

Resource Guide: Criminal Legal System + Work

This fact sheet is a tool for advocates, workers, and policymakers to use in efforts to create safer and more equitable workplaces.

Overview

The criminal legal system shapes labor market participation and employment stability. It pushes the labor market toward further exploiting the work of incarcerated people and people with records, lowering the floor for all workers.

Criminalization continues to impact a worker long after incarceration. Even for those who manage to secure a source of income, having a record erodes wages and drives up poverty among workers with records and their families.¹ Employer bias against job applicants with records—intertwined with racism and classism—translates into fewer and worse job opportunities. Parole, probation, and other court-supervision programs compound this problem by regularly mandating some form of work or searching for work as a condition of release from incarceration.² As a result of the threat of re-incarceration, criminal legal debt, employer bias, and other economic stressors, workers with records are generally expected to accept undesirable, low-paying jobs and not complain about exploitative working conditions.³

Prisons, jails, and migrant detention camps are workplaces, and incarcerated people are workers. Incarceration removes individuals at risk of joblessness and under-employment from the labor force. The Bureau of Labor Statistics (BLS) does not include incarcerated people in its measure of unemployment, under-employment, or joblessness. For instance, federal data reveals that the labor force participation rate for Black men (64.4 percent) is lower than that of white men (67.8 percent), but, in reality, that disparity is more stark because of the exclusion of racially targeted incarceration.⁴ With more than two million Black men incarcerated, and with Black men disproportionately targeted in their prime working age, their exclusion from BLS data obfuscates any assessment of the U.S. labor market's claims of achievement in race equity and economic security.⁵

Incarceration is often used as workforce training. Through wage-less and under-waged prison labor programs, people who experience incarceration are conditioned to expect less pay and benefits in the labor market after release.⁶ After incarceration, many people with records are statutorily barred from obtaining various occupational licenses and holding a variety of jobs, including as staff for labor unions.⁷ Taken together, these lowered

expectations and limited opportunities reduce worker power by undermining the social cohesion of workers against bosses and management.

Incarcerated workers have a long history of organizing, resistance, and uprising, including in the form of labor unions. They continue to advocate for many of the demands of incarcerated worker movements during the civil rights era of the 1960s and 1970s. Calls for fair labor practices, union representation, and an end to racism remain pillars in their fight for economic justice.⁸

Research & Data: How the Criminal Legal System Shapes Work

Below are research and data points that illuminate the criminal legal system's role in shaping work.

Because of massive investments in a legal system that criminalizes people of color, Black, Latinx, and Indigenous people are much more likely to be incarcerated and/or have a record.

- For a variety of reasons, ranging from over-policing and racial profiling to racist charging and sentencing decisions, the people impacted by mass criminalization are disproportionately Black and Latinx.⁹
- On average in state prisons, Black people are incarcerated at over five times the rate of white people; in five states, at over 10 times the rate.¹⁰
- Nearly one-third of adult Black men have a felony record, as compared with 8 percent of the overall adult population.¹¹
- These race disparities cannot be attributed to significantly different rates of offending.¹²

Across the nation, working people of color are segregated into the lowest paid, least stable, and most dangerous jobs, perpetuating racial wage gaps and exacerbating the racial wealth gap.

- Black workers earn less than white workers at all levels of education, and the gap has only gotten worse in the past 20 years. Hispanic workers earn less than white workers at all but the lowest level of education, and the overall Hispanic-white wage gap has narrowed only slightly over the past 20 years.¹³
- Black, Latinx, and women workers are overrepresented in jobs paying less than \$15 an hour and in industries and occupations that have some of the highest proportions of workers earning less than \$15 an hour.¹⁴
- After controlling for education, 87 percent of occupations in the United States can be classified as racially segregated.¹⁵
- The median Black household holds approximately 12 cents for every dollar of wealth held by the median white family.¹⁶

Excluding workers with records from good jobs contributes to a racially segregated workforce. Both employer bias and government policies contribute to that outcome.

- People with a variety of felony conviction records are statutorily prohibited from working as staff for labor unions for over a decade after release from incarceration.¹⁷
- Seventy-one percent of participants in an Urban Institute study reported that their criminal record reduced their ability to find work after incarceration.¹⁸ In a separate 2020 study, 69 percent of respondents with a felony conviction continued to have difficulty finding a job even long after completing their sentence.¹⁹

- Occupational licensing laws in every state across the country prohibit workers with a variety of records from working in licensed and certified professions, which often are more stable and better paid.²⁰
- A research survey of food service and restaurant employers revealed that participating employers prefer to hire workers without a criminal record.²¹
- One landmark study observed dramatic drops in employer callback rates when job applicants made their records known: callbacks halved for white applicants with records and dropped by two-thirds for Black applicants with records.²²

The stigma of a record frequently destroys employment prospects, especially for Black workers.

- Workers who have been incarcerated are four to six times more likely to be unemployed than other workers.²³
- An estimated 27.3 percent of formerly incarcerated people were unemployed in 2008, when the general unemployment rate was just 5.8 percent.²⁴
- Roughly two-thirds of formerly incarcerated workers were jobless at any given time, according to a Bureau of Justice Statistics study that followed 50,000 individuals for four years after their release from federal prison.²⁵
- Not only are Black communities more impacted by mass incarceration, but Black workers (especially Black women) are penalized in the labor market more harshly than white workers for having a record. White men and women face unemployment rates 14 percent and 18 percent higher, respectively, if they have been incarcerated. Black men and women see much greater prison penalties: formerly incarcerated Black men and women see unemployment rates 27 percent and 37 percent higher, respectively, than their counterparts who have not been incarcerated.²⁶
- Even women of color with records who find jobs are often underemployed. Formerly incarcerated women of color can often find only part-time work.²⁷
- After incarceration, individuals can expect their wages to drop for the rest of their lives, resulting in their lifetime earnings being cut in half.²⁸ Those who have been convicted but not incarcerated also see wage decreases that last for the rest of their lives.²⁹ Even a misdemeanor conviction reduces annual earnings by an average of 16 percent.³⁰

While access to employment is important, it is not a panacea to equity for formerly incarcerated people. Job quality is critical.

- After release from incarceration, workers struggle to find jobs and therefore often accept sporadic, precarious, and low-paid work.³¹
- People with records are more likely to search for jobs via intermediaries, including temp and staffing companies,³² which often results in lower-paid, unstable work.³³
- In New York, “body shops” (labor brokers that hire formerly incarcerated workers and place them in work for third-party companies) place paroled workers into jobs in the construction industry, an industry that commonly employs formerly incarcerated people. These demanding jobs are often made unsafe by the broker system.³⁴
- Formerly incarcerated people need an average of over six months to find their first job after release, according to a Bureau of Justice Statistics study.³⁵
- People under court surveillance, including those on parole or probation, are often forced—under threat of reincarceration—to accept underpaid, dangerous, and unstable work.³⁶
- When acceptable jobs aren’t available, people with records don’t have the luxury to wait for something better to come along. Workers released from incarceration are not eligible for unemployment insurance while they search for work,³⁷ yet many immediately owe criminal legal debt³⁸ and child support payments.³⁹

Systemic workforce disadvantages and labor abuses—including retaliation, wage theft, and lack of safety protocols—emerge for workers while they are still confined. Incarcerated people are workers, and jails, prisons, and migrant detention camps are workplaces that exploit them as part of the legacy of slavery.

- The ACLU estimates that over 65 percent of people confined in state and federal prisons work.⁴⁰
- A 2017 study by the Prison Policy Initiative found that incarcerated workers are paid a measly \$0.86 to \$3.45 on average, with some states paying incarcerated workers nothing.⁴¹
- Confinement facilities use the cost of incarceration as an excuse to garnish incarcerated workers' wages. The Prison Industry Enhancement Certification Program (PIECP), a government contractor that uses incarcerated labor, deducted an estimated 80 percent of workers' wages to pay for room and board between July 2020 and July 2021.⁴²
- Low-paid or unpaid incarcerated workers often labor in dangerous conditions even when the work takes place outside of a confined facility. For example, Mayfield Consumer Products, an employer accused of discrimination, contracts with two jails to use incarcerated labor in its candle factory. When the factory was hit by a deadly tornado in December 2021, incarcerated workers were inside, working alongside non-incarcerated factory employees.⁴³
- Workers detained by Immigration Customs and Enforcement (ICE) at Corrections Corporation of America were paid \$1 per day and experienced deplorable working conditions and retaliation. One worker recounted that “[s]ometimes his work detail required cleaning the dorm showers, including the floors, walls, and toilets of a dank, humid area that had never been exposed to fresh air. He recalled being ordered to revisit a particularly difficult patch of mildew that had seemingly been there for years. When he explained that the company needed a specialized janitorial service and equipment for the task, he was told he would be fired.”⁴⁴

The policy advocacy and direct action of currently and formerly incarcerated workers builds worker power, thereby helping to raise the floor for all workers and create a more equitable labor market.

- The Albany Park Worker Center is a community-based program taking a holistic approach to improving job quality in the informal and temporary job economy—an economy that often employs the formerly incarcerated. The Center is a worker-led hiring center with practices that increases pay, use a wage scale, and utilize worker-led marketing campaigns.⁴⁵
- The inability to pay exorbitant criminal legal fees, like bail, keep Black and brown people stuck in the carceral system. This has lasting impacts on their communities and livelihood, including job loss. Essie Justice Group, an organization comprised of the loved ones of incarcerated people, leads a campaign, “Bailing Out Black Mamas.” Every year the organization, along with other racial justice advocates, fundraises to bail out Black mothers in California by Mother’s Day.⁴⁶
- In 2021, the advocacy of formerly incarcerated people, unions, and worker rights advocates led to the passage of bill 2318-2021 in New York. The legislation includes provisions to hold employers accountable, offers workers information about their rights on the job, and ensures employer accountability in the labor broker system.⁴⁷
- In July 2022, after several weeks of labor strikes, detainees at two California ICE facilities, operated by the GEO Group, filed a class action lawsuit against the company, accusing the Group of wage theft and seeking recovered wages. Workers are also seeking a \$15 minimum wage for the facilities’ labor force.⁴⁸
- Incarcerated workers exercise their power to fight other harms that punishment systems create, beyond unfair pay and working conditions. In May 2022, at the Northwest Detention Center (NWDC), another facility owned and operated by the

GEO Group, incarcerated people went on a hunger strike after sounding the alarm on sexual abuse, a lack of COVID safety protocols, spoiled food, and unsanitary laundry in the facility. In 2021, this same facility was ordered by a federal court to pay over \$23 million for not providing members of its workers program a minimum wage.⁴⁹

To learn more about the intersection of the criminal system and work, please see NELP's policy brief, ["Worker Power in the Carceral State: 10 Policy Proposals Against the Criminalization of Workers."](#)

Endnotes

¹ Over the course of an entire career, the Brennan Center estimates that Black workers with an arrest or conviction record earn \$37,000 on average annually, while similarly situated white workers with an arrest or conviction record earn \$49,000. Black workers without an arrest or conviction record earn \$39,000 on average annually, while similarly situated white workers without an arrest or conviction record earn \$52,000. Terry-Ann Craigie, Ames Grawert, Cameron Kimble, Brennan Center for Justice, Conviction, Imprisonment, and Lost Earnings, September 2020, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

² Han Lu, Laura Padin, Maya Pinto, NELP, Local 79 Fights the Criminalization of Laborers, May 2021, <https://www.nelp.org/publication/local-79-fights-the-criminalization-of-laborers/>. See also, Josh Seim and David J. Harding, "Parolefare: Post-prison Supervision and Low Wage Work," RSF: Journal of the Social Sciences, April 2020, <https://www.rsfsjournal.org/content/6/1/173>; Jesse Jannetta, Justin Breaux, Helen Ho, The Urban Institute, Examining Racial and Ethnic Disparities in Probation Revocation, April 2014, <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-ProbationRevocation.PDF>.

³ "When you're released on parole you have to work in unsafe conditions and walk on eggshells. If you breathe wrong, you're fired and that's a violation of your parole. These body shops know this and exploit it." Duane Townes, former body shop laborer and member of Laborers' Local 79 Fight Back Campaign, Real Reentry for New York, <https://www.realreentry.org/>.

⁴ US Bureau of Labor Statistics, "Employment status of the civilian population by race, sex, and age," July 2022, <https://www.bls.gov/news.release/empsit.t02.htm>.

⁵ Sandra Susan Smith and Jonathan Simon, "Exclusion and Extraction: Criminal Justice Contact and the Reallocation of Labor," RSF: The Russell Sage Foundation Journal of the Social Sciences, March 2020, <https://www.rsfsjournal.org/content/rsfjss/6/1/1.full.pdf>.

⁶ "After years of working for pennies on the dollar inside, twelve dollars an hour sounds great to someone coming out of prison – even if you could never make the costs of living in New York City with that pay," Bernard Callegari, Lead Organizer and member of Laborers Local 79 Fight Back Campaign, Real Reentry for New York, <https://www.realreentry.org>

⁷ The Labor Management Reporting and Disclosure Act (LMRDA) imposes a thirteen-year prohibition against labor union employment for people with specific convictions; See 29 U.S.C. §504(a). Office of Labor-Management Standards (OLMS), U.S. Dept. of Labor, *OLMS Fact Sheet: Prohibition Against Certain Persons Holding Union Office or Employment* (Mar. 2013), <https://www.dol.gov/olms/regs/compliance/504unionoffholdempl.pdf>

⁸ Ann Arbor Sun, "Support Jackson Prisoners' Self-Determination Union!!" (July 7, 1972).

⁹ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>; The Nat'l Judicial College, "Most Judges Believe the Criminal Justice System Suffers from Racism," July 14, 2020, <https://www.judges.org/newsand-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/>.

¹⁰ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

¹¹ Sarah K. S. Shannon, et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 *Demography* 1795 (2017) (using 2010 data).

¹² Studies demonstrate that, for example, while rates of drug usage are essentially equal among white and Black populations, arrests and convictions for drug offenses are much higher in the Black community. The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>. See also The Hamilton Project, "Chart: Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race" (2016), https://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice.

¹³ Elise Gould, Economic Policy Institute, "State of Working America Wages in 2019" (February 2020), <https://www.epi.org/publication/swa-wages-2019/>

¹⁴ Laura Huizar & Tsedeye Gebreselassie, National Employment Law Project, *What a \$15 Minimum Wage Means for Women and Workers of Color* (Dec. 2016), <https://www.nelp.org/wp-content/uploads/Policy-Brief-15-Minimum-Wage-Women-Workers-of-Color.pdf>. As another example, Black and Latinx workers are overrepresented in temporary staffing work. Black workers comprise 12.1 percent of the overall workforce but 25.9 percent of workers employed by temporary staffing agencies. Latinx workers comprise 16.6 percent of all workers, but 25.4 percent of workers employed by temporary staffing agencies. National Employment Law Project, *America's Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data* (June 7, 2018), <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefitpenalties-according-us-data/>.

¹⁵ Darrick Hamilton, et al., Economic Policy Institute, *Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men* (2011), <https://files.epi.org/page/-/BriefingPaper288.pdf>.

¹⁶ Natasha Hicks, et al., Insight Ctr., *Still Running Up the Down Escalator* (2021), <https://insightcced.org/still-running-up-the-down-escalator/>.

¹⁷ OLMS, *supra* at 7.

¹⁸ Christy Visher, Sara Debus, Jennifer Yahner, "Employment after Prison: A Longitudinal Study of Releases in Three States" (October 2008), <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releases-in-Three-States.PDF>

¹⁹ Alliance for Safety & Justice, "Toward Shared Safety: The First-Ever National Survey of America's Safety Gaps" (2020), <https://allianceforsafetyandjustice.org/wp-content/uploads/2020/09/NatlSafetyGaps-Report-PREVIEW-20200908-1751.pdf>

²⁰ See, e.g., Michelle Natividad Rodriguez & Beth Avery, National Employment Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* (2016), <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>.

²¹ Scott H. Decker, Cassia Spohn, Natalie R. Ortiz, Eric Hedberg, *Criminal Stigma, Race, Gender and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment*, (January 2014), <https://www.ojp.gov/pdffiles1/nij/grants/244756.pdf>.

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