

# The Case for Private Enforcement of Workers' Rights

## *Ensuring Workers Can Enforce Their Rights in Court*

by Cassandra Gomez

### Summary

Laws that raise job standards and protect workers—such as laws setting minimum wage floors, requiring paid leave and other benefits, and adopting health and safety protections to name a few—can have lasting impacts on workers' lives and raise conditions across workplaces and industries. But for a law to truly fulfill its legislative purpose, it must include strong enforcement mechanisms that give workers the ability to enforce their rights. NELP supports the inclusion of strong enforcement mechanisms in these types of laws, because they bring us closer to a good-jobs economy where laws that provide multiple avenues for workers to enforce their rights—including giving workers the option to go directly to court—are the standard.

For many workers, public enforcement by a government agency is the first line of defense to vindicate their workplace rights. However, public enforcement agencies often face resource gaps, which can make it difficult for workers whose rights have been violated to be made whole. Private enforcement can help fill these gaps and support government public enforcement efforts.

While the availability of both private and public enforcement is crucial, workplace laws must also address other barriers to enforcement. First, agencies should be adequately funded so that they have sufficient resources to process, investigate, and prosecute workers' claims. To best overcome systemic inequities that inhibit workers' ability to actualize their rights and increase workers' access to the legal system, private and public enforcement should be combined with: (1) strategic enforcement partnerships<sup>1</sup> that expand agencies' reach and help make it easier for workers to invoke their rights, and (2) robust anti-retaliation protections to safeguard workers who speak up about violations. Additionally, regulating forced

### Key Points

- Private rights of action, also known as private enforcement, give workers the ability to enforce their rights in a court of law.
- Public enforcement alone is insufficient in meeting the needs of workers due to limited government agency resources, among other factors.
- Public and private enforcement work together to ensure the best results for workers.

### Key Solutions

- Private enforcement must be an option for workers to enforce their rights.
- Legislators should also address other barriers to enforcement—such as employer retaliation and forced arbitration—to ensure that workers' rights laws are effective.

arbitration clauses, which prevent tens of millions of workers from enforcing their rights in court is critical to ensuring workers' access to meaningful enforcement.<sup>2</sup>

## Overview of Private Enforcement

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Private enforcement, also known as a “private right of action,” gives workers the option to hold employers accountable in a court of law when their rights have been violated. There are two types of private enforcement: express and implied. Express private enforcement is provided pursuant to a statute or ordinance that explicitly creates the right for workers to file a civil action in a court of law to enforce their rights. Implied private enforcement is established by a court of law in the absence of an express private right of action. This policy brief recommends including an express private right of action as part of any policy intended to establish worker protections or workplace standards. Private enforcement, whether express or implied, is only one piece of a strong enforcement framework and works in tandem with public enforcement.

### **Private enforcement is a critical component of effective enforcement efforts.**

Public enforcement is often the first and most accessible avenue of accountability for workers who suspect their rights have been violated. However, private enforcement can be paired with public enforcement to fill gaps and ensure that workers are still able to enforce their rights in instances when public enforcement is insufficient. Therefore, private and public enforcement work together as two pieces of a robust enforcement system.

### **Private enforcement helps to make workers whole when their rights have been violated.**

Strong enforcement options are essential to rectify harms when workers' rights have been violated, such as in the context of the wage theft epidemic. It is estimated that employers steal \$50 billion from underpaid workers every year throughout the U.S. by not paying them what they are owed, amplifying systemic financial struggles that impact workers' access to food, housing, and other essentials.<sup>3</sup> However, from 2021 through 2023, federal, state, and local agencies recovered just \$901.4 million, or less than 1 percent, of these stolen wages.<sup>4</sup> Of that \$901.4 million in recovered wages, \$659.8 million was attributable to the federal Department of Labor's efforts.<sup>5</sup> Meanwhile, in the year 2021 the ten largest wage and hour private class action lawsuits alone recovered \$641.3 million for workers—a figure comparable to the federal Department of Labor's total recovery for 2021 through 2023.<sup>6</sup>

### **Public agency enforcement may be limited for a number of reasons, underscoring the importance of private litigation.**

At every level of government, agencies that are charged with enforcing workers' rights laws contend with limited budgets, which in turn lead to inadequate staffing, delayed investigations and audits, and limited recoveries for workers.

For example, at the federal level, the Wage and Hour Division (WHD), which enforces several major workers' rights laws, including the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA), is chronically underfunded and understaffed. In 2022, the ratio of workers covered under these laws to WHD investigators was 202,840 to one.<sup>7</sup>

States and local enforcement agencies face similar resource constraints. For example, Oregon's understaffed Bureau of Labor and Industries recently adopted a policy of prioritizing wage claims based on

a worker's income level to address a backlog of complaints.<sup>8</sup> While the policy allowed for some workers to have their unpaid wage claims dealt with more expeditiously, workers who earned above the income threshold feared their claims would not be resolved.<sup>9</sup> However, Oregon advocates worked with the Labor Commissioner to successfully increase the agency's budget by 30%, allowing the agency to hire additional investigators and, in turn, lift the policy of prioritizing wage claims based on income level.<sup>10</sup>

**Enforcing agencies may have shifting priorities, underscoring the need for workers' access to private enforcement of their rights.**

Labor enforcement agency budgets and priorities are often reflective of the overall priorities of the executive branches, which shift. President Trump's proposed budget for Fiscal Year 2026 is a clear example of this. The proposed budget would cut the federal Department of Labor's discretionary budget by one third and reduce the staff of various enforcement divisions by 25% overall.<sup>11</sup> The budget proposal is punctuated by a deregulatory agenda that would roll back key worker protections that the Department of Labor has previously enforced, including in-home care worker minimum wage and overtime.<sup>12</sup> This major overhaul to the Department of Labor is expected to have devastating impacts on workers' health and safety and wage and hour rights throughout the country.<sup>13</sup>

The impact of shifting federal Department of Labor resources and priorities will also reverberate in the states. For example, in Arizona, the Department of Economic Security, which oversees several state benefits programs, including unemployment insurance, recently announced that it would reduce its workforce by 5% due to the federal government's decision to eliminate federal grants and shift a greater portion of unemployment insurance costs to the states.<sup>14</sup>

## **The Role of Public Agencies in Enforcement**

Public enforcement is typically workers' first line of defense against workplace rights violations; therefore, agencies may be hard-pressed to handle the broad scope of claims they receive. Instead, some public agencies may be better suited to audit, investigate, and ensure broader industry compliance in priority sectors with high levels of noncompliance.

## **Private Enforcement is a Critical Tool for Workers**

### **Private enforcement has long been incorporated in laws throughout the U.S.**

The U.S. has an established tradition of integrating private enforcement in various legal contexts, including environmental law, consumer protection laws, and workers' rights laws.<sup>15</sup> From federal to state and local governments, lawmakers have regularly incorporated private enforcement into legislative implementation schemes.

The New Deal era is considered one of the first large waves when private enforcement became more deeply enshrined in U.S. law. During that time, a number of key laws that Congress enacted, such as the Fair Labor Standards Act of 1938, included a private right of action.<sup>16</sup> Decades later during the Civil Rights Movement, there was another sharp increase in the number of statutes Congress adopted that incorporated private enforcement.<sup>17</sup> As during the New Deal era, workers' rights legislation with private rights of action—such as Title VII of the Civil Rights Act<sup>18</sup>—was notable among laws enacted during the Civil Rights Movement. Today, Congress continues to enact measures with express private enforcement across various legal fields.

While difficult to quantify when states and localities began to use private enforcement, all 50 states have laws on the books that use private enforcement as a means for accountability across a broad scope of issue areas.<sup>19</sup> And where private enforcement is available for state and federal laws regarding the same subject matter, states laws have expanded beyond their federal counterparts.<sup>20</sup>

## **Workers have used private rights of action to successfully enforce their rights.**

Where lawmakers have crafted private enforcement into legislative schemes, it has proved to be an important tool for workers to enforce and define their legal rights.

Since its enactment in the 1930s, private enforcement has been instrumental to building out workers' rights under the Fair Labor Standards Act.<sup>21</sup> Similarly, private enforcement has also been largely responsible for shaping workers' Title VII rights against employment discrimination. While Title VII adheres to a combined private and public enforcement model, private enforcement efforts, led by civil rights organizations such as the NAACP, are credited with bringing about Title VII's development, especially during its initial decade of being implemented.<sup>22</sup> The Supreme Court has explained that private enforcement has been essential to Title VII's implementation because through private enforcement, "the private litigant not only redresses his own injury, but also vindicates the important congressional policy against discriminatory employment practices."<sup>23</sup>

## **Local Progress: New York City Earned Safe and Sick Time Act**

In effect since 2014, New York City's Earned Safe and Sick Time Act (ESSTA) has provided paid sick and safe time protections for millions of New Yorkers for over a decade. However, at the time of its enactment, workers' sole mechanism for enforcement was to file an administrative complaint with the New York City Department of Consumer and Worker Protection.<sup>24</sup> In a 2019 audit of the Department's enforcement of the ESSTA, the Office of the Comptroller identified several enforcement gaps, including untimely performance of key investigatory steps, and recommended that the Department consider pursuing civil action through the City Law Department to make workers whole.<sup>25</sup> A decade after taking effect, in 2024, the City expanded the enforcement provisions of the ESSTA to include private enforcement to give workers additional options to pursue legal relief.<sup>26</sup>

## **Workers' option to enforce their rights via both public *and* private enforcement maximizes accountability.**

- *For a legal right to truly be a right, it must be enforceable.* As the Supreme Court noted in *Marbury v. Madison*, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury."<sup>27</sup> When legislation is enacted without an enforcement framework, its ability to impact the status quo is inherently limited. For codified laws to be realized in workplaces and fulfill their intended purpose for workers, adequate enforcement mechanisms must be in place.
- *Effective enforcement incentivizes employers to comply with the law.* Strong and accessible enforcement—particularly when combined with adequate remedies—influences employers' behavior to encourage compliance. Thus, private enforcement is a guardrail that protects workers and the public from employers that may otherwise erode workplace protections if left unchecked.

- *Many workers in the U.S. lack adequate workplace protections, underscoring the importance of enforcing the protections they do have.* Compared to other OECD countries, the U.S. ranks in the bottom quartile on wage policies and workers' rights to organize and last on worker protections (such as equal pay, paid leave, and work schedule protections).<sup>28</sup> For example, despite ample evidence that the federal minimum wage of \$7.25, last raised in 2009, is a poverty wage, 20 states have failed to raise their minimum wages above the federal rate.<sup>29</sup> Further, most workers in the U.S. are not unionized, driving down labor standards since unions not only raise workplace standards, but protect workers from retaliation and provide processes through which union members' contract rights are enforced.

## **Despite the clear need for both private and public enforcement, private rights of action have been increasingly vulnerable in legislative debates.**

While the need for private enforcement as a tool to supplement public enforcement is clear, it has been increasingly scrutinized by workers' rights opponents in legislatures throughout the country. When private enforcement is included within proposed new legislation, enactment efforts are sometimes met with pushback. And even when a law is enacted with a private right of action, it can be undermined or even abrogated altogether.

### **New workplace justice campaigns are increasingly facing pushback to the inclusion of private rights of action in proposed policies.**

Advocates and legislators continue to enact new policies to meet workers' needs in the modern workforce. However, as new legislation is enacted, private rights of action are increasingly abandoned as proposals proceed through the legislative process or are simply excluded from new legislation to begin with.

A recent example in Maryland is instructive. In 2024, to combat wage theft, the state amended its Wage Payment and Collection Law to enhance the information required to be included on workers' paystubs and create enforcement mechanisms for the law.<sup>30</sup> While the bill initially provided for both private and public enforcement,<sup>31</sup> just a month after the bill was introduced, the legislature struck workers' ability to privately enforce their new paystub protections from the bill.<sup>32</sup> The law was ultimately enacted with public enforcement through the Commissioner of Labor and Industry as the sole means of enforcement.<sup>33</sup>

A number of state legislatures have recently enacted policies regarding warehouse worker protections. However, despite the clear need for robust enforcement of these laws that provide critical worker safety measures, opponents have fought hard against private enforcement. Washington State adopted legislation regarding warehouse worker protections in 2023,<sup>34</sup> and although workers would have been able to bring a civil action to seek injunctive relief under the originally introduced bill,<sup>35</sup> that provision was struck from the bill less than two weeks before it was ultimately enacted.<sup>36</sup> A similar bill in Minnesota also included language empowering workers to file civil actions to seek damages and injunctive relief to obtain compliance with the law.<sup>37</sup> However, undeterred by opponent pushback against the private right of action,<sup>38</sup> the Minnesota legislature ultimately enacted the law with that provision included, ensuring that workers are able to hold their employers accountable for violations.

## Legislative Recommendations

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As lawmakers explore new policy solutions to match the modern workforce—such as protections for warehouse workers<sup>39</sup> and gig workers<sup>40</sup>—they must ensure their enforceability. The most effective enforcement framework for workers' rights laws should incorporate the following key components:

- *Combined private and public enforcement.* As explained throughout this brief, public and private enforcement work together as two parts of a strong enforcement system. To fully address workers' needs and ensure that all workers can reliably enforce their rights, both public and private enforcement should be available.
- *A lengthy statute of limitations that is tolled during agency investigations.* A statute of limitations sets the amount of time that a worker has to bring a claim. To ensure that workers have enough time to file a claim, stronger state wage laws have set a statute of limitations of six years from the time a worker learns that their rights have been violated. Where the violation is ongoing, statutes of limitations should expressly recognize that the recovery period is longer. Further, during a period of agency investigation, the statute of limitations should be tolled (or paused) so administrative investigation time does not count against the deadline.
- *No administrative exhaustion requirement.* In some instances, even where both private and public enforcement is adopted, workers' access to damages may be delayed because an administrative exhaustion requirement is in place. Administrative exhaustion requires workers who suspect that their rights have been violated to pursue action with the public enforcing agency and work their way through the administrative process prior to being able to file a civil action in a court of law. However, to increase efficiency, shorten workers' journey to a resolution, and preserve administrative resources, legislation should not include an administrative exhaustion requirement. Instead, both private and public enforcement should be available to workers from the start, allowing workers to weigh their options and choose the path best suited to them.
- *Fee shifting for prevailing plaintiffs.* The vast majority of workers' rights laws include reasonable attorney's fees and costs of the action as part of a plaintiff's recovery when they prove their rights have been violated.<sup>41</sup> By removing the financial barrier to entry created by legal costs, fee shifting grants workers with viable claims access to court when private enforcement may otherwise be out of reach.
- *Strong retaliation protections.* Employers may retaliate against workers who try to enforce their workplace rights to intimidate and stoke a chilling effect in an effort to evade accountability. A landmark study of low-wage industries in New York, Chicago, and Los Angeles found that 43 percent of workers who raised complaints with their supervisor or to a government agency experienced retaliation as a result, including firing, demotion, and blacklisting.<sup>42</sup> A recent survey of over 1,000 California workers found that 38 percent had experienced a workplace violation, and that a majority of those that reported the violation to an employer or government agency experienced retaliation as a result.<sup>43</sup> Strong retaliation protections include:
  - Protecting workers' identities for as long as possible when they file administrative claims or civil actions;
  - Creating a presumption of retaliation if an employer takes any adverse or discriminatory action against a worker within a certain timeframe after the worker files a complaint;
  - Meaningful monetary damages for workers who suffer retaliation (in addition to any lost pay); and



- Defining retaliatory actions expansively and providing all workers with full protection and recourse available under the law, regardless of their immigration status.<sup>44</sup>
- *Collective and class action provisions.* Class and collective actions can facilitate enforcement by aggregating worker power and resources.<sup>45</sup> When workers are able to act together, they are better insulated from employer retaliation and are more likely to find private representation.<sup>46</sup>

## Enforcement of Workplace Rights Impacts Entire Communities

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When workers' rights are not enforced, communities beyond just individual workers and workplaces suffer. This is particularly true in relation to wage justice laws. If left unchecked, noncompliant businesses become emboldened to continue committing wage theft, making it difficult for businesses that are following the law to compete.<sup>47</sup> When workers bring less money home as a result of wage theft, they have less discretionary funds to spend at businesses within their communities.<sup>48</sup> The negative economic impacts of unenforced wage and hour laws are compounded by the decreased tax revenue that results from wage theft.<sup>49</sup> All of these broader negative consequences further underscore the need for private enforcement.

## Conclusion

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Employment and labor laws are only meaningful if effectively enforced. Ensuring workers' access to both private and public enforcement opens the opportunity for workers to assert their rights and helps to level out the power imbalance between workers and employers. When workers' enforcement options are limited, unscrupulous employers harm workers, weaken our communities, and undermine law-abiding employers.

## About NELP

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Founded in 1969, the National Employment Law Project (NELP) is a nonprofit advocacy organization dedicated to building a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. NELP is the leading national nonprofit working at the federal, state, and local levels to create a good-jobs economy. Learn more at [www.nelp.org](http://www.nelp.org).

## Endnotes

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- <sup>1</sup> See *Build Community-Government Partnerships to Uphold Labor Laws*, NAT'L EMP. LAW PROJECT, <https://www.nelp.org/explore-the-issues/enforcing-labor-laws/strategic-enforcement-partnerships/> (last visited Sept. 4, 2025).
- <sup>2</sup> Dan Ocampo, *FAQ on Mandatory Arbitration in Employment: How Mandatory Arbitration Weakens Workplace Laws and Lets Employers Off the Hook*, NAT'L EMP. LAW PROJECT (Oct. 30, 2024), <https://www.nelp.org/insights-research/faq-on-mandatory-arbitration-in-employment/>.
- <sup>3</sup> See *Wage Theft: How It Affects Us All*, WORKERS DIGNITY, <https://www.workersdignity.org/how-wage-theft-affects-us-all/> (last visited Sept. 2, 2025).

<sup>4</sup> Margaret Poydock & Jiayi (Sonia) Zhang, *More Than \$1.5 Billion in Stolen Wages Recovered for Workers Between 2021 and 2023*, ECON. POL'Y INST. (Dec. 20, 2024), <https://files.epi.org/uploads/292809.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> The Wage and Hour Division has long struggled with inadequate budgets and staffing. From 2006 to 2022, the Wage and Hour Division's budget increased by just \$5 million when adjusted for inflation. Daniel Costa & Philip Martin, *Record-Low Number of Federal Wage and Hour Investigations of Farms in 2022*, ECON. POL'Y INST., at 6 (Aug. 22, 2023), <https://files.epi.org/uploads/271660.pdf>. In 2006, the Division was staffed by 751 investigators for the 151.4 million workers in the nationwide workforce at the time, equating to 201,598 workers per investigator. *Id.* at 6, Fig. C; *Current Population Survey: 2023 Annual Averages*, U.S. BUREAU LAB. STAT., at Table 1 (Jan. 14, 2025), [https://www.bls.gov/cps/cps\\_aa2023.htm](https://www.bls.gov/cps/cps_aa2023.htm). Similarly, years later in 2022, the Division was staffed by 810 investigators for 164.3 million workers in the workforce at the time, equating to 202,840 workers per investigator. Costa & Martin, *supra*, at 6, Fig. C. However, the 2022 ratio of workers to Wage and Hour Division Investigators represents a nearly 150% increase from 1979 when there were 81,717 workers for every wage and hour investigator. Ihna Mangundayao et al., *Worker Protection Agencies Need More Funding to Enforce Labor Laws and Protect Workers*, ECON. POL'Y INST. (July 29, 2021), <https://www.epi.org/blog/worker-protection-agencies-need-more-funding-to-enforce-labor-laws-and-protect-workers/#:~:text=Unsurprisingly%2C%20the%20Wage%20and%20Hour,little%20to%20deter%20wage%20theft>.

<sup>8</sup> Kaylee Tornay, *Oregon Labor Bureau Prioritizes Wage Claims of Lower-Paid Workers, Setting Stage for Big Budget Ask*, INVESTIGATEWEST (Jan. 16, 2025), <https://www.investigatwest.org/oregon-labor-bureau-prioritizes-wage-claims-of-lower-paid-workers-setting-stage-for-big-budget-ask/>.

<sup>9</sup> See *id.*

<sup>10</sup> Kaylee Tornay, *Oregon Labor Bureau Gets \$19M Budget Boost to Tackle Wage Claim Backlog*, OR. CAP. CHRON. (July 14, 2025), <https://oregoncapitalchronicle.com/2025/07/14/oregon-labor-bureau-gets-19m-budget-boost-to-tackle-wage-claim-backlog/>.

<sup>11</sup> Brian D. Pedrow et al., *President Trump's Budget Goes to Work Against Enforcement Agencies with Significant Cuts to DOL and NLRB*, BALLARD SPAHR LLP (June 17, 2025), <https://www.hrlawwatch.com/2025/06/17/president-trumps-budget-goes-to-work-against-enforcement-agencies-with-significant-cuts-to-dol-and-nlr/>.

<sup>12</sup> Celine McNicholas et al., *Trump's Department of Labor Is Dismantling Key Workplace Protections*, ECON. POL'Y INST. (July 10, 2025), <https://www.epi.org/blog/trumps-department-of-labor-is-dismantling-key-workplace-protections/>; *Department of Labor Announces Deregulatory Agenda to Weaken Wage Standards, Workplace Safety, and Other Protections*, ECON. POL'Y INST. (July 11, 2025), <https://www.epi.org/policywatch/department-of-labor-announces-deregulatory-agenda-to-weaken-wage-standards-workplace-safety-and-other-protections/>.

<sup>13</sup> See Julie Su, *What Cuts to the Department of Labor Will Mean for You*, CENTURY FOUND. (Apr. 3, 2025), <https://tcf.org/content/report/what-cuts-to-the-department-of-labor-will-mean-for-you/#:~:text=in%20April%202024.->.

<sup>14</sup> Kathy Ritchie, *Arizona Department of Economic Security Is Laying Off 5% of Its Workforce Because of Federal Cuts*, KJZZ (June 18, 2025), <https://www.kjzz.org/politics/2025-06-18/arizona-department-of-economic-security-is-laying-off-5-of-its-workforce-because-of-federal-cuts>.

<sup>15</sup> Stephen B. Burbank et al., *Private Enforcement*, 17 LEWIS & CLARK L. REV. 637, 685 (2013), [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1487&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1487&context=faculty_scholarship).

<sup>16</sup> *Id.* at 647; Fair Labor Standards Act of 1938, ch. 67, § 11, 52 Stat. 1060, 1066-67, available at <https://www.govinfo.gov/content/pkg/STATUTE-52/pdf/STATUTE-52-Pg1060.pdf>.

<sup>17</sup> Burbank et al., *supra* note 15, at 647.

<sup>18</sup> Civil Rights Act of 1964, tit. VII, Pub. L. No. 88-352, 78 Stat. 241, 253, available at <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf>.

<sup>19</sup> Diego A. Zambrano et al., *Private Enforcement in the States*, 172 U. PA. L. REV. 61, 62, 66-67 (2023), [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9834&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9834&context=penn_law_review).

<sup>20</sup> *Id.* at 68.

<sup>21</sup> A couple of examples include *IBP, Inc. v. Alvarez* and *Kasten v. Saint-Gobain Performance Plastics Corp.* In *IBP, Inc. v. Alvarez*, employees were able to assert their FLSA rights to ensure that they were paid for time spent walking to their worksite while donning protective clothing that was required while on the job. 546 U.S. 21 (2005). In that case, the Supreme Court explained that while time spent waiting to put on the protective equipment was non-compensable



“preliminary” activity time, any activity that is integral and indispensable to the work, such as changing into protective equipment, is a “principal activity” that must be paid and that time spent walking to the worksite after the first principal activity and before the worker’s last principal activity ends is covered by the FLSA. *Id.* at 37, 40-41. Further, in *Kasten v. Saint-Gobain Performance Plastics Corp.*, an employee who was retaliated against for his verbal complaints of alleged FLSA violations affirmed his FLSA retaliation protections, with the Supreme Court holding that both oral and written complaints trigger the FLSA’s anti-retaliation provision. 563 U.S. 1 (2011).

<sup>22</sup> Robert Belton, *A Comparative Review of Public and Private Enforcement of Title VII of the Civil Rights Act of 1964*, 31 VAND. L. REV. 905, 924-25 (1978),

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=3073&context=vlr>.

<sup>23</sup> *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 45 (1974).

<sup>24</sup> N.Y.C. Admin. Code § 20-924 (2013), <https://intro.nyc.local-laws/2013-46>.

<sup>25</sup> Marjorie Landa, *Audit Report on the Department of Consumer and Worker Protection’s Enforcement of the New York City Earned Sick Time Act*, OFF. N.Y.C. COMPTROLLER 2, 3 (June 28, 2019), <https://comptroller.nyc.gov/wp-content/uploads/documents/ME18-070A.pdf>.

<sup>26</sup> See *Department of Consumer and Worker Protection Celebrates 10 Years of Paid Safe and Sick Leave*, N.Y.C. DEP’T CONSUMER & WORKER PROTECTION (Apr. 11, 2024), <https://www.nyc.gov/site/dca/news/019-24/departments-consumer-worker-protection-celebrates-10-years-paid-safe-sick-leave>.

<sup>27</sup> *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

<sup>28</sup> Kaitlyn Henderson, *Where Hard Work Doesn’t Pay Off: An Index of US Labor Policies Compared to Peer Nations*, OXFAM (May 3, 2023), <https://www.oxfamamerica.org/explore/research-publications/where-hard-work-doesnt-pay-off/>.

<sup>29</sup> See Sebastian Martinez Hickey & Ismael Cid-Martinez, *The Federal Minimum Wage Is Officially a Poverty Wage in 2025*, ECON. POL’Y INST. (Apr. 28, 2025), <https://www.epi.org/blog/the-federal-minimum-wage-is-officially-a-poverty-wage-in-2025/>; see *Minimum Wage Tracker*, ECON. POL’Y INST. (July 1, 2025), [https://www.epi.org/minimum-wage-tracker/#/min\\_wage/](https://www.epi.org/minimum-wage-tracker/#/min_wage/).

<sup>30</sup> S.B. 38, 2024 Leg., 446th Sess. (Md. 2024), *available at*

[https://mgaleg.maryland.gov/2024RS/Chapters\\_noln/CH\\_305\\_sb0038t.pdf](https://mgaleg.maryland.gov/2024RS/Chapters_noln/CH_305_sb0038t.pdf).

<sup>31</sup> S.B. 38, 2024 Leg., 446th Sess. (Md. 2024) (as filed on Jan. 10, 2024), *available at*

<https://mgaleg.maryland.gov/2024RS/bills/sb/sb0038f.pdf>.

<sup>32</sup> Amendments to S.B. 38, 683623/1, 446th Sess. (Md. 2024), *available at*

[https://mgaleg.maryland.gov/2024RS/amds/bil\\_0008/SB0038\\_68362301.pdf](https://mgaleg.maryland.gov/2024RS/amds/bil_0008/SB0038_68362301.pdf).

<sup>33</sup> S.B. 38, 2024 Leg., 446th Sess. (Md. 2024), *available at*

[https://mgaleg.maryland.gov/2024RS/Chapters\\_noln/CH\\_305\\_sb0038t.pdf](https://mgaleg.maryland.gov/2024RS/Chapters_noln/CH_305_sb0038t.pdf).

<sup>34</sup> 2023 Wash. Sess. Laws ch. 306, *available at* <https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1762-S2.SL.pdf?q=20251029122832>.

<sup>35</sup> H.B. 1762, 2023 Reg. Sess., 68<sup>th</sup> Leg. (Wash. 2023) (as filed on Feb. 6, 2023), *available at* <https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/1762.pdf#page=1>.

<sup>36</sup> Amendments to H.B. 1762, 68<sup>th</sup> Leg. (Wash. 2023), *available at* <https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Amendments/Senate/1762-S2%20AMS%20KEIS%20S3291.1.pdf>.

<sup>37</sup> H.F. 36, 93rd Leg. (Minn. 2023), *available at* <https://www.revisor.mn.gov/bills/93/2023/0/HF/36/versions/0/>.

<sup>38</sup> Minnesota Chamber of Commerce et al., *Oppose HF 36/SF 58: Broad, Bureaucratic & Unnecessary*, submitted to the Minnesota House of Representatives Ways & Means Committee on Mar. 27, 2023, <https://www.house.mn.gov/comm/docs/Z9N9t1QhQk6gFhRrbTNrJg.pdf>.

<sup>39</sup> *Advocacy in Action: Movement Gains Momentum to Hold Amazon Accountable for Harms to Warehouse Workers*, NAT’L EMP. LAW PROJECT (Feb. 28, 2025), <https://www.nelp.org/advocacy-in-action-movement-to-hold-amazon-accountable-for-harms-to-warehouse-workers-gains-momentum/>.

<sup>40</sup> Laura Padin, *The Hill: App-Based Workers Need Real Rights, Not ‘Portable Benefits’ Gimmicks*, NAT’L EMP. LAW PROJECT (Aug. 16, 2025), <https://www.nelp.org/app-based-workers-need-real-rights-not-portable-benefits-gimmicks/>.

<sup>41</sup> See, e.g., the Fair Labor Standards Act, 29 U.S.C. § 216(b), which requires that judgment for the plaintiff include reasonable attorney’s fees and costs of the action.

- <sup>42</sup> Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, NAT'L EMP. LAW PROJECT, at 25 (2009), <https://www.nelp.org/app/uploads/2015/03/BrokenLawsReport2009.pdf>.
- <sup>43</sup> Tsedeye Gebreselassie, Nayantara Mehta, & Irene Tung, *How California Can Lead on Retaliation Reforms to Dismantle Workplace Inequality*, NAT'L EMP. LAW PROJECT, at 8 (Nov. 2022), <https://www.nelp.org/app/uploads/2022/11/NELP-Report-CA-Retaliation-Funds-2022.pdf>.
- <sup>44</sup> *Enforce Labor Protections to Improve Workers' Lives*, NAT'L EMP. LAW PROJECT, <https://www.nelp.org/explore-the-issues/enforcing-labor-laws/> (last visited Sept. 5, 2025).
- <sup>45</sup> *Decoding Legal Jargon: The Difference Between Class and Collective Action*, ARCADIER, BIGGIE & WOOD, PLLC (Aug. 21, 2023), <https://melbournelegalteam.com/decoding-legal-jargon-difference-class-collective-action/>.
- <sup>46</sup> Larry Johnson, *Collective and Class Actions Are Critical Tools to Helping Employees Enforce Their Rights*, HAWKS QUINDEL, S.C. (May 21, 2014), <https://www.hq-law.com/attorneys/larry-johnson/collective-and-class-actions-are-critical-tools-to-helping-employees-enforce-their-rights/>.
- <sup>47</sup> *Winning Wage Justice: Talking Points on the Need for Strong Anti-Wage Theft Laws*, NAT'L EMP. LAW PROJECT (Jan. 2012), <https://www.nelp.org/app/uploads/2015/03/WinningWageJusticeTalkingPoints.pdf>.
- <sup>48</sup> *Id.*; Jeounghee Kim & Skye Allmang, *Wage Theft in the United States: A Critical Review*, RUTGERS SCH. MGMT. & LAB. REL. 4 (June 2020), [https://smlr.rutgers.edu/sites/default/files/Documents/CWW/Publications/wage\\_theft\\_in\\_the\\_united\\_states\\_a\\_critical\\_review\\_june\\_2020.pdf](https://smlr.rutgers.edu/sites/default/files/Documents/CWW/Publications/wage_theft_in_the_united_states_a_critical_review_june_2020.pdf).
- <sup>49</sup> NATIONAL EMPLOYMENT LAW PROJECT, *supra* note 47; Kim & Allmang, *supra* note 48, at 4.

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