

Why unions are good for workers—especially in a crisis like COVID-19

12 policies that would boost worker rights, safety, and wages

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SECTIONS

What this report finds: The COVID-19 pandemic has underscored both the importance of unions in giving workers a collective voice in the workplace and the urgent need to reform U.S. labor laws to arrest the erosion of those rights. During the crisis, unionized workers have been able to secure enhanced safety measures, additional premium pay, paid sick time, and a say in the terms of furloughs or work-share arrangements to save jobs. These pandemic-specific benefits build on the many ways unions help workers. Following are just a few of the benefits, according to the latest data:

- Unionized workers (workers covered by a union contract) earn on average 11.2% more in wages than nonunionized peers (workers in the same industry and occupation with similar education and experience).
- Black and Hispanic workers get a larger boost from unionization. Black workers represented by a union are paid 13.7% more than their nonunionized peers. Hispanic workers represented by unions are paid 20.1% more than their nonunionized peers.

Why it matters: A badly broken system governing collective bargaining has eroded unions and worker power more broadly, contributing to both the suffering during the pandemic and the extreme economic inequality exacerbated by the pandemic. In spite of efforts to push policy reforms, the U.S. entered the COVID-19 pandemic with a weak system of labor protections. As a result, working people, particularly low-wage workers—who are disproportionately women and workers of color—have largely borne the costs of the pandemic. While providing the “essential” services we rely on, many of these workers have been forced to work without protective gear; many have no access to paid sick leave; and when workers have spoken up about health and safety concerns, they have been fired.

What we can do about it: Policymakers must enact reforms that promote workers’ collective power. While one package of needed reforms—the Protecting the Right to Organize (PRO) Act—already has widespread political support and has passed the U.S. House of Representatives, there are a range of other practical policy reforms that should be a priority for the first 100 days of the administration in charge in 2021. These reforms build on existing legal frameworks and structures of worker power and could be put in place while we take on the larger task of considering new structures that promote workers’ collective power. Leaders who are interested in using their power to halt and reverse the four-

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decades-old trend of rising inequality and near wage stagnation for most workers can't afford to wait.

Introduction

The COVID-19 pandemic has exposed a reality that U.S. workers have long confronted—U.S. labor law fails to protect working people. For decades, union leaders and workers' rights advocates have called on policymakers to reform a badly broken system, warning that the erosion of unions—and of worker power more broadly—was contributing to extreme economic inequality and threatening our overall democracy.

In spite of efforts to push policy reforms, the U.S. entered the COVID-19 pandemic with a weak system of labor protections, historically low rates of union density, and extreme economic inequality. As a result, working people, particularly low-wage workers—who are disproportionately women and workers of color—have largely borne the costs of the pandemic. While providing the “essential” services we rely on, these workers have been forced to work without protective gear, have no access to paid sick leave, and when workers have spoken up about health and safety concerns they have been fired. Clearly, a system that allows this dynamic must be reformed.

Reform must be responsive to the lessons we have learned from the challenges working people have faced during the pandemic. One of the main lessons is the need for and power of workers' collective voice in the workplace. Where workers have been able to act collectively and through their union, they have been able to secure enhanced safety measures, additional premium pay, and paid sick time. Unionized workers have had a voice in how their employers navigate the pandemic, including negotiating for terms of furloughs or work-share arrangements to save jobs.

Research shows the advantages workers in unions have over nonunionized workers. Workers with strong unions have been able to set industry standards for wages and benefits that help all workers, both union and nonunion (Rhinehart and McNicholas 2020). Never in recent history has this dynamic been more clear. Never has it been more important that all workers have a voice in the workplace and access to a union. Workers' lives and the health and safety of working families depends on their ability to have a say in how they do their jobs.

The right to a union and collective bargaining is also directly relevant to our urgent national conversation around racial inequality in its various forms, including economic disparities by race. Unions and collective bargaining help shrink the Black–white wage gap, due to the dual facts that Black workers are more likely than white workers to be represented by a union and Black workers who are in unions get a larger boost to wages from being in a union than white workers do (Farber et al. 2018).¹ This means that the *decline* of unionization has played a significant role in the *expansion* of the Black–white wage gap over the last four decades, and that an increase in unionization could help

reverse those trends (Wilson and Rodgers 2016).

It is essential that policymakers prioritize reforms that promote workers' collective power. The political response to the economic and public health crises spurred by the COVID-19 pandemic has repeatedly failed to do so (McNicholas 2020). However, the pandemic will require sustained intervention. The depth of the economic crisis will necessitate additional legislative action. This provides an opportunity to workers, worker advocates, union leaders, and social justice advocates to demand that policymakers place the needs of working people ahead of corporate interests and deliver long overdue policy interventions and reforms that fulfill the promise made to U.S. workers nearly 100 years ago: the right to a union and collective bargaining. This crisis will continue to reshape our economy, our workforce, and our democracy. We must demand policies that create a more just economy and democracy.

This report examines the impact of the COVID-19 pandemic on working people and our economy, discusses the importance of unions and workers' collective action in establishing an equitable economy and labor market, and recommends policy reforms to promote workers' collective power and grow union density. There is already widespread political support for many of these important reforms, including the Protecting the Right to Organize (PRO) Act, which passed the House of Representatives early this year. And, while it is important to consider new structures that promote workers' collective power, this report focuses on practical policy reforms that build on existing legal frameworks and structures of worker power. These reforms should be a priority for the first 100 days of any new administration that is interested in using its power to halt and reverse the four-decades-old trend of rising inequality and near wage stagnation for most workers—a trend that has been exacerbated and worsened by the COVID-19 pandemic.

The coronavirus economic crisis is not close to over

The coronavirus recession came swiftly. In February, the unemployment rate was at a 50-year low of 3.5%. The unemployment rate began rising in March, and in April, as fear of the virus and social-distancing measures shut down nonessential parts of the economy, the unemployment rate shot up to 14.7%—with the Bureau of Labor Statistics noting that the unemployment rate would have been 19.5% in April if not for 7.5 million workers who were misclassified as “employed, not at work” instead of being classified as temporarily unemployed (BLS 2020).²

As the economy began reopening in May, some workers who had been temporarily laid off in March and April began to be rehired, but as of July—as the virus surged in part because reopening was not accompanied by robust workplace safety and public health measures—progress had slowed dramatically. Given that the labor market remains 12.9 million jobs below where it was before the virus hit and the unemployment rate remains higher than it ever was during the Great Recession, a dramatically slowing recovery means the U.S. labor market is likely to be very weak for an extended period (Gould 2020b).

The danger of extended labor market weakness is particularly acute if Congress does not provide substantial additional fiscal aid (Bivens 2020; Bivens and Cooper 2020). The Congressional Budget Office predicts that if Congress does nothing, the unemployment rate will average 10.5% in the fourth quarter of this year, 8.4% in 2021, and over 7% in 2022—still *more than twice* where it was before the recession hit (CBO 2020). Without significant intervention by Congress, we are going to face a sustained period of economic weakness that will do lasting harm to the economy and the people who make up the economy, and will greatly exacerbate existing inequalities.

Coronavirus impacts disproportionately affect Black and Hispanic workers

The challenges of the COVID-19 pandemic have been felt broadly, but not equally. Low-wage workers have experienced vastly greater job loss due to the fact that low-wage jobs are concentrated in sectors that are getting hit particularly hard because they involve more social contact (such as restaurants and bars, hotels, personal services, events, and brick-and-mortar retail). Further, due to racial and ethnic differences in labor market outcomes caused by occupational segregation, discrimination, and other disparities rooted in systemic racism, Black, Latinx, and Asian American/Pacific Islander (AAPI) communities have experienced much greater job loss. While white non-Hispanic workers saw a peak unemployment rate of 12.8%, Black non-Hispanic workers saw a peak unemployment rate of 16.7%, Hispanic workers saw an unemployment rate of 18.5%, and AAPI workers saw an unemployment rate of 15.0%. This recession also saw greater job loss among women than among men, and, at the intersection of race and gender, unemployment rates peaked at incredibly high rates for women of color: 17.3% for Black non-Hispanic women, 20.5% for Hispanic women, and 16.1% for AAPI women.³

While a common conception may be that “everyone is working from home,” survey data from the Bureau of Labor Statistics find that in fact fewer than 30% of workers can work from home (BLS-ATUS 2019).⁴ Black and Hispanic workers are even less likely to have the opportunity to telework. Less than one in five Black workers (19.7%) and only one in six Hispanic workers (16.2%) can telework (Gould and Shierholz 2020).

Workers who can’t work from home but whose jobs have survived the pandemic include the millions of workers who are on the job providing “essential” services. The majority of essential workers are employed in health care; food and agriculture; and the industrial, commercial, and residential facilities and services industry (such as construction workers, building cleaning services workers, and maintenance workers). Women and workers of color make up the majority of all workers in the top three “essential” industries (McNicholas and Poydock 2020a).⁵

In spite of their critical role in providing necessary services, these workers have been working without access to fundamental protections like personal protective equipment or

paid sick leave. For instance, people of color make up half of essential workers in food and agriculture, which has the lowest median hourly wage, at \$13.12, of all essential work (McNicholas and Poydock 2020a).⁶ Low-wage workers in general are roughly half as likely as high-wage workers to have access to paid sick leave—less than half (47%) of low-wage workers have access to paid sick days, compared with 90% of high-wage workers (Gould 2020a).⁷ For Black workers, lack of access to paid sick time is compounded by lower rates of health insurance coverage. Black workers are 60% more likely to be uninsured than white workers (Wilson and Gould 2020).

While the majority of workers who are currently working onsite at their workplaces believe they face considerable risk of COVID-19 infection, Black and Hispanic workers are more likely to fear risks from work than are white workers. Results from one survey indicate that Black essential workers are nearly twice as likely as white essential workers to express concern about infection risk (Hertel-Fernandez et al. 2020).⁸ In fact, Black workers make up one in six of all front-line industry workers, putting them and their family members at greater risk of contracting and spreading COVID-19 (Wilson and Gould 2020).⁹

Unions have played an integral role in securing benefits for workers during the pandemic

The Trump administration's failure to provide essential workers with basic protections during the coronavirus pandemic has underscored the importance of unions (McNicholas and Poydock 2020b). With a union, workers have negotiated additional pay,¹⁰ health and safety measures,¹¹ paid sick leave,¹² and job preservation.¹³ Furthermore, unionized workers have felt more secure speaking out about hazards (Jamieson 2020).

Without unions, many workers are forced to work without personal protective equipment or access to paid leave or premium pay. And when nonunion workers have advocated for health and safety protections or wage increases, they have often been retaliated against or even fired for doing so (Paul 2020; Davenport, Bhattarai, and McGregor 2020; Kruzel 2020; Eidelson 2020; Miller 2020). The lack of these basic protections has led to thousands of essential workers becoming infected with the coronavirus, and many are dying as a result (Bhattarai 2020; Kaplan and Kent 2020; Jewett, Bailey, and Renwick 2020).

How unions help working people broadly

While the coronavirus pandemic has underscored the importance of unions for working people, the benefits of union membership pre-date the pandemic and extend to a broad swath of the U.S. workforce. The following findings show just how diverse the unionized

workforce is and how the union-led wage and safety benefits help advance the goal of a fair and prosperous economy.¹⁴ Unless otherwise noted, the data findings that follow are for both private- and public-sector workers and derive from our analysis of Current Population Survey microdata pooled from 2015–2019 (EPI 2020), and “union workers” refers to workers covered by a union contract.

Who are today’s union workers?

While historically union members had been predominately white men, today’s union workers are a diverse group.

- More than one in nine workers (16.4 million) are covered by a union contract (Shierholz 2020).
- Almost two-thirds (65.2%) of workers covered by a union contract are women and/or people of color. Almost half (46.2%) are women. More than a third (36.1%) are Black, Hispanic, Asian American/Pacific Islander, or other people of color.
- Black workers are the major racial/ethnic group most likely to be represented by unions: 13.5% of Black workers are covered by a contract, compared with 12.2% of white workers, 10.2% of Hispanic workers, and 10.5% of AAPI workers.
- More than half (54.7%) of workers covered by a union contract have an associate degree or more education.
- More than two out of five (43.1%) have a bachelor’s degree or more education.
- Union workers hail from a variety of sectors, but the biggest numbers are found in the public sector (7.9 million) and in private-sector industries like education and health services (2.1 million), manufacturing (1.4 million), transportation and utilities (1.2 million), construction (1.1 million), and wholesale and retail trade (917,000).¹⁵
- Since industries vary in size, industries with the highest numbers of union workers aren’t always the industries with the highest union coverage rate. The highest shares of workers covered by a union contract (the “union coverage rate”) are public-sector workers (37.8%) and private-sector workers in the transportation and utilities (19.4%), construction (14.1%), information (10.4%), manufacturing (9.8%), and educational and health services (9.4%) industries.

Unions raise wages for both union and nonunion workers

On average, a worker covered by a union contract earns 11.2% more in wages than a peer with similar education, occupation, and experience in a nonunionized workplace in the same industry; this wage advantage is known as the “union wage premium.”¹⁶ And unions don’t just help union workers—they help all of us. When union density is high, *nonunion* workers benefit, because unions effectively set broader standards—including higher wages, as noted by Rosenfeld, Denice, and Laird (2016)—that nonunion employers must

meet in order to attract and retain the workers they need (and to avoid facing a union organizing drive themselves).

The combination of the direct effect of unions on union members and this “spillover” effect to nonunion workers means unions are crucial in raising wages for working people and reducing income inequality. Research shows that deunionization accounts for a sizable share of the growth in inequality between typical (median) workers and workers at the high end of the wage distribution in recent decades—on the order of 13–20% for women and 33–37% for men.¹⁷

Unions help raise wages for women and lessen racial wage gaps

Unions help raise women’s pay. Hourly wages for women represented by a union are 5.8% higher on average than for nonunionized women with comparable characteristics. Rigorous research shows that unions reduce gender wage gaps within given employers: For example, Biasi and Sarsons (2020) show that the expiration of teacher collective bargaining agreements led to a gender gap in wages between male and female teachers with similar credentials.

Unions also help close wage gaps for Black and Hispanic workers. Since collective bargaining lifts wages of Black and Hispanic workers closer to those of their white counterparts, Black and Hispanic workers get a larger boost from unionization. White workers represented by union are paid “just” 8.7% more than their nonunionized peers who are white, but Black workers represented by union are paid 13.7% more than their nonunionized peers who are Black, and Hispanic workers represented by unions are paid 20.1% more than their nonunionized peers who are Hispanic.

Unions provide workers with better benefits, including paid leave and health care

Union workers are more likely to be covered by employer-provided health insurance. More than nine in 10 workers covered by a union contract (94%) have access to employer-sponsored health benefits, compared with just 68% of nonunion workers. Further, union employers contribute more to their employee’s health care benefits. Union employers pay 86% of workers’ health care premiums while nonunion employers pay 79% of their workers’ health care premiums (BLS-EB 2019a).

Union workers also have greater access to paid sick days. Nine in 10 workers covered by a union contract (91%) have access to paid sick days, compared with 73% of nonunion workers. Almost all union workers in state and local government (97%) have paid sick days, compared with 86% of their nonunion peers. In the private sector, 86% of union workers have paid sick days compared with 72% of their nonunion peers (BLS-EB 2019b).

If workers want unions and they are critical to a just economy—why don't we have them?

The National Labor Relations Act (NLRA) provides most private-sector workers in the United States with the right to unionize and collectively bargain. However, in the 85 years since the law was enacted, those rights have become increasingly inaccessible to the overwhelming majority of the U.S. workforce. And only 25 states and the District of Columbia have laws that comprehensively protect public-sector workers' right to form and join unions (see map of state laws in the policy section of this report).¹⁸ In 2019, only 7.1% of private-sector workers were represented by a union, while 37.2% of public-sector workers were (Shierholz 2020). These shares stand in stark contrast to the nearly half (48%) of all nonunion workers who say they would vote for a union if given the opportunity—a 50% higher share than when a similar survey was taken in 1995 (Kochan et al. 2018).¹⁹

If so many workers want union representation, why don't they have it? If workers want stronger COVID-19 protections, better wages and benefits, and a voice on the job, why don't they just form a union at their workplace? The fact is that our current labor law makes it very difficult for workers to win union representation (McNicholas et al. 2019). Workers face multiple hurdles when they try to organize (Lafer and Lousaunau 2020.) Some of the fundamental weaknesses and shortcomings of current labor law have been exposed as essential workers required to work during the COVID-19 pandemic have tried to organize and raise questions about their working conditions. Their experiences illustrate the weaknesses in current law.

Protections for workers who are organizing are weak

When workers at an Amazon warehouse in New York City joined together and walked out to protest safety conditions, Amazon fired Chris Smalls, one of the lead organizers (Ivanova 2020a). His case is still being investigated by the National Labor Relations Board (NLRB) (the presidentially appointed board that supervises union representation elections governed by the NLRA) and the New York State Attorney General.

Under current law, Smalls has no right to bring a lawsuit against the employer to assert his rights—he is entirely dependent on the Trump NLRB and its general counsel to pursue his case for unlawful termination. The general counsel is under no time deadlines or obligation to prioritize Smalls's case. If the company is found to have illegally fired Smalls, it is simply required to offer him his job back, minus the wages he earned or could have earned in the meantime. There are no damages or penalties. In other words, Amazon is no worse off financially for illegally firing Smalls, but the company will have succeeded in removing a union activist from the workplace and creating fear among Smalls's co-workers.

Employers are charged with illegally firing union activists in nearly 20% of all NLRB election campaigns (McNicholas et al. 2019). Employers know illegal firings are effective in derailing campaigns and that they will face no real consequences. (Firing workers for trying to organize a union is one of many illegal tactics U.S. employers have proven willing to use to thwart worker collective action because the penalties are so minimal, as detailed in McNicholas et al. 2019.)

Elections are slowed down while employers run anti-union campaigns

Earlier this year, more than 1,600 nurses at Mission Hospital in Asheville, North Carolina, tried to get an NLRB election at their workplace so that they could bargain collectively with the hospital over safety and other issues (Gordon 2020). The nurses filed a petition with the NLRB that included the requisite showing of support and got a hearing date. Then the Trump NLRB unilaterally decided to stop holding elections and canceled the hearing. After a lengthy process, during which the employer twice sought an extension for filing its papers and postponement of the hearing date, the NLRB scheduled a telephonic hearing to take place six weeks after the union had initially filed its representation petition (Cotiaux 2020a).

As the employer was claiming that the COVID crisis required indefinite postponement of the representation process, it ran an anti-union campaign that included sending anti-union communications to nurses and forcing them to attend mandatory meetings to hear the employer's anti-union message. (The use of anti-union propaganda and such "captive audience meetings" are but two of the many legal intimidation tactics used by employers—and the union-busting consultants they hire—to effectively scare workers out of exercising their right to collective bargaining, as detailed in Lafer and Lousaunau 2020.)

The NLRB finally set an election date, with voting starting on August 18—months after the nurses filed their petition (Cotiaux 2020b). Meanwhile, the employer continues to barrage the nurses with anti-union messages, having their anti-union consultants roam the halls, sometimes without masks, and decamp in nurses' break rooms to lobby against the union. Under current law, the union is not able to hold meetings with nurses at the hospital to talk about the benefits of unionization, so nurses are deprived of the opportunity to hear from both sides at the workplace.

Union-busters are everywhere

Workers at Google staged a national walkout in 2019 to protest the company's handling of sexual harassment. Earlier this year, workers petitioned Google to not bid on work for the Immigration and Customs Enforcement agency (ICE). Google workers have raised questions about other company practices. Google responded by firing several of the activists and by hiring a notorious union-avoidance consultant—one of the hundreds of companies that advise companies on how to stop union organizing drives (Scheiber and Wakabayashi 2020; Lafer and Lousaunau 2020).

Employers are evading responsibility

Workers have gone on strike at dozens of McDonald's restaurants over safety concerns, inadequate protections against sexual harassment, and other issues over the last eight years.²⁰ Workers have been stymied in their efforts to get the company's safety practices and other labor policies addressed corporatewide, because McDonald's claims it is not their employer—that the workers are employed only by a particular franchise, and thus that McDonald's does not have any shared liability for wage and hour violations (Selyukh 2019). The Trump NLRB has weakened the test for determining whether two employers are “joint employers” who share that liability. And in a recent rulemaking, the Trump NLRB concluded that control over health and safety issues is not an automatic part of the joint-employer analysis (NLRB 2020).

Policy solutions for strengthening workers' bargaining rights

Bold and comprehensive action is needed to restore and strengthen workers' ability to join with their co-workers to form unions and build collective power to bargain with their employers over safety practices and other important workplace issues. What follows is a partial list of possible reforms, with an emphasis on steps Congress can take to strengthen federal law governing private-sector bargaining rights.

1. Pass the PRO Act

The Protecting the Right to Organize Act (the PRO Act), H.R. 2474, passed the U.S. House of Representatives on February 6, 2020, by a bipartisan vote of 224–194. A companion bill in the United States Senate, S. 1306, has 42 co-sponsors. Senate action on the PRO Act is being blocked by Senate Majority Leader Mitch McConnell. The PRO Act would significantly strengthen the ability of workers in the private sector to form unions and engage in collective bargaining by addressing several of the major obstacles that currently stand in workers' way. Following are descriptions of some of the PRO Act's key provisions, which are outlined in **Table 1**:

- The PRO Act establishes stiff penalties, including personal liability for corporate officials in appropriate cases, for violations of the NLRA.
- It strengthens remedies when companies illegally fire or retaliate against workers for trying to form a union and requires the NLRB to seek preliminary reinstatement of fired workers while their cases are pending.
- It bans “captive audience” meetings in which employers force workers to listen to the employer's anti-union messages.
- It establishes a process for achieving an initial collective bargaining agreement when workers first organize.

- It overrides state “right to work” laws that ban “fair share” agreements by explicitly allowing employers and unions to agree to fair share arrangements whereby all workers covered by a collective bargaining agreement share in the union’s costs of negotiating and enforcing the agreement, even if some of those workers are not union members paying union dues. (In “right to work” states, fair share arrangements are banned and workers can get the benefit of union representation without contributing their fair share.)

The PRO Act has strong support and is ready for action. It should be a top priority for the administration and new Congress in January 2021.

2. Pass the Public Sector Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act

Pass these two acts so that all public-sector workers have the ability to form unions and engage in collective bargaining. Currently more than half of the states lack comprehensive collective bargaining laws for public-service workers like teachers. Public-service workers deserve the right to join together in unions to fight for stronger safety and health protections, better pay, and better working conditions.

3. Reaffirm in statutory language that the purpose of labor law is to promote and encourage organizing and collective bargaining

Reaffirm in statutory language that the purpose of labor law is to promote and encourage organizing and collective bargaining and that the NLRB’s actions must further this goal. Promoting and encouraging organizing and collective bargaining was the purpose and goal of the original Wagner Act (the NLRA). However, after the passage of the Taft-Hartley Act, employers have argued that the law is not pro-union but is neutral.

The statutory language must be strengthened to provide that NLRB actions that do not meet the statutory standard of promoting organizing and collective bargaining could be invalidated by a reviewing court as contrary to the governing law under the Administrative Procedures Act. This approach is similar to that taken under the Occupational Safety and Health Act, which states that health standards must provide the maximum level of protection to workers that is technologically feasible, and standards that fall short of this level of protection can be invalidated by the courts.²¹

Table 1

The Protecting the Right to Organize (PRO) Act expands workers' rights on the job

Examples of loopholes in current labor law and how the PRO Act closes them

Deficiency in the National Labor Relations Act	Policy reform under the PRO Act
Employers drag out the election process through litigation at the National Labor Relations Board (NLRB).	Workers and the NLRB set union election procedures. The employer is not involved.
Employers have free rein to hold captive audience meetings where they deliver anti-union messages without an opportunity for the union to respond.	Employers are prohibited from forcing workers to attend captive audience meetings.
Workers wait months and even years to be reinstated or receive back pay after they were unlawfully discharged by their employer for engaging in activities protected under the National Labor Relations Act (NLRA).	The NLRB is required to go to court and get an injunction to immediately reinstate workers if the NLRB believes the employer has illegally retaliated against workers for union activity.
Employers who violate workers' rights under the NLRA face no civil penalties.	Employers who commit violations under the NLRA face civil penalties, including individual liability for responsible corporate officials.
Workers are prohibited from bringing civil lawsuits against their employer for violating their NLRA rights.	Workers gain a private right to civil action.
Employers are allowed to force workers to sign arbitration agreements in which they waive the right to collective or class action litigation.	Collective and class action waivers are banned.
Employers are allowed to misclassify workers as independent contractors without violating the NLRA.	Employers must follow an "ABC" test to determine employee status and employee misclassification is a violation under the NLRA.
Multiple employers are able to dictate workers' terms of employment while evading collective bargaining with employees.	Employers are less able to evade their responsibilities because the PRO Act codifies a strong joint-employer standard (a defined set of criteria ensuring that employers who dictate workers' terms of employment are considered joint employers and thus responsible for workplace protections).
States may have "Right-to-work" laws that prohibit employers and unions from negotiating contracts that require dues or "fair share" fees from all represented workers.	States must allow private employers and unions to enter into "fair share" agreements.

Table 1
(cont.)

Deficiency in the National Labor Relations Act	Policy reform under the PRO Act
Employers have the ability to drag out the process of bargaining over a first collective bargaining agreement.	Employers must follow a process for reaching a first agreement when workers organize, a process that uses mediation and then, if necessary, binding arbitration, to enable the parties to reach a first agreement.
Workers face limits on their fundamental right to strike.	Workers gain their full fundamental right to strike because the PRO Act removes prohibitions on secondary strikes, prohibits employers from permanently replacing striking workers, and bans the use of proactive lockouts by employers in which employers lock out employees who want to keep working.

Source: Authors' analysis of current labor law and the Protecting the Right to Organize Act of 2019, H.R. 2474, 116th Cong. (2019).

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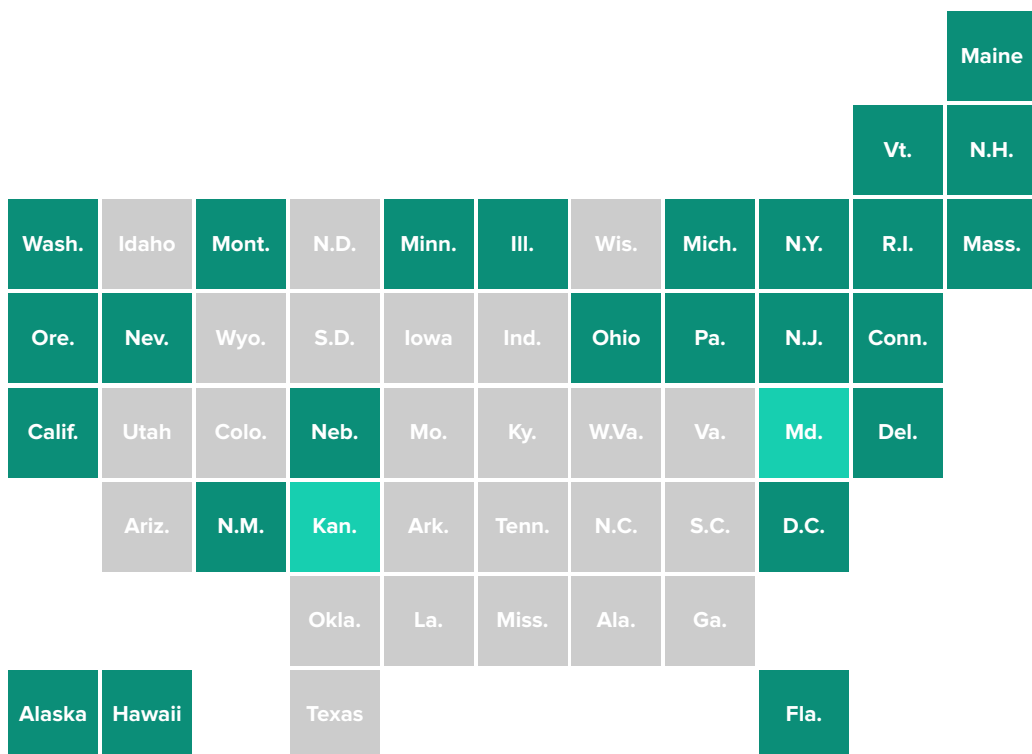
4. Amend the NLRA to expand access for workers and union organizers to discuss unionization at the workplace

Workers need a fair chance to hear from union representatives about the benefits of unionization, including the ways in which unions help strengthen health and safety protections at the workplace. Currently, employers are able to deliver their anti-union messages at the workplace and on work time, because the employer controls the workplace and directs how work time is spent. Employers use this advantage to bombard workers with anti-union messages in their paychecks, in one-on-one meetings with their supervisors, and in employer anti-union “captive-audience” meetings that workers are required to attend or face discipline or discharge. Nine out of 10 employers require workers to attend captive-audience meetings during organizing campaigns (Bronfenbrenner 2009).

Workers have only a limited ability to hear from union supporters at the workplace, and their access has been further curtailed by the Trump NLRB, which has restricted the ability of workers and organizers to organize at their workplace (McNicholas et al. 2019; Fawaz 2020). This imbalance undermines the ability of workers to organize together.

The law should be amended to require employers to grant reasonable access to union organizers, off-duty employees, and off-duty contractor employees to nonworking areas to talk with workers on their nonworking time. The law should also make clear that workers may use their employer’s internal e-mail system for union-related messages. In addition, workers who have not yet organized a union should be able to designate a union representative as their representative during an OSHA inspection and related

Status of collective bargaining rights for state and local public workers, by state



■ Comprehensive laws protecting collective bargaining rights for a majority of public workers
 ■ Weak laws with limited rights, no laws, or outright bans on collective bargaining for public workers
 ■ State or local laws that guarantee full rights but only to some local government workers

While federal laws provide most private-sector workers and federal government workers with the right to unionize and bargain collectively, there is as of yet no federal law guaranteeing that right for state and local government workers like teachers. A patchwork of state laws provides inconsistent rights for these public workers.

Source: American Federation of State, County and Municipal Employees analysis, August 2020.

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proceedings.

The COVID-19 crisis shows that workers with union representation have fared better than nonunion workers in terms of advocating for safety equipment and protocols. Workers should not have to go through the formal NLRB election process to gain the benefit of union advocacy and expertise when it comes to their health and safety on the job.

5. Amend the NLRA to reestablish voluntary recognition of unions when workers choose it, and promote electronic voting in NLRB elections

The NLRB election process gives employers too many opportunities to interfere with

workers' ability to organize. Passage of the PRO Act will significantly improve the situation, but experience during the COVID-19 pandemic shows that further reforms are needed. Specifically, employers should be required to recognize and bargain with a union if a majority of workers indicate their support for the union as their representative. The law should not allow employers to determine whether workers have a formal election—that choice should be left up to workers, not the employer.

The additional obstacles placed in the way of NLRB elections during the COVID-19 crisis—cancellation of elections, the NLRB's inability to hold remote hearings, allowing mail ballot elections only if employers agree, and delays in the election process during which employers run their anti-union campaigns—all bolster the need to require employers to recognize unions based on a showing of majority support. This method of forming unions has been recognized and used by employers in the United States for decades. The law should allow workers to choose union representation through this method and require employers to respect their workers' choice. In addition, the NLRB should be directed to allow electronic voting in representation elections. Electronic voting has been used by the National Mediation Board for years, and it should be allowed and encouraged—particularly given the health risks associated with large gatherings (Muller 2020).

6. Amend the NLRA to let workers determine the bargaining unit and bargaining structure

When workers organize, they determine the group of workers—called the “bargaining unit”—that will be the group covered by the organizing and collective bargaining agreement, and they describe the bargaining unit in their petition to the NLRB. Employers try to gerrymander the bargaining unit by adding workers they think will vote against the union or removing those who support representation. Here again, it should be workers' choice, and not up to the employer, to determine the group that is organizing and bargaining.

As EPI has previously recommended, the law should make clear that the petitioning union's description of the bargaining unit is determinative, unless the employer can make a compelling case as to why the proposed unit is unworkable (Rhinehart and McNicholas 2020). Similarly, workers should be able to designate a multi-employer bargaining arrangement, and their proposed arrangement should be certified unless the employer can make a compelling case as to why its participation in a multi-employer bargaining unit is unworkable (Rhinehart and McNicholas 2020).

7. Enact federal and state measures that strengthen the right to refuse hazardous work and continue eligibility for UI benefits for workers refusing unsafe work

At the beginning of the COVID-19 pandemic, essential workers in health care, food service, warehouses, grocery stores, meatpacking plants, and other settings raised concerns about the risk of workplace exposure to COVID-19 and the lack of personal protective equipment and other safety protections. Too often, these workers were fired or faced other retaliation for raising these concerns (Hiltzik 2020; Kruzel 2020; Davenport, Bhattarai, and McGregor 2020). In other places, workers were called back to work at workplaces that did not have sufficient health and safety protections and were faced with the prospect of working at an unsafe job and risking contracting a deadly disease, or refusing to work and risking losing their unemployment benefits.

Workers should not be faced with choosing between their health and their livelihood. The law must be strengthened to explicitly protect workers who refuse to perform hazardous work from being fired or retaliated against. These protections exist to some extent now under the Occupational Safety and Health Act and the NLRA, but the protections are weak and the enforcement is up to the government agency. Also, workers who refuse to work because of unsafe working conditions that the employer fails to address should not be disqualified from receiving unemployment benefits: States should be required to consider the refusal to perform unsafe work as “good cause” to not work, so that unemployment benefits continue (Berkowitz and Sonn 2020). And because strikes have shown themselves to be effective and often necessary to force action on safety and health, states should be required to provide unemployment insurance for strikers (Block and Sachs 2020).²²

8. Amend the NLRA to extend collective bargaining rights to agricultural, domestic, and student workers

Millions of agricultural workers and domestic workers other than those employed by private agencies are excluded from the NLRA’s coverage. And the Trump NLRB has proposed to strip millions of student workers of their collective bargaining rights (McNicholas, Poydock, and Rhinehart 2019). Yet the COVID-19 crisis has shown how vulnerable these workers are to occupational exposure to the coronavirus—in the fields, in people’s homes, and at colleges and universities. The NLRA should be amended to expand coverage to agricultural, domestic, and student workers so these workers can form unions and fight for health and safety protections on the job.

9. Strengthen and expand workers’ speech

rights in the law

The COVID-19 crisis has shown that when it comes to health and safety and many other issues, there is no meaningful distinction between a workplace issue and a public issue, or a workplace issue and a consumer issue (see “Unions have played an integral role in securing benefits for workers during the pandemic” section earlier). Workers who have spoken out about the lack of protections at grocery stores have been raising issues of importance to both workers and consumers who shop at these stores. Workers who have been raising concerns about a lack of protective equipment in health care settings have been concerned about their own safety and also that of patients and family members visiting patients. Meatpacking workers who have raised concerns about a lack of protections at their plants have raised issues that are also of concern to their communities, because workers who contract COVID-19 on the job carry the disease home with them to their communities.

Similarly, when workers speak out about corporate practices—such as the Google workers who petitioned their employer about contracting with ICE, or employees urging stronger action by Google on climate change (Wong 2019)—they are using their voice as workers to try to bring about better corporate practices. Workers should not face retaliation for speaking out about these workplace and public issues, nor should they be punished for the equivalent of “taking a knee” to protest police violence or for demonstrating their support for Black Lives Matter at work—but they have (Ivanova 2020b; Jagannathan 2020; Pappas 2020). The NLRA should protect workers against retaliation for speaking out on their own and their co-workers’ behalf on workplace issues, corporate issues, and societal issues and should not artificially constrain workers’ speech rights to a narrow set of issues.²³

10. Amend the NLRA to establish remedies when employers stall bargaining

Workers form unions because they want to bargain with their employers and reach agreement about issues that matter to them—issues like health and safety, wages, protections against sexual harassment, and dignity on the job. Yet too often workers’ goals are frustrated because employers drag out the bargaining process and refuse to reach agreement.

The PRO Act establishes an important mediation and arbitration process for ensuring that newly organized workers reach a first agreement. This reform should be expanded to include “make-whole” remedies for workers when employers drag their feet and fail to bargain in good faith—remedies like the wages and benefits workers would have received if the employer had not dragged out the bargaining process. These remedies were once regularly issued by the NLRB but the NLRB stopped doing so because reviewing courts viewed them as beyond the NLRB’s statutory authority.²⁴ Congress should establish that the NLRB has the authority to provide this make-whole remedy and should direct the NLRB to make this remedy its standard practice.

11. Enact NLRA provisions that extend existing collective bargaining agreements

Relatedly, workers should not need to start from scratch when bargaining a contract with a newly organized employer. Where a union has a significant presence at an employer, in an industry, or in a geographic area, the law should provide a process for the union to extend the contract standards for wages and benefits that the union has achieved through bargaining with these employers to newly organized groups. The PRO Act establishes a mediation and arbitration process for achieving initial collective bargaining agreements for newly organized workers. That process should default to the contract standards the union has been able to achieve with other employers in the industry or area, or such higher standards as the union demonstrates are appropriate (Rhinehart and McNicholas 2020).

12. Amend the NLRA to make clear that health and safety are essential terms of employment when determining joint-employer status

Health and safety is consistently cited as one of the most important issues to working people, and the COVID-19 crisis has only elevated its importance. Unions routinely bargain with employers over health and safety protections, and collective bargaining gives workers a stronger voice for addressing these critical issues than they would have individually. Yet, inexplicably, the Trump NLRB has determined that health and safety is not an “essential” term of employment, such that it is not automatically considered when reviewing whether two employers are joint employers with control over “essential” terms of employment (NLRB 2020). This artificially narrows the joint-employer inquiry and excludes an issue of extreme importance to working people (Becker and Berner 2020). Legislation should make clear that health and safety is an essential term of employment.

Endnotes

1. The phenomenon of unions narrowing the Black–white wage gap isn’t new. Starting in the mid-1940s, Black workers began to be more likely to be in unions and to have a larger union premium than white workers.
2. See question 14 in the BLS’s “Frequently Asked Questions: The Impact of the Coronavirus (COVID-19) Pandemic on The Employment Situation for April 2020” (BLS 2020) for the discussion of misclassified workers.
3. These numbers are based on EPI’s analysis of Current Population Survey microdata (EPI 2020) and will not match those published by BLS because we use mutually exclusive racial and ethnic categories: for instance, white non-Hispanic and Black non-Hispanic. Further, these numbers are not seasonally adjusted. Note that the Black unemployment rate, the Black women’s unemployment rate, the AAPI unemployment rate, and the AAPI women’s unemployment rate peaked in May. The other unemployment rates listed in this paragraph, and the overall unemployment rate, peaked in April.

4. This is roughly consistent with Dingel and Neiman 2020, which finds that 37% of jobs in the U.S. can be performed entirely at home.
5. Essential workers in this data set include workers in food and agriculture; emergency services; transportation, warehouse, and delivery; industrial, commercial, residential facilities and services; health care; government and community-based services; communications and IT; financial sector; energy sector; water and wastewater management; chemical sector; and critical manufacturing. The 12 “essential” industries were identified by using executive orders from California and Maryland as models (State of California 2020; Maryland Office of Legal Counsel 2020).
6. See Table 3 in McNicholas and Poydock 2020a.
7. Here, low-wage workers are defined as those in the bottom 25% of wage earners and high-wage workers are defined as those in the top 25%.
8. Essential workers in this data set include workers in social services, health care, protective services, food service, custodial/building maintenance, personal care, sales, installation and repair, and transportation.
9. Front-line industries in this data set include grocery, convenience, and drugstore workers; public transit workers; trucking, warehouse, and postal service workers; building cleaning service workers; health care workers; and child care and social services workers.
10. The United Food and Commercial Workers secured increased pay and benefits for workers in more than a dozen meatpacking and food-processing companies. The commitments include \$2 per hour premium pay for workers at Campbell’s Soup, a \$1,500 bonus for workers at Smucker Foods, and a 15% pay increase for workers at Danone North America. In addition, the United Food and Commercial Workers won premium pay for thousands of workers at Kroger, Giant, Safeway, and Shoppers. As of July 2020, all stores had eliminated premium pay for front-line workers. See UFCW 2020 and UFCW Local 400 2020.
11. The United Auto Workers persuaded General Motors, Ford, and Fiat Chrysler to shut down operations for two weeks to slow the spread of the virus, and they negotiated with the companies to provide all workers with protective gear, including masks. See UAW 2020 and Engdahl 2020.
12. The Communications Workers of America secured additional paid sick and family leave for unionized Verizon workers. The agreement includes 26 weeks of paid sick leave for individuals diagnosed with COVID-19 and eight weeks of paid leave for those caring for an individual medically diagnosed with COVID-19. See CWA 2020.
13. The Teamsters reached an agreement with DHL Express that relaxes rules pertaining to vacation use by workers for the shipping company if shipping volumes drop. The letter of agreement aims to minimize any potential layoffs that may result from COVID-19. See Teamsters 2020.
14. The text and data in the following sections are adapted and updated from *How Today’s Unions Help Working People* (Bivens et al. 2017).
15. In this analysis, the unionized public-sector workforce (7.9 million workers, constituting 37.8% of all public-sector workers) includes workers in all industries in the public sector. So, for example, education and health services workers who work in the public sector are included in this tally, not in the private-sector education and health services industries tallies.
16. The union wage premium analysis uses individual-level data from EPI microdata extracts of the 2015–2019 Current Population Survey Outgoing Rotation Groups (EPI 2020). Specifically, we

report the coefficient on union status from a regression of the log of the hourly wage on union status and a quintic polynomial in age (used as a measure of experience), and dummies for race and ethnicity, education, citizenship, major industry, major occupation, state, and year. We exclude observations with imputed wages because the imputation process does not take union status into account and therefore biases the union premium toward zero. This analysis does not account for nonwage benefits.

17. The estimates of 13% for women and 37% for men are from authors' analysis of data from Fortin, Lemieux, and Lloyd 2019. The estimates of 20% for women and 33% for men are from Western and Rosenfeld 2011. Western and Rosenfeld estimate that "deunionization explains a fifth of the inequality increase for women and a third for men."
18. Federal law gives federal employees the right to unionize and bargain.
19. As Kochan et al. note, "The survey excluded senior managers, owners, or family members of owners," thus "it contains a higher percentage of low income workers than in the national population."
20. McDonald's workers in New York City were among the fast-food workers who walked off the job in 2012 to demand a \$15 hourly wage and the right to form a union, which was the genesis of the now-global First for \$15 movement. See Fight for \$15 2020.
21. See 29 USC 656(b)(5) (directing OSHA to set the standard that "most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity").
22. Workers who are locked out by their employers should also be eligible for unemployment benefits. See Block and Sachs 2020.
23. The state of Virginia recently adopted emergency regulations to protect workers from COVID-19 exposure, including provisions banning retaliation against workers for raising safety concerns to the public. See VA DOLI 2020.
24. Ex-Cell-O, 185 NLRB 107 (1970), aff'd in relevant part, 449 F.2d 1058 (D.C. Cir).

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