorization for recovery of attorneys' fees, and authorization for "qui tam" enforcement. Similar to a private right of action, qui tam enforcement allows workers and members of the public to supplement government agency enforcement by stepping into the government's shoes to bring enforcement proceedings as "private attorneys general." Significantly, it can allow representative organizations, such as unions or worker centers, to bring enforcement action, ensuring that the burden of challenging employer lawbreaking does not remain solely on individual workers, who may face retaliation.



12. No waivers of rights permitted – A just cause policy should prohibit employers from asking workers to waive their just cause rights -- for example, as a condition of being hired -- and should allow workers to waive their just cause claims only as part of a settlement supervised by a court or labor agency.



13. Rights that are enforceable before judges and juries, regardless of forced arbitration requirements and class/collective action waivers – Finally, a just cause policy should ensure that its protections can be enforced by workers before judges and juries. Forced arbitration requirements deny workers the right to go before a judge and jury when their employer breaks the law. Instead, workers must bring any claims to a secret proceeding before a private arbitrator who is not accountable to the public. Because these arbitrators depend on corporations for repeat business, they strongly favor employers. Making matters even worse, class and collective action waivers routinely incorporated into these requirements prevent groups of employees from banding together to challenge employer lawbreaking. An effective just cause policy must ensure that forced arbitration requirements and class/collective action waivers will not interfere with the ability of workers to enforce their rights under that policy.

8 Methodology

In January 2021, Hart Research on behalf of the Raise the Floor Alliance and the National Employment Law Project conducted an online survey among 806 Illinois adults in the workforce. Interviews were conducted from January 5 to January 15, 2021, among a representative cross section of Illinois adults through an online survey panel. Respondents were screened to include those currently employed full-time or part-time, unemployed and looking for work, or who have been employed either full-time or part-time in the past year. The survey included an oversample of Black respondents to ensure representation of the Illinois workforce. The survey was available in both English and Spanish. All data has been weighted by age, education, race, marital status, and household income according to the Census November 2020 Current Population Survey data. The margin of error is +/- 3.5%.

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Raise the Floor Alliance

A united voice, Raise the Floor Alliance (RTF) was founded by eight Chicago area worker centers. Worker centers help organize and provide support to communities of low wage workers who are not already members of a collective bargaining organization or have been legally excluded from coverage by U.S. labor laws.

Raise the Floor Alliance is a Chicago-based non-profit and legal clinic whose mission is to ensure that low-wage workers have access to quality jobs and are empowered to uphold and improve workplace standards. Both an alliance and a support center, RTF brings area worker centers together into a collective voice for economic policies that foster permanent, full-time, family-supporting work. RTF's worker center coalition includes [Arise Chicago](#), [Chicago Community and Workers' Rights](#), [Centro de Trabajadores Unidos](#), [Chicago Workers' Collaborative](#), [Latino Union](#), [Warehouse Workers for Justice](#), and [Worker Center for Racial Justice](#).

National Employment Law Project

For 50 years, NELP has sought to ensure that this country upholds, for all workers, the promise of opportunity and economic security through work. NELP fights for policies to create good jobs, expand access to work, and strengthen protections and support for underpaid workers and unemployed workers. We publish research that illuminates workers' issues; promote policies that improve workers' lives; lend deep legal and policy expertise to important cases and campaigns; and partner with allies to advance crucial reforms.

Hart Research Associates

Hart Research Associates is one of the leading research firms in the United States and has been at the cutting edge of change in public opinion since our founding in 1971. During that time, we have conducted more than 8,000 public opinion surveys and 7,500 focus groups and in-depth interviews, talking with more than five million individuals across the United States and beyond.

Authors

Ugo Okere, Kara Rodriguez, Paul Sonn, Irene Tung, and Sophia Zaman

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NELP

www.nelp.org

NELP National Office

90 Broad Street
Suite 1100
New York, NY 10004
212-285-3025

Washington, DC Office

1350 Connecticut Ave. NW
Suite 1050
Washington, DC 20036
202-640-6520

California Office

2030 Addison Street
Suite 420
Berkeley, CA 94704
510-982-5945

Washington State Office

300 Lenora Street #357
Seattle, WA 98121
206-324-4000



**RAISE
THE
FLOOR**

www.raisetheflooralliance.org

RTF National Office

1 N LaSalle St.
Suite 1275 L
Chicago, IL 60602
312-795-9115

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For further inquiries, please contact NELP (nelp@nelp.org).