

Power and Voice at Work: New Yorkers View Employer Retaliation as a Barrier to Addressing Workplace Problems and Express Desire for Union Representation

In New York as elsewhere, the COVID-19 pandemic has underscored the importance of workers' ability to raise workplace concerns without employer reprisal.¹ Being able to speak up carries critical implications for worker health and safety, freedom from discrimination, and other matters of basic wellbeing.² Even in the midst of a health and economic crisis, workers around the country mobilized individually and collectively around a range of issues, including premium pay and stronger workplace protections.³ Too often, however, employers continue to punish workers for raising workplace concerns.⁴

Data from the national Just Recovery Survey (n=3,100), which oversampled working New Yorkers (n=324), provides insight into how New Yorkers compare to the rest of the country with regard to perceptions of possible of employer retaliation for raising concerns about workplace safety and sexual harassment.⁵ It also shows how working New Yorkers compare to their counterparts elsewhere with respect to interest in a specific kind of vehicle for workplace collective action: forming a union.

Key Findings

- Workers in New York are more likely than those in the rest of the country to report that they perceive employer retaliation to be a significant barrier preventing them from freely expressing concerns related to workplace health and safety. Forty-seven percent of working New Yorkers reported that potential employer retaliation could prevent them from refusing to work in unsafe conditions, as compared to 37% of workers in the rest of the country. Thirty-four percent reported that potential employer retaliation could prevent them from raising concerns about unsafe working conditions, as compared to 25% in the rest of the country.
- Workers in New York are more likely than those in the rest of the country to feel pressure to refrain from reporting workplace sexual harassment to avoid employer retaliation. Thirty-four percent of working New Yorkers reported that potential

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- Workers in New York express a higher level of interest in joining a labor union than those in the rest of the country. Of workers who don't currently belong to a labor union, 57% of working New Yorkers stated that they would like to join a union, as compared to 45% in the rest of the country.

- Nationally, Black workers are more likely than other workers to report potential employer retaliation as a barrier to taking action against unsafe working conditions.⁶

- U.S. workers who perceived retaliation to be a barrier are more likely to want to organize with co-workers in a union, suggesting that workers view unionization as a means to bolster their voice and power to speak up about workplace issues that arise.

Building on these results, this brief concludes by drawing some implications for efforts to expand worker voice as part of a just and worker-centered recovery.

New Yorkers are more likely to perceive retaliation as a barrier than workers in other parts of the country

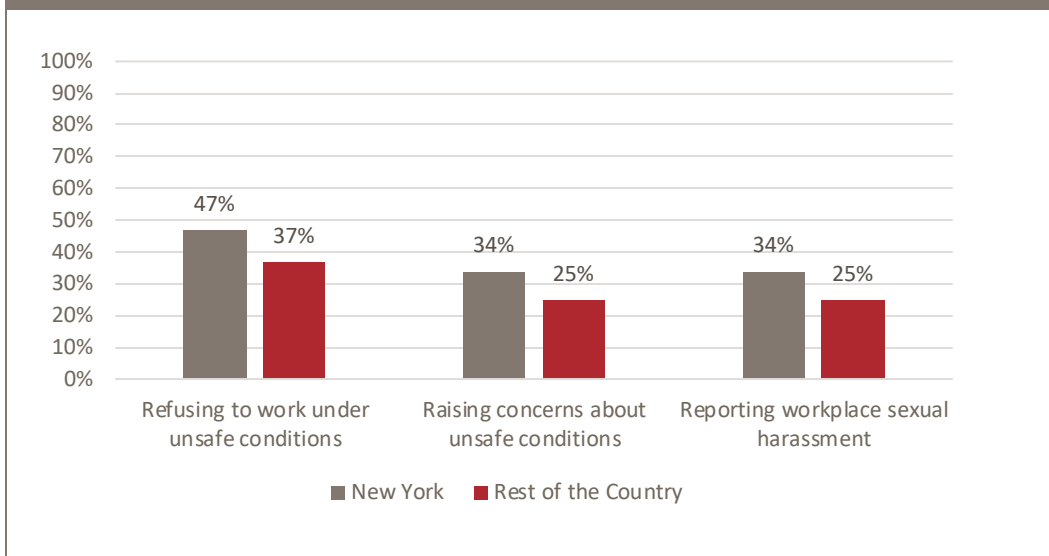
During the pandemic, many employers have called on frontline workers to work in high-risk environments without providing adequate protections against COVID-19, placing the physical and economic health of workers and their families at risk. Being able to freely identify workplace safety hazards is crucial to maintaining safe workplaces. COVID-19 has laid bare the problem of employer retaliation against workers who raise these concerns and underscored the impact of suppressing workers' concerns on their wellbeing and that of the broader public.

Results from the Just Recovery Survey show that a large share of New Yorkers say potential retaliation from their employer would prevent them from taking action on issues related to workplace safety and discrimination. Indeed, workers in New York are more likely to report that potential employer retaliation is a barrier than their counterparts in the rest of the country (see **Figure 1**).⁷

The Just Recovery Survey data show 47% of New Yorkers reporting that potential employer retaliation could prevent them from refusing to work under unsafe conditions, and 34% reporting that potential employer retaliation could prevent them from raising concerns about unsafe working conditions. By comparison, 37% of respondents in the rest of the country reported that potential employer retaliation could prevent them from refusing to work under unsafe conditions, and 25% reported that potential employer retaliation would prevent them from raising concerns about unsafe workplace conditions.

Alongside reporting the stifling effect of potential retaliation related to health and safety concerns, working people in New York expressed that potential employer retaliation could prevent them from reporting sexual harassment. Workplace sexual harassment and violence is both a discrimination and a health and safety issue, and barriers to reporting hinder efforts to confront the problem. As in the case of the other retaliation outcomes, New

Figure 1. Share of Workers Viewing Potential Employer Retaliation as a Barrier to Addressing Workplace Problems



Yorkers were also more likely than those in the rest of the country to report that this was the case: 34% of working New Yorkers expressed potential retaliation as a barrier to reporting sexual harassment, as compared to 25% of working people in the rest of the country (see **Figure 1**).

While demographic breakdowns are not available for New York specifically due to the limited sample size, the national survey results suggest that there are troubling racial and gender disparities in how empowered workers feel to take certain forms of action: Black workers are more likely to report that potential employer retaliation could prevent them from refusing to work under unsafe working conditions, and women are more likely than men to report that potential employer retaliation could prevent them from reporting workplace sexual harassment.

Stronger interest in unions in New York than in other parts of the country

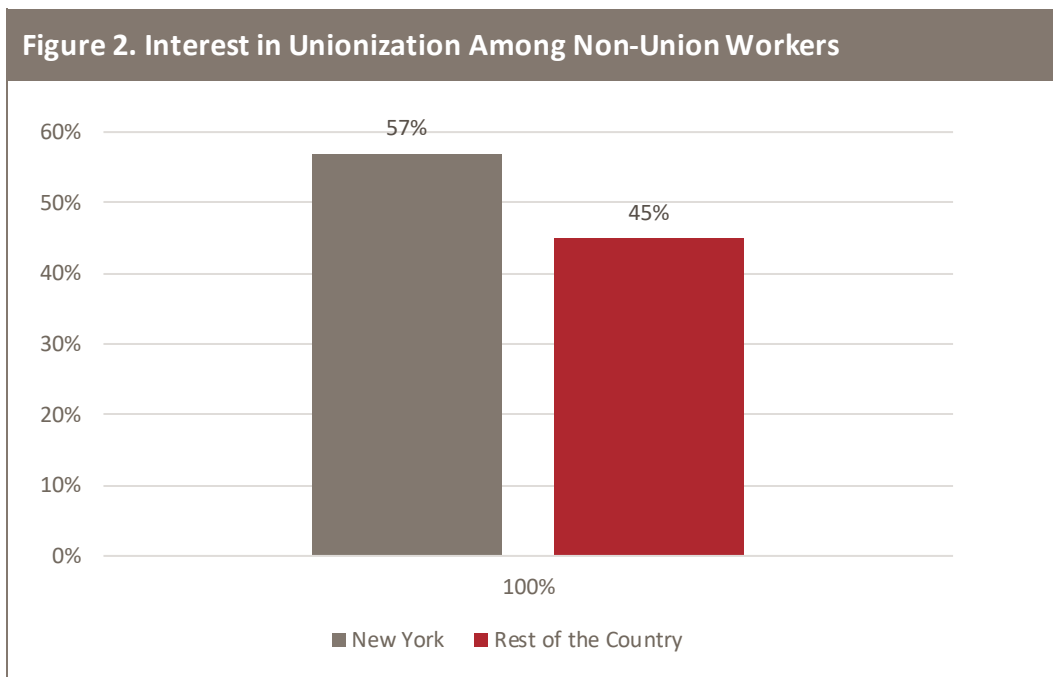
As workers have navigated unsafe and unfair conditions during the pandemic, many have engaged in workplace collective action, including strikes, petitions, and different forms of protest. In a number of cases, workers have won important concessions from employers. And, as shown in previous work, the “collective action potential” of the moment far exceeds what has actually surfaced—e.g., a large share of non-union workers would be interested in forming a union if given the chance.⁸

The Just Recovery Survey shows that interest in unionization among non-union New Yorkers is high. A solid majority of non-union workers in New York—57%—expressed interest in unionization, which was 12 percentage points higher than in the rest of the country (see **Figure 2**).

Importantly, the national data also show that interest in unionization was higher among those indicating that potential employer retaliation was a barrier to addressing any of the workplace problems noted above (55%) than those who did not indicate that potential

employer retaliation was a barrier at all (38%). The size of the survey sample in New York did not allow for this analysis within New York specifically, but the data do not indicate that the correlation between views of employer retaliation and interest in unionization are any different in New York than in the rest of the country.

This correlation suggests that workers reporting potential employer retaliation for speaking up about key workplace issues may view unionization as a vehicle for overcoming this threat. Prior research confirms that being part of a union can facilitate the ability of workers to freely raise concerns, showing that unionized workers are more likely than their non-union peers to both speak up about their workplace health and safety concerns and successfully have them addressed.⁹



Finally, worker interest in unionization was especially high among Black and Asian workers nationally. Sixty-two percent of non-union Black workers and 61% of non-union Asian workers said they would definitely or probably support a union at their job, compared to 42% of white workers and 44% of Latinx workers.

Implications

Results from the Just Recovery Survey carry important implications for elected officials and others in New York seeking to expand worker voice during the pandemic recovery and beyond.

- **Expand whistleblower and anti-retaliation protections.** The survey results indicate that legal protections against employer retaliation in New York State need strengthening. The recently-enacted NY HERO Act bolstered protections against employer retaliation for workers speaking up about airborne infectious diseases like COVID-19. The same level of protection, however, is still not afforded to

workers speaking up about other health and safety concerns or workplace issues. If signed into law by Governor Cuomo, a bill passed this spring by New York's legislature would strengthen the state's current anti-retaliation laws in several ways, including by extending anti-retaliation protections to all workers who have a "reasonable belief" that they are complaining about a violation of the law or a threat to public health or safety on the part of their employer.¹⁰ Additional action could prohibit retaliation against workers who share information about workplace health and safety risks on social media, which has become a common forum for raising such issues. Currently, retaliation for such disclosure is prohibited only in the case of health care workers in New York State.

For more information about other steps that lawmakers can take to protect workers from retaliation, please see NELP's previous reports: *Protecting Worker Safety & Health in the COVID Crisis: A State & Local Model Policy Response*; *Silenced About COVID in the Workplace*; *Exposing Wage Theft Without Fear*; and *Retaliation Funds: A New Tool to Tackle Wage Theft*.

- **Establish just-cause termination standard for all workers in New York.** The limited protections under current law for workers who experience retaliation are undermined because they exist against the backdrop of an "at will" employment system—in which workers can be fired for any reason, or no reason at all, without advance notice or fair process. The core of a just-cause employment system is a requirement that an employer show justifiable reason for discharging a worker. Shifting responsibility to the employer to demonstrate a good reason for discharge is a crucial step towards meaningfully protecting workers against arbitrary and unfair firings—including retaliatory firings of whistleblowers, workers experiencing and reporting discrimination or harassment, and workers exercising other rights under the law.¹¹
- **Improve enforcement of workplace protections including anti-retaliation provisions.** The survey results indicate the importance of ensuring that existing worker protections function in practice. This means supporting enforcement at the state as well as the local level. For example, in New York City, the Office of Labor and Policy Standards (OLPS) plays a key role in enforcing key labor and employment protections and is seen around the country as a successful model for municipal governance related to labor and employment. In the last two years, however, OLPS has experienced significant staffing reductions in all areas, including investigators, attorneys, researchers, intake staff, and outreach and advocacy—with a decrease in staffing of 36% between 2018 and 2020.¹² Prior work has also indicated that additional funding and resources would help the New York State Department of Labor to effectively enforce the law.¹³ Enforcement agencies could also consider expanded use of co-enforcement strategies involving worker organizations.¹⁴
- **Defend the right to organize at work.** Unions in New York, which make up one of the most powerful statewide labor movements in the country, have experienced widespread member attrition during the pandemic due to employment disruptions.¹⁵ However, the survey data show broad interest in joining a union. The coming period could be one in which workers come to wield greater control over

their conditions through collective action, and the right to organize collectively needs to be vigorously defended to ensure that workers have the necessary voice and power on the job to speak up about issues that arise. For example, prior research has shown that unionized workers are more likely than their non-union peers to speak up about health and safety problems in the workplace.¹⁶ And many stakeholders can benefit from the power and voice afforded by unions: In New York during the height of the pandemic, death rates from COVID-19 were lower in unionized nursing homes than in those without union representation.¹⁷

About the Survey and Analysis

In late 2020, Color OfChange, the National Employment Law Project, TIME'S UP Impact Lab, and the Worker Institute at Cornell partnered on a 63-item national *Just Recovery Survey* (n=3,100).¹⁸ With an oversample of Black respondents (n=595), Latinx respondents (n=722), and New Yorkers (n=324), the survey captured the varying experiences of working adults during the COVID-19 crisis based on race, gender, and income, addressing three areas: economic security, health and wellbeing, and agency and voice. In the current analysis, we coded as “Black” those respondents who self-identified as “Black” and “non-Hispanic” or “Black” and “Hispanic”; and we coded as “Latinx” those respondents who self-identified as “white” and “Hispanic” or “Hispanic” with their race unspecified.

The Just Recovery Survey included 63 questions related to worker economic security, health and wellbeing, and agency and voice, and was administered by the survey research firm SSRS in September and October of 2020 using its online SSRS Opinion Panel.¹⁹ The survey (n=3,100) included respondents from 50 U.S. states and the District of Columbia who indicated that they were not retired or permanently out of the labor market (for more detail on the methodology, see footnote).²⁰

Findings reported above are based on questions related to barriers presented by retaliation for different workplace actions related to health and safety and sexual harassment, and interest in unionization (which was asked only to non-union workers). All reported differences between New York and the rest of the county are statistically significant at a 90% confidence level, and all reported differences based on demographics are statistically significant at a 95% confidence level.

Endnotes

¹ This survey study was conducted with the support of funds from New York State. The opinions, results, findings, and interpretations of data contained herein are those of the authors and do not necessarily represent the opinions, interpretations, or policy of the State.

² Berkowitz, Debbie and Shayla Thompson. "OSHA Must Protect COVID Whistleblowers Who File Retaliation Complaints." National Employment Law Project. October 2020. Accessed August 2, 2021, <https://www.nelp.org/publication/osha-failed-protect-whistleblowers-filed-covid-retaliation-complaints/>

³ Abrams, Abigail. "The Challenges Posed by COVID-19 Pushed Many Workers to Strike. Will the Labor Movement See Sustained Interest?" *Time Magazine*. January 17, 2021. Accessed July 31, 2021. <https://time.com/5928528/frontline-workers-strikes-labor/>

⁴ Tung, Irene and Laura Padin. "Silenced About COVID-19 in the Workplace." National Employment Law Project. June 2020. Accessed August 2, 2021, <https://www.nelp.org/publication/silenced-covid-19-workplace/>.

⁵ The survey question included the following examples of retaliation: "being fired of experiencing unfavorable changes in assignments, promotions, hours, or pay."

⁶ For the purposes of this survey, the descriptor "Black" respondents refer to respondents that self-identified as "Black" and "non-Hispanic." "Latinx" includes respondents who self-identified as "Hispanic" and "White" or "Hispanic" with an unspecified race.

⁷ In March, Chris Smalls, working at an Amazon warehouse in Staten Island, reported being fired for organizing with workers to draw attention to unsafe conditions. See Hutchinson, Bill. "'It's Retaliation': Amazon Warehouse Worker Fired Following Coronavirus Employee Walkout." *ABC News*. March 21, 2020. Accessed July 31, 2021. <https://abcnews.go.com/Business/retaliation-amazon-warehouse-worker-fired-staging-walkout/story?id=69893683>. Following the firing of Smalls and other Amazon whistleblowers, an Amazon Vice President resigned in protest. See Lyons, Kim. "Amazon VP Quits Over Whistleblower Firings in Scathing Blog Post." *The Verge*. May 4, 2020. Accessed July 31, 2021. <https://www.theverge.com/2020/5/4/21246284/amazon-vp-resign-whistleblower-firings-warehouse-workers>.

⁸ Hertel-Fernandez, Alexander, Suresh Naidu, Adam Reich, and Patrick Youngblood. "Understanding the COVID-19 Workplace: Evidence from a Survey of Essential Workers." June 2020. Accessed July 31, 2021. https://rooseveltinstitute.org/wpcontent/uploads/2020/07/RI_SurveyofEssentialWorkers_IssueBrief_202006-1.pdf.

⁹ See Sojourner, Aaron. "Unionized workers are more likely to assert their right to a safe and healthy workplace." *The Conversation*. September 2, 2020. Accessed August 2, 2021, <https://theconversation.com/unionized-workers-are-more-likely-to-assert-their-right-to-a-safe-and-healthy-workplace-144718> and Sojourner, Aaron and Jooyoung Yang. "Effects of Union Certification on Workplace-Safety Enforcement: Regression-Discontinuity Evidence." *ILR Review*. September 3, 2020. Accessed August 2, 2021, <https://journals.sagepub.com/doi/10.1177/0019793920953089>.

¹⁰ An act to amend the labor law, in relation to retaliatory actions by employer, New York State Senate. S4394A. (2021) Accessed August 2, 2021, https://www.nysenate.gov/legislation/bills/2021/S4394?fbclid=IwAR2p3pbuz5AxpK7_3UtAMw32DRwKwL1YftadMK53j2XMNA9Hn3EgXQBn0Y, Accessed August 2, 2021. See also "Legislative Advocacy," NELA/NY, The National Employment Lawyers Association/NY. Accessed August 6, 2021, https://www.nelany.com/legislative_advocacy.php.

- ¹¹ Tung, Irene, Paul Sonn and Jared Odessky. “Just Cause Job Protections: Building Racial Equity and Shifting the Power Balance Between Workers and Employers.” National Employment Law Project. May 2021. Accessed August 2, 2021, <https://www.nelp.org/publication/just-cause-job-protections-building-racial-equity-and-shifting-the-power-balance-between-workers-and-employers/>
- ¹² New York City Department of Worker and Consumer Protection. “The State of Workers’ Rights in New York City: Fourth Annual Report.” April 2021. Accessed July 31, 2021. <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2021.pdf>.
- ¹³ Miller, Rebecca, Estee Ward and Benjamin Wolcott, “Coming Up Short: The State of Wage Theft Enforcement in New York,” April 2019. Accessed August 2, 2021, https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short_-The-State-of-Wage-Theft-Enforcement-in-NY-4_8_19.pdf.
- ¹⁴ Fine, Janice, Daniel Galvin, Jenn Round and Hana Shepherd. “Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession.” Washington Center for Equitable Growth, January 14, 2021. Accessed August 2, 2021, <https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/>.
- ¹⁵ Milkman, Ruth, and Stephanie Luce. “The State of the Union 2020: A Profile of Organized Labor in New York City, New York State, and the United States.” CUNY School of Labor and Urban Studies. September 2020. Accessed July 31, 2021. https://slu.cuny.edu/wp-content/uploads/2020/09/CUNY-SLU-Union_Density-Report-2020pdf.pdf.
- ¹⁶ See Sojourner and Yang, 2020. Accessed August 2, 2021, <https://journals.sagepub.com/doi/10.1177/0019793920953089>.
- ¹⁷ Dean, Adam, Atheendar Venkataramani, and Simeon Kimmel. “Mortality Rates from COVID-19 are Lower in Unionized Nursing Homes.” *Health Affairs*, Vol. 31, No. 11. September 10, 2020. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01011>.
- ¹⁸ See the national survey report, Mabud, Rakeen, Amity Paye, Maya Pinto, and Sanjay Pinto. “Foundations for a Just and Inclusive Recovery: Economic Security, Health and Safety, and Agency and Voice in the COVID-19 Era.” Color of Change, National Employment Law Project, TIME’S UP Foundation, and The Worker Institute at Cornell ILR. February 2021. Accessed July 31, 2021. <https://www.nelp.org/publication/foundations-for-a-just-and-inclusive-recovery/>.
- ¹⁹ In addition to questions asked as part of the Just Recovery Survey, project researchers also have access to background demographic variables that were already collected as part of the SSRS Opinion Panel.
- ²⁰ The survey was conducted both in English (n=3,020) and Spanish (n=80). Survey weights were developed and applied to provide estimates representative of the U.S. adult population 18 years of age and older in the labor market and with internet access. The mean survey completion time was 13.6 minutes. SSRS Opinion Panel participants are recruited randomly based on nationally representative address-based sampling combined with targeted recruiting for hard-to-reach demographic groups in the Omnibus survey platform, a nationally representative bilingual random digit dialing telephone survey. In all, 5,382 panelists were invited to participate in the survey. Participants received modest incentives in the form of an electronic gift card. A base weight was developed to account for the probability of selection into the survey panel and then further weighted to match population targets, including sex by age, sex by education, race and Hispanic ethnicity, Census region, civic engagement, and population density. The design effect for this survey was 1.95 overall, and the survey margin of error is 2.5.