



A How-To Guide for State and Local Workers' Boards

By Kate Andrias, David Madland, and Malkie Wall December 2019

Center for American Progress



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Introduction and summary

Workers' boards are governmental bodies that bring together representatives of workers, employers, and the public to set minimum standards for jobs in particular occupations and sectors. These boards—also known as wage boards, worker standards boards, or industry committees—investigate challenges facing workers and make recommendations regarding minimum wage rates, benefits, and workplace standards. Boards can also set scheduling requirements, paid leave policies, training standards, and portable benefit contribution rates. As part of their operations, boards conduct hearings and outreach activities as well as issue reports on their findings.

This report provides a road map for state and local government officials and advocates interested in developing policies on workers' boards.¹

State and local action on workers' boards is an important part of a strategy to help address wage stagnation, reduce economic inequality, and build power for workers. Workers' boards complement policies that set base standards for all workers such as the minimum wage and paid leave.² What distinguishes workers' boards is their ability to focus on the needs of a particular sector or occupation; their capacity to increase compensation for low-income as well as middle-income workers; and their flexibility to adjust standards to account for different levels of training and experience. Indeed, when the economist Arindrajit Dube simulated the effects of wage boards, he found significant gains at the 20th, 40th, and 60th percentiles of the wage distribution. His calculations imply that “wage boards are much better positioned to deliver gains to middle-wage jobs than a single minimum pay standard.”³

Research suggests that workers' boards could help close the pay gaps that women and people of color face since compensation standards set by boards can limit the opportunities for discrimination.⁴ By helping standardize compensation in certain sectors, workers' boards can also help ensure that high-road businesses that provide good wages and benefits are not undercut by low-road firms and can force companies to compete on the basis of productivity and sustainability rather than by lowering wages.⁵

For more information, see also:

[“Workers' Boards: A Brief Overview”](#)
and [“Workers' Boards: Frequently Asked Questions”](#).

This report will be
periodically updated

By involving workers and their organizations directly in governance decisions, these boards also help build worker power; they are an important complement to policies that seek to strengthen unions and support collective bargaining.⁶ Labor law reform is critical to building worker power and reducing economic and political inequality in the modern economy. But, because federal law preempts most action at the state or local level to strengthen traditional union rights, collective bargaining, and strike protections for private sector employees, most of these policy changes would have to be accomplished at the federal level. In the meantime, however, workers' boards can be established at the state and local level as a complement to existing labor and employment law.

Workers' boards can ensure high standards and support collective action and voice for workers in sectors and occupations where union density is too low, or the firms are too fragmented, for collective bargaining to cover many workers. This is especially important as contemporary firms increasingly outsource jobs to subcontractors or otherwise organize work in ways that make it difficult for traditional worksite-by-worksite bargaining to raise wages.⁷ Workers' boards can also help foster strong worker organizations, which can give workers greater power in the economy and democracy⁸ and potentially even lead to organizations that can engage in more independent bargaining.⁹

Workers' boards differ from a task force or other commission that tends to be merely advisory in nature and often consists of members of government or individuals chosen at the sole discretion of a government executive. Workers' boards, however, have greater authority to prompt the government to take action and are typically representative of workers, firms, and the public.

Although many states have some historical experience with wage boards, and although they once existed under the federal Fair Labor Standards Act,¹⁰ only a handful of states—including California, New Jersey, and New York—currently have wage board laws on their books. Today, however, there is increasing interest in creating and expanding workers' boards and their use. The state of New York, for example, used a wage board to raise fast-food workers' wages to \$15 per hour in 2015¹¹ and recently passed legislation establishing a farm laborer wage board.¹² Seattle created a workers' board for domestic workers in 2018.¹³ A growing number of cities and states, including Washington and Oregon, are considering similar proposals.¹⁴

This guide aims to help state and local governments design effective workers' boards. The report explains the core elements and discusses best practices based on existing

laws and proposed legislation.¹⁵ All states have the ability to implement these recommendations, as do cities with sufficient home-rule authority.

Specifically, this report recommends that legislation creating workers' boards:

- Include a strong purpose statement and a broad mandate to improve wages and working conditions for all workers throughout the economy.
- Require that board members be selected in ways that are representative, democratic, and encourage public participation.
- Provide boards with the authority to gather relevant information through hearings and investigations as well as to issue comprehensive recommendations.
- Design boards with a bias toward action operating as adequately resourced institutions making regular decisions.
- Provide for a process that enables quick review and adoption of board recommendations.
- Create strong enforcement mechanisms to ensure compliance with promulgated standards.
- Empower workers to organize and participate in board activities.

This report provides additional details on these recommendations, explaining key concepts and providing examples of specific statutory language drawn from existing law or legislative proposals. The accompanying one-page overview and FAQ provide short descriptions of these concepts and other important information about workers' boards.

Workers' board policy elements

To successfully improve conditions for workers, legislation on workers' boards should contain a number of core features. These elements are described in more detail below.

Purpose and mandate of a workers' board

The primary task of a workers' board is to improve conditions for workers throughout an occupation, sector, or industry. In order to maximize efficacy, a board's mandate should extend to improving wages, benefits, and workplace standards, and their purpose should be unambiguous. A clear purpose statement works to provide important direction to the board as well as to any administrative officials or courts that might ultimately review the board actions.

The nearly century-old laws that created the New York state and California wage boards provide examples of strong purpose statements. They clearly describe the harms that come from low wages and boldly state that it is the policy of the state to eliminate these harmful environments.¹⁶ For example, New York law states:

There are persons employed in some occupations in the state of New York at wages insufficient to provide adequate maintenance for themselves and their families. Such employment impairs the health, efficiency, and well-being of the persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of this state and injures the overall economy. Accordingly, it is the declared policy of the state of New York that such conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power. To this end minimum wage standards shall be established and maintained.

[N.Y. Lab. Law §650.](#)

Still, these long-standing purpose statements could be improved, as they use language that is dated and, in some cases, too limited. For example, New York’s law focuses on wages while neglecting benefits and many working conditions. A Washington state proposal contains updated language. It emphasizes the harm that the fraying of the social contract caused and directs the boards to provide a safety net to all workers covered by the board’s authority.¹⁷ New statutes could build on this approach, acknowledging current challenges facing workers and directing boards to improve not only wages but also a broader suite of standards.

Decision guidelines: Statutes should also provide specific direction to boards regarding the standards to be achieved for workers.¹⁸

The federal Domestic Workers Bill of Rights Act instructs boards to issue recommendations that

promote the health, safety, and well-being of domestic workers; and ... achieve a living wage for domestic workers.

[Domestic Workers Bill of Rights Act, S.2112 \(2019\), §201\(a\)\(1\).](#)

Proposed legislation in Washington provides perhaps the most aspirational standard by calling for

wages and benefits necessary to provide for the full participation in society.

[Wash. Senate Bill 5690 \(2019\), §37\(1\)\(a\).](#)

The statutes should also empower boards to set wage scales that provide higher pay commensurate with greater skills, experience, and location.¹⁹ Critically, boards should be empowered to set minimums based on standards that prevail for workers with similar skills in similar industries so that the industrywide standards reflect standards achieved in collective bargaining as well as other goals.²⁰ The statute should also make clear that prevailing wages should not create a ceiling on recommendations. Thus, in occupations and areas where the prevailing wage is high, board recommendations could recognize that standard as the floor; in areas where the prevailing wage is low because collective bargaining is limited or nonexistent, workers’ boards should push beyond what prevails.

Board membership

For boards to function effectively, their members must fairly represent the relevant workers and businesses; that is, boards should not simply reflect the desires of the current executive. The selection process should encourage workers as well as businesses to join together in representative organizations. There are different ways to design a selection process to achieve these goals. One possibility is to enable a government official—typically the secretary or commissioner of the relevant labor agency—to appoint members based on certain criteria that ensure representativeness. This can best be achieved by requiring the government to select candidates that have demonstrated they represent a sufficient number of workers in the industry.²¹ Another option is to provide for the election of representatives. For example, the recent Maine home care ballot initiative would have created a system for all home care workers to vote for their representatives.²²

Where multiple organizations meet the representativeness threshold, the statute should specify either that the most representative organization should be selected or that several representatives should be selected proportionate to their representativeness. In cases where there are not yet any organizations that can demonstrate they represent a sufficient number of workers in the industry, nominations can be constrained to the organizations most likely to represent the interests of the workers and businesses.²³

The statute should also make clear how board membership is to be divided. Board membership is usually split three ways among representatives of workers, employers, and the public or the government. At times, however, it might make more sense to provide for direct negotiations between workers and employers by creating evenly split boards that incorporate an arbitration process in the event of a stalemate, subject to state or local governmental review.²⁴

The Washington state proposal includes the following exemplary board selection language for independent contractors and their hiring firms, referred to as “contributing agents” in the legislation:

- (2)(a) Worker positions must be distributed among validated worker representatives²⁵ in accordance with the number of workers the organization represents. Validated worker representatives must appoint individuals for each of the seats they are allotted.*
- (b) Contributing agent positions must be distributed among validated contributing agent representatives in accordance with the number of intermediary employees the organization represents. Validated contributing agent representatives must appoint individuals for each of the seats they are allotted.*
- (c) If there are more validated organizations than seats, only the most representative organizations are to be seated on the board.*
- (d) The director of the department must appoint the department representatives.*

Wash. Senate Bill 5690 (2019), §36.²⁶

This language could be adapted for more general use.

Where legislation authorizes workers’ boards for multiple occupations or industries, each board would have separate membership. Boards called to make recommendations about the restaurant industry would, for example, include representatives of restaurant workers and employers, while boards about transportation or delivery would include workers and firm representatives from those industries. For boards that deal with a single sector, such as child care or home care, where consumers may be particularly motivated and organized to promote high standards, it may be beneficial to place consumer representatives on the board with workers and firms. Oregon’s proposed long-term care wage board act provides a useful model of this type of board selection process.

- (2)(a) The commissioner shall solicit recommendations of qualified individuals from any source including a labor organization, provided that the labor organization maintains a membership of at least 100 members. The commissioner shall select members from the recommendations as follows:*
 - (A) Three members who represent long term care employees;*
 - (B) Three members who are employers who hire long term care employees; and*
 - (C) Three members who represent the interests of individuals who receive long term care services.*

(b) If the commissioner does not receive a sufficient number of recommendations, the commissioner may appoint any remaining positions on the board, in any combination, from among the following:

(A) An employer who employs long term care employees;

(B) A labor organization that represents the interests of long term care employees; and

(C) A representative of a long term care facility or other facility that is responsible for individuals receiving long term care services.

Or. House Bill 2490 (2019), §1.

The statute should also specify the size or size range of the boards. The choice of the number of representatives on the board reflects a compromise between providing sufficiently broad representation while maintaining a small enough group for ease of operation. Cities and states have found a variety of workable configurations. For example, the boards in New York have three members, or up to nine,²⁷ and California has five,²⁸ while Seattle began with nine and is increasing to 13.²⁹

In any event, all board decisions would ultimately be endorsed by the government in order to go into effect. A designated executive branch official would review the recommendations to ensure they comply with the statutory mandate.³⁰

Ultimately, the method of selecting board members is important for ensuring the fairness and efficacy of the boards. Selection strategies are also important insofar as they can help build power for worker organizations as they provide an incentive for groups to organize workers and a reason for workers to join.

Board authority and responsibilities

Boards need the authority to gather relevant information through hearings and investigations as well as the ability to issue recommendations that cover a range of workplace issues. These elements enable boards to make effective and well-informed recommendations for minimum wage rates, benefits, and workplace standards.

Investigations and hearings

Boards should have the authority to conduct fact-finding and outreach activities.³¹ These activities include ordering depositions, subpoenaing testimony, administering oaths, holding public hearings, consulting employers and employees, and conduct-

ing surveys. They also include producing reports and conducting public outreach about the programs, similar to what is outlined in New York state labor law:

The wage board shall have power to conduct public hearings. The board may also consult with employers and employees, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairman of the board, or any other public member, and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

[N.Y. Lab. Law §655\(3\).](#)

To improve upon the New York model, legislation could also require boards to hold a minimum number of hearings and mandate that workers and other affected constituencies be notified about the hearings. Engaging workers in the hearings provides an important opportunity for the board to receive information and also creates opportunities for workers to come together.³² California law provides important notification requirements.³³ The proposed federal Domestic Workers Bill of Rights Act provides a model for general hearing requirements:

(A) IN GENERAL.—The Board may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this section.

(B) REQUIRED PUBLIC HEARINGS.—The Board shall, prior to issuing any recommendation under this section, hold public hearings to enable domestic workers across the United States to have access to the Board. Any such public hearing shall—

(i) be held at such a time, in such a location, and in such a facility that ensures accessibility for domestic workers;

(ii) include interpretation services in the languages most commonly spoken by domestic workers in the geographic region of the hearing;

(iii) be held in each of the regions served by the regional offices of the Wage and Hour Division of the Department of Labor; and

(iv) include worker organizations in helping to populate the hearings.

[Domestic Workers Bill of Rights Act, S.2112 \(2019\), §201\(f\)\(1\).](#)

Scope of recommendation authority

Boards should have clear responsibilities for evaluating and making recommendations on a wide range of worker issues, including wages, benefits, and working conditions.

Oregon's proposed board provides a good model of broad authority not limited to wage rates. Its board would specifically examine challenges to recruiting and retaining long-term care employees. Similar language could be used to address working conditions for a variety of workers:

(10) The board shall:

(a) Evaluate and make findings regarding factors that may contribute to a shortage of a skilled long term care workforce including, but not limited to:

(A) Compensation rates; and

(B) Lack of health care benefits or other paid benefits including, but not limited to, paid family leave, sick leave or retirement benefits; and

(b) Make recommendations regarding:

(A) Strategies that define uniform standards for training and education for long term care employees;

(B) Proposed increases to the hourly minimum wage paid to long term care employees; and

(C) Improvements to working conditions, including work schedules and workplace standards relating to safety.

(11) In addition to the duties prescribed to the board under subsection (10) of this section, the board shall annually review the compensation rates paid to long term care employees in this state. The board shall prepare and approve by a majority vote a recommended compensation schedule for long term care employees.

Or. House Bill 2490 (2019), §1.

The federal and Seattle Domestic Workers Bill of Rights as well as the Washington state independent contract board also provide useful models for the scope of recommendation authority.³⁴

Board operations

The history of workers' boards shows that some are much more active and do a better job promoting the interests of workers, while others can lay moribund for decades. To achieve the intended goal of improving standards for workers, boards should be structured with a bias for action. Boards should also operate based on democratic procedural rules. Finally, legislation should provide protections for workers if the board fails to act.

Permanent, staffed institution making regular decisions

The board should be established as a permanent institution so that it is always available to act³⁵ and should be required to issue new determinations every few years so that decisions keep up with the times.

For example, the federal Domestic Workers Bill of Rights Act would require:

Not later than 1 year after the date of enactment of this Act, and every 3 years thereafter, the Board shall issue recommendations to the Secretary.

[Domestic Workers Bill of Rights Act, S.2112 \(2019\), §201\(e\)\(1\)\(a\).](#)

A threshold number of workers or employers should be able to call the board to act in case there are significant issues in the industry that need to be resolved before the next regularly scheduled decision.

For example, under Washington state's proposal:³⁶

Once any eligible worker representative provides a showing of interest by presenting evidence that they represent the lesser of two hundred fifty covered intermediary employees or one-half percent of the industry, the department must indicate that the organization is validated, and a workers' board must be established in the industry.

[Wash. Senate Bill 5690 \(2019\), §34\(2\).](#)

Boards should provide compensation for members and/or reimburse members for expenses incurred during board activities.³⁷ Boards should also have the ability to use state labor agencies for administrative, logistical, and research support³⁸ and have at least one full-time staff member³⁹ to help with operations. Authorizing statutes should provide clear funding mechanisms for these board activities. Boards should receive funding through the agency that oversees them. This general funding can be supplemented by funds from penalties and fees. For example, a portion of penalties collected during enforcement can go toward board activities, as Oregon

has proposed,⁴⁰ or employers could be required to contribute a small fee, similar to what Washington state has proposed to support board enforcement activities.⁴¹

Board legislation should specify a quorum, voting requirements, and the boundaries of action. Two-thirds of members should constitute a quorum. For most recommendations, a majority vote should be sufficient to win approval.⁴² However, for any recommendation that would reduce worker compensation or standards from previous board recommendations, a higher hurdle should be met, with reductions requiring agreement from a majority of each of the worker, employer, and government representatives or even unanimous consent. This ensures that all parties agree that reductions are necessary. The law should also make clear that boards can never go below statutory minimums, although they can exceed them. As discussed further below, the Washington state proposal contains model language for these requirements.

Policymakers should set up procedures for what to do if the board fails to reach a conclusion or submit its report in a timely manner. These procedures should include requirements that prior board decisions automatically increase with inflation. This ensures that workers do not lose ground as the result of inaction but still have an incentive to encourage the board to act so they can potentially receive larger increases.

Washington state's proposed legislation provides a model for promoting action as well as ensuring that workers are protected in the event of either action or inaction:

Sec. 37 (2) Every three years, the workers' board must issue determinations on aspects of the industry that affect workers' well-being.

[...]

Sec. 37 (3) The standards established by the workers' board may meet or exceed, but may not fall below, standards established in statute, including minimum wages established in chapter 49.46 RCW, and established in this chapter, including minimum rates, benefit contributions, or the proportion of benefit contributions allowable for administrative purposes. (4) If an established workers' board fails to make determinations under this section within any four-year period, the department must institute increases in the minimum rates and benefit contributions for the industry in accordance with inflation as determined by the department.

[...]

Sec. 38 (3) Determinations by the workers' board must be set through majority vote. However, a majority of validated worker representatives, validated contributing agent representatives, and state representatives is required for determinations that decrease rates or worker protections.

Wash. Senate Bill 5690 (2019) §37(2), §§37(3-4), and §38(3).

Implementation of board recommendations

Board recommendations should quickly lead to implementing action, subject to appropriate government oversight.⁴³ Ultimately, the governmental body that reviews and approves board decisions should not be able to ignore board recommendations and instead should be compelled to deal with them in a process that favors adopting the board recommendations as long as they are consistent with statute. For example, under the original federal Fair Labor Standards Act, the U.S. Department of Labor was bound to adopt wage board recommendations as long as they were above the minimum and in accordance with statutory standards.⁴⁴ Certain state board recommendations follow a similar blueprint.⁴⁵ In California, for example, board recommendations that receive two-thirds support are automatically incorporated into proposed regulations, which are then subject to public comment and become law unless the government finds “no substantial evidence to support such recommendations,” while majority decisions can become law through a similar regulatory process.⁴⁶ Mandating that the government provide a reason for not approving board recommendations makes it more difficult for the government to reject board recommendations for purely political reasons and creates a bias toward action.⁴⁷

Statutes should also require the review and adoption of board recommendations within a certain time period. For example, the proposed Domestic Workers Bill of Rights as well as New Jersey and New York law require the government to accept or reject board recommendations within a certain number of days of receipt.⁴⁸

Under New York labor law:

[T]he commissioner shall by order accept or reject the board’s report and recommendations within forty-five days after filing with the secretary of the department. The commissioner may by such order modify the regulations recommended by the board. Such order of the commissioner shall become effective thirty days after publication, in the manner prescribed in this section, of a notice of such order. The commissioner may, within forty-five days, confer with the wage board, which may make such changes in its report or recommendation as it may deem fit. The commissioner also may, within such forty-five days, remand the matter to the board for such further proceeding as he may direct.

[N.Y. Lab. Law §656.](#)

Enforcement

To ensure compliance with board standards, strong enforcement mechanisms are required. Wage theft is already a significant problem and could get much worse if boards increase standards without providing for additional enforcement tools.⁴⁹ Enforcement strategies are also important because they can help empower workers, leading to greater compliance over time.

Effective enforcement starts with adequately empowered and funded government inspectors who can investigate potential violations, issue findings of fact, pursue civil penalties, and order corrective action. Furthermore, to ensure compliance with standards, the law should provide for sufficient monetary penalties⁵⁰ and a private right of action for workers to access courts and recover unpaid wages and overtime compensation, along with interest and costs.⁵¹ It should also require employers and hiring entities to provide workers with notice of their rights.⁵²

The most successful labor enforcement models recognize the critical role worker organizations play in ensuring compliance. Vulnerable workers are frequently afraid to talk to government officials, but worker organizations are more likely to have workers' trust as well as information about what is happening in the worksite.⁵³ Thus, the best enforcement models empower worker organizations to act as co-enforcers. They also provide funding for worker and community groups to conduct education and enforcement activities; enable these organizations to benefit from enforcement lawsuits; and provide these organizations with access to information and workplaces to facilitate enforcement and worker education.

Washington's proposed Universal Worker Protections Act provides a model for co-enforcement and also directs employers to help fund compliance efforts:

(3) In addition to any remedies provided by the department to an eligible beneficiary for a contributing agent's noncompliance, an eligible beneficiary may bring a private cause of action against a contributing agent for the contributing agent's failure to comply with the contribution requirements under this chapter.

(4) The department must adopt rules to implement and administer performance of workers' boards within this chapter, including:

(a) Allowing represented workers to report violations of portable benefit contribution requirements or compliance with board determinations to the department. The department must investigate these complaints with the same diligence as any other employment or labor law violation;

- (b) Providing validated worker representatives with standing to file complaints on the behalf of represented workers; and*
- (c) Establishing monetary penalties for a contributing agent found to be in violation of the standards established by the board. The department must set the amount of monetary penalties at no less than three times the amount owed in wages or benefit contributions. If the penalty results directly from a complaint by a benefit provider or validated worker representative, the collected award must be split between the department and the complainant.*

Wash. Senate Bill 5690 (2019), §44.

- (1) The department must contract with eligible worker representatives to implement outreach and education to eligible beneficiaries and covered intermediary employees.*
- (2) Organizations conducting outreach and education must educate eligible beneficiaries and covered intermediary employees about their legal rights, and help eligible beneficiaries and intermediary employees file reports of violations of laws and standards, including portable benefit contribution requirements and standards established by the workers' board.*
- (3) Contributing agents must provide organizations conducting outreach and education access to workers through all reasonable means including, but not limited to, worksites, user data, and payment data.*

Wash. Senate Bill 5690 (2019), §45.

Scope of coverage

A key choice facing localities that want to develop workers' boards is to decide what categories of workers to cover. The most ambitious approach is to cover all workers in the state no matter what industry they work in or whether they are an employee or independent contractor. State policy should also ensure that all workers are properly classified.⁵⁴ Such broad coverage would ensure that all workers can benefit from the workers' board decisions and would prevent standards from being undercut by firms that categorize workers as outside the scope of the board.

Broad coverage requires granting the government entity overseeing the board with the authority to determine sectors and occupations. Several states follow this approach, covering almost every industry and occupation in the state, although they only cover employees.⁵⁵ Some more narrowly targeted boards—such as Seattle's

domestic worker ordinance—cover both independent contractors and employees.⁵⁶ Drawing from each of these approaches, a model policy would cover all industries and would mandate coverage for both employees and independent contractors. When including both, the law could state that independent contractors receive a premium to compensate for the additional costs they bear such as for workers' compensation and employer-side Social Security taxes and equalize the savings that firms receive by categorizing workers as independent contractors.⁵⁷

In cases where authorizing legislation covers all workers, policymakers may want to prioritize board action in certain industries and occupations.⁵⁸ One option would be to require that boards meet within the first year after enactment for occupations and industries where the median wage is significantly less than the regional median wage and within the first three years for other occupations and industries.

On occasion, there may be reasons to create a wage board for specific sectors or occupations such as for domestic workers,⁵⁹ agricultural workers,⁶⁰ independent contractors,⁶¹ or subsets of these groups that have been left out of traditional labor and employment law. Indeed, laws that cover only workers excluded from the National Labor Relations Act could, in most cases, provide for additional labor rights that would otherwise be preempted by federal labor law.⁶² For example, a state could establish a system to provide domestic workers or agricultural workers with union and collective bargaining rights, along with the right to participate in worker boards.⁶³ Policymakers could also follow the lead of the Washington state independent contractor proposal, which would create a portable benefits fund run by workers.⁶⁴

Worker participation and power building

In order for boards to fulfill their mission, they also need to encourage worker participation and organization. Only with robust worker engagement and organization can fair deliberations and evenly matched negotiations occur. Without increased worker power, boards may not act in the public's best interest and instead may favor the interests of more powerful employers. Increased worker participation and organization can also lead to benefits beyond better board decisions, including greater voter turnout and public policies that are more representative of the interests of low- and middle-income Americans.⁶⁵ Worker engagement in board activity might also lead to more direct forms of bargaining because boards would generate a tradition of workers and employers negotiating.⁶⁶

The goal of empowering workers should run throughout board processes. That is, worker empowerment should be promoted through numerous board elements, including the process of selecting representatives, the design of public hearings and notifications, the creation of worker-led benefits' funds, and the creation of co-enforcement, as described previously. The law should also ensure that workers have strong rights to participate in board processes and that they are protected against retaliation. Finally, the law should encourage organizations to reach out to workers and engage them in board activities.⁶⁷ (Note that workers' board legislation can also strengthen workers' bargaining position with elements outside of board processes, such as though provisions that ensure workers are properly classified as employees,⁶⁸ and by requiring that workers receive written contracts that are free of mandatory arbitration, nondisclosure clauses, and noncompete clauses, as the federal domestic worker legislation proposes.⁶⁹)

Right to participate and release time

Workers' board legislation should prohibit employers from retaliating against workers who participate in or express support for board activities and should provide strong penalties and enforcement mechanisms for violations of anti-retaliation rules.⁷⁰

Seattle's Ordinance provides a model for protecting workers' rights:

A) No hiring entity or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this [Chapter 14.23](#).

B) No hiring entity or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this [Chapter 14.23](#). Such rights include but are not limited to the right to make inquiries about the rights protected under this [Chapter 14.23](#); the right to inform others about their rights under this [Chapter 14.23](#); the right to inform the person's hiring entity, union or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this [Chapter 14.23](#); the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this [Chapter 14.23](#); the right to cooperate with the Agency in its investigations of this [Chapter 14.23](#); the right to testify in a proceeding under or related to this [Chapter 14.23](#); the right to refuse to participate in an activity that would result in a violation of city, state or federal law; and the right to oppose any policy, practice or act that is unlawful under this [Chapter 14.23](#).

C) No hiring entity or any other person shall communicate to a person exercising rights protected under this [Section 14.23.070](#), directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not

lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of a domestic worker or a family member of the domestic worker to a federal, state, or local agency because the domestic worker has exercised a right under this [Chapter 14.23](#).

D) It shall be considered a rebuttable presumption of retaliation if the hiring entity or any other person takes an adverse action against a person within 90 calendar days of the person's exercise of rights protected in this [Section 14.23.070](#). However, in the case of seasonal employment that ended before the close of the 90 calendar day period, the presumption also applies if the employer fails to rehire a former domestic worker at the next opportunity for work in the same position. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E) Proof of retaliation under this [Section 14.23.070](#) shall be sufficient upon a showing that the hiring entity or any other person has taken an adverse action against a person and the person's exercise of rights protected in [Section 14.23.070](#) was a motivating factor in the adverse action, unless the hiring entity can prove that the action would have been taken in the absence of such protected activity.

[Seattle Mun. Code §§14.23.070 \(A-E\)](#).

Legislation should also require that employers grant workers reasonable leave—ideally, paid leave—to participate in board activities. Oregon's proposal includes leave as well as workers' rights protections.⁷¹

Opportunities for worker outreach and engagement

The mere existence of rights is not sufficient to promote worker engagement. Rights do not necessarily translate into increased worker participation and power, especially because there is an inherent collective action problem in workers' boards, where workers can benefit from the efforts of others. Accordingly, boards need to take proactive steps to encourage and incentivize workers to organize and participate. There are several ways to do so, as outlined below.

First, legislation should bring workers and their organizations into the delivery of any board benefits.⁷² For example, if board recommendations include workforce training, that training should be required to be provided by a labor management partnership.⁷³ Engaging worker organizations in benefit provision is a proven strategy to improve the delivery of government benefits as well as to increase organizational membership.⁷⁴

Second, legislation should ensure that worker organizations are able to access workers to engage them in board activity. For example, proposals in Washington state⁷⁵ and Maine⁷⁶ would provide authorized worker organizations with worker contact information.⁷⁷ Care needs to be taken to ensure that this sensitive information only goes to organizations that workers control democratically.⁷⁸

Third, legislation should enable workers to contribute to worker-controlled organizations of their choice through paycheck deduction and transfers. Such donations will help organizations be effective participants in the board processes. A New York City law provides a useful model.⁷⁹

Conclusion

Workers' boards provide an important mechanism for state and local policymakers to increase compensation and build worker power. They are also an essential component of broader strategies to improve conditions for workers in the economy. Bringing together representatives of workers, business, and the public to negotiate standards is not an entirely new idea, but it has great potential to address modern economic challenges. A handful of places already have workers' board laws on the books, and a growing number of cities and states are discussing proposals to institute their own versions. Policymakers should take advantage of their authority to implement boards and should ensure that boards are designed to advance the interests of workers and high-road businesses. By taking the best of existing law and proposals, the recommendations in this report provide a clear road map for developing strong and effective workers' boards.

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Endnotes

- 1 Kate Andrias, “The New Labor Law,” *The Yale Law Journal* 126 (1) (2016): 1–261, available at <https://www.yalelawjournal.org/article/the-new-labor-law>; Kate Andrias and Brishen Rogers, “Rebuilding Worker Voice in Today’s Economy” (New York: Roosevelt Institute, 2018), available at <https://rooseveltinstitute.org/wp-content/uploads/2018/07/Rebuilding-Worker-Voices-final-2.pdf>; David Madland, “Future of Worker Voice and Power” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/economy/reports/2016/10/11/143072/the-future-of-worker-voice-and-power/>; David Madland, “Wage Boards for American Workers: Industry-Level Collective Bargaining for All Workers” (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/economy/reports/2018/04/09/448515/wage-boards-american-workers/>; Dylan Matthews, “Governors in these states can give workers a raise with the stroke of a pen,” *Vox*, July 19, 2019, available at <https://www.vox.com/future-perfect/2019/7/19/20698079/wage-boards-union-labor-movement-california-colorado-new-jersey>; and David Madland and Alex Rowell, “How State and Local Governments Can Strengthen Worker Power and Raise Wages” (Washington: Center for American Progress Action Fund, 2017), available at <https://www.americanprogressaction.org/issues/economy/reports/2017/05/02/166640/state-local-governments-can-strengthen-worker-power-raise-wages/>.
- 2 Madland and Rowell, “How State and Local Governments Can Strengthen Worker Power and Raise Wages.”
- 3 In his simulation, Dube imposed region-by-industry-by-occupation wage standards that set minimums at either 30 percent or 35 percent of the median wage in each wage category. The low scenario (30 percent) caused wages in the 20th, 40th, and 60th percentile increased by 13 percent, 9 percent, and 4 percent, respectively. Under the high scenario (35 percent), wages in those percentiles rose by 19 percent, 15 percent, and 12 percent, respectively. For comparison, the impacts of traditional minimum wage increases tend to taper out by the 20th percentile. See Arindrajit Dube, “Using wage boards to raise pay” (Economists for Inclusive Prosperity, 2018), available at <https://econfp.org/wp-content/uploads/2019/02/4.Using-Wage-Boards-to-Raise-Pay.pdf>.
- 4 David Madland and Alex Rowell, “Combating Pay Gaps with Unions and Expanded Collective Bargaining” (Washington: Center for American Progress Action Fund, 2018), available at <https://www.americanprogressaction.org/issues/economy/reports/2018/06/28/170469/combating-pay-gaps-unions-expanded-collective-bargaining/>.
- 5 David Madland, “How to Promote Sectoral Bargaining in the United States” (Washington: Center for American Progress Action Fund, 2019), available at <https://www.americanprogressaction.org/issues/economy/reports/2019/07/10/174385/promote-sectoral-bargaining-united-states/>.
- 6 *Ibid.*
- 7 David Weil, *The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press, 2014); Jess Forden, “Challenges for Workers in the Age of Fissured Jobs and Joint Employers” (New York: Roosevelt Institute, 2019), available at http://rooseveltinstitute.org/wp-content/uploads/2019/04/RI_Joint-employer_issue-brief_201904.pdf.
- 8 See, for example, Madland, “Future of Worker Voice and Power.”
- 9 For more information and an example of how wage boards create a forum for bargaining, see the European Court of Human Rights’ decision in *Unite the Union v. the United Kingdom*, paragraph 58, on file with author. See also John Hendy QC and Keith Ewing, “An IER Briefing: Article 11(3) of the European Convention on Human Rights” (Liverpool, UK: The Institute of Employment Rights, 2017), available at https://www.ier.org.uk/sites/ier.org.uk/files/Article_11_of_the_ECHR_briefing.pdf.
- 10 Kate Andrias, “An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act,” *The Yale Law Journal* 128 (3) (2019): 616–709, available at https://www.yalelawjournal.org/pdf/Andrias_tfwmq5cj.pdf.
- 11 Andrias, “The New Labor Law.”
- 12 New York Senate Bill 6578, 2019–2020 Leg., Reg. Sess. (2019), available at <https://www.nysenate.gov/legislation/bills/2019/s6578>.
- 13 Seattle, Washington, Municipal Code, Ch. 14.23, available at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.23DOWO.
- 14 Washington Senate Bill 5690, 66th Leg., Reg. Sess. (2019), available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5690.pdf>; Oregon House Bill 2490, 80th Leg., Reg. Sess. (2019), available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2490/Introduced>.
- 15 Policies reviewed for this report include laws on the books in California, New Jersey, New York, and Seattle as well as proposals in Washington state, Oregon, Maine and at the federal level for domestic workers. See California Labor Code, §§70–74, 1178 et seq., available at https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=1.&title=&part=&chapter=2.&article=1.&part=4.&chapter=1.&article=1; New Jersey Statutes Annotated, §34:11-56a4.7 et seq., available at https://nj.gov/labor/wagehour/lawregs/nj_state_wage_and_hour_laws_and_regulations.html#1156a47; New York Labor Law, §650 et seq., available at <https://law.justia.com/codes/new-york/2012/lab/article-19/>; New York Senate Bill 6578, 2019–2020 Leg., Reg. Sess. (2019), available at <https://legislation.nysenate.gov/pdf/bills/2019/S6578>; Seattle, Washington, Municipal Code, Ch. 14.23, available at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.23DOWO; Washington Senate Bill 5690, 66th Leg., Reg. Sess. (2019), available at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5690.pdf>; Oregon House Bill 2490, 80th Leg., Reg. Sess. (2019), available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2490/Introduced>; Domestic Workers Bill of Rights Act, S. 2112, 116th Cong., 1st sess. (July 15, 2019), available at <https://www.congress.gov/116/bills/s2112/BILLS-116s2112is.pdf>; and Maine Ballot Initiative, “An Act to Establish Universal Home Care for Seniors and Persons with Disabilities” (2018), available at <https://www.maine.gov/sos/cec/elec/citizens/uhcleg.pdf>. Policies and proposals in other countries, including Australia, New Zealand, and Britain and not directly discussed, though they inform the brief. This brief may be periodically updated to reflect new proposals.
- 16 See Cal. Lab. Code §§1178–1178.5(a).

- 17 Proposed legislation in Washington state aims “[t]o provide Washington businesses the necessary legal clarity they require to thrive as companies and employers, and ensure a basic and adaptable social safety net is available to all workers, regardless of worker status, the legislature intends to further clarify the definition of ‘employee’ in Washington state and provide a regulatory and benefits structure for nonemployee workers, and establish workers’ boards for independent contractors and the companies that rely on their services.” See Wash. Senate Bill 5690 (2019), §1(2).
- 18 New York law instructs the board to consider, “the amount sufficient to provide adequate maintenance and to protect health and, in addition, [...] the value of the work or classification of work performed, and the wages paid in the state for work of like or comparable character.” See N.Y. Lab. Law §654. New Jersey calls for wage boards to be convened if the Minimum Wage Advisory Commission (WAC) and/or the WAC Commissioner believe that “a substantial number of employees in any occupation or occupations are receiving less than a fair wage.” See N.J. Stat. Ann. §34:11-56a8.
- 19 New Jersey law allows for variances by locality. The wage board “may recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper.” See N.J. Stat. Ann. §34:11-56a13. Boards in New York may also recommend that a minimum wage vary by locality if, “in the judgment of the board, conditions make such variation appropriate.” See N.Y. Lab. Law §655(5)(a).
- 20 See for example, the Washington, D.C., security guard law, which states that “[b]eginning on July 1, 2019, and no later than July 1 of each successive year, an employer shall pay a security officer working in an office building in the District of Columbia wages, or any combination of wages and benefits, that are not less than the combined amount of the minimum wage and fringe benefit rate in effect on September 1 of the immediately preceding year for the guard 1 classification established by the United States Secretary of Labor pursuant to Chapter 67 of Title 41 of the United States Code (41 U.S.C. § 6701 *et seq.*), as amended.” See D.C. Code §32-1003(h).
- 21 For example, under Washington state’s proposal, validated worker representatives—defined as “an eligible worker representative that has been approved by the department [of labor and industries] to represent workers on the workers’ board”—appoint individuals to represent workers on the workers’ boards. To become a validated worker representative, organizations must show evidence that they represent either the lesser of 250 covered intermediary employees or 0.5 percent of the industry or at least 100 covered intermediary employees. See Wash. Senate Bill 5690 (2019), §30(12) and §34(2).
- 22 For example, Maine’s universal home care ballot initiative specified that, “The board shall establish procedures to provide for elections of board members after the terms of the first board members expire. The board shall establish and administer a system of nomination and secret ballot voting by mail or using a secure online voting system by which each member is elected by vote of that member’s constituency. The following persons are eligible to vote for the board members representing their respective constituencies: A. All personal care agencies as defined in section 1717, subsection 1, paragraph C, acting through their owners, directors and managers as they may choose; B. All individual providers and direct care service providers employed by in-home and community support services agencies; and C. All persons receiving in-home and community support services through the program, or their family members.” See Maine Ballot Initiative, “An Act to Establish Universal Home Care for Seniors and Persons with Disabilities” (2018), §7284(5).
- 23 Both New York and New Jersey legislate a representation role for the state AFL-CIO. See N.J. Stat. Ann. §34:11-56a4.7 and N.Y. Senate Bill 6578 (2019), §22 §674-a.
- 24 For example, boards could require that the neutral representative on the board be selected jointly by worker organizations and business groups from a list of approved arbitrators, or they could even establish a mechanism for consumer or public representation through a new democratic process encouraging the growth of membership based consumer organizations. See Kate Andrias, “Social Bargaining in States and Cities: Toward a More Egalitarian and Democratic Workplace Law” (Cambridge, MA: Harvard Law School, 2018), available at <https://harvardlpr.com/wp-content/uploads/sites/20/2018/01/Andrias-Social.pdf>.
- 25 A validated worker representative is defined as an “eligible worker representative that has been approved by the department to represent workers on the workers’ board.” See Wash. Senate Bill 5690 (2019) §30(12).
- 26 Note also the domestic worker board process selection in Seattle Mun. Code §14.23.030 and the federal proposal, Domestic Workers Bill of Rights Act, S.2112 (2019) §201(b).
- 27 N.Y. Lab. Law. §650 and N.Y. Senate Bill 6578 (2019), §22 §674-a.
- 28 Cal. Lab. Code §70.1.
- 29 Seattle Mun. Code §14.23.030 (B).
- 30 Under federal constitutional law, the government cannot delegate lawmaking or rulemaking powers to private entities; ultimate decision-making authority must rest with the government. Most states have similar nondelegation doctrines, but policymakers should be guided by the relevant law in their states.
- 31 For example, in New Jersey, “[a] wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to matters under investigation. Such subpoena shall be signed and issued by the chairman of the wage board and shall be served and have the same effect as if issued out of the Superior Court. A wage board shall have power to cause dispositions of witnesses residing within or without the State to be taken in the manner prescribed for like dispositions in civil actions in the Superior Court.” See N.J. Stat. Ann. §34:11-56a10.
- 32 Washington’s proposed legislation requires that the public hearings “be open to all individuals or organizations” and that “[v]alidated worker representatives and validated contributing agent representatives not represented on the workers’ board have priority in hearings, with time allocated in accordance with the number of workers or agents represented.” See Wash. Senate Bill 5690 (2019), §38(4)(a)-(b).
- 33 In California, a notice of public hearings must be provided to and posted at the superior court of each county in the state and advertised in at least one newspaper published in each of the major cities. The Industrial Welfare Commission must also mail a notice to each association of employers or employees that, in its opinion, may be affected by the hearing and/or regulations. See Cal. Lab. Code §1181. New York’s proposed farmworker bill requires that “any materials advertising such hearings shall be bilingual in English and Spanish.” See N.Y. Senate Bill 6578 (2019), §22(4).
- 34 See the federal Domestic Workers Bill of Rights Act, S.2112 (2019), §201(e)(1)(A); Seattle Mun. Code §14.23.030 (I); and Wash. Senate Bill 5690 (2019), §37(2).

- 35 Seattle's ordinance establishes a permanent board: "(A) A Domestic Workers Standards Board (Board) is established to provide a forum for hiring entities, domestic workers, worker organizations, and the public to consider, analyze, and make recommendations to the City on the legal protections, benefits, and working conditions for domestic worker industry standards." See Seattle Mun. Code §14.23.030.
- 36 See also N.Y. Lab. Law §653(1).
- 37 Oregon's proposed legislation states that "[t]he board may employ and compensate employees and other advisors as the board deems necessary and appropriate. Members of the board shall receive such compensation as the board determines necessary and appropriate. Members of the board shall receive such compensation as the board determines is necessary and shall be reimbursed for expenses they incur in the exercise of board duties." See Or. House Bill 2490 (2019), §4.
- 38 See, for example, Seattle Mun. Code §14.23.030 (F).
- 39 The federal Domestic Workers Bill of Rights Act instructs the U.S. secretary of labor to appoint at least two full-time staff members to support board operations. See Domestic Workers Bill of Rights Act, S.2112 (2019), §201(g)(3)(B).
- 40 For example, Oregon's proposed legislation includes language that "[a]ll moneys collected as penalties under this subsection shall be paid to the Bureau of Labor and Industries to reimburse the board for the costs incurred by the board in performing its duties under this section." Or. House Bill 2490 (2019), §1(6)(a). Washington's proposed legislation also recommends "[e]stablishing penalties on any contributing agents or eligible beneficiaries out of compliance. Such penalties may be used to fund the department's compliance efforts. If the penalty results directly from a complaint by a benefit provider or validated worker representative, the collected award must be split between the department and the complainant." See Wash. Senate Bill 5690 (2019), §44(1)(g).
- 41 Washington's proposed legislation directs the Department of Labor and Industries to create rules for administering and enforcing workers' boards including rules for "[e]stablishing a fee on contributing agents to fund the department's compliance efforts." See Wash. Senate Bill 5690 (2019), §44(1)(a).
- 42 Under N.Y. Lab. Law §655(4)(b), no report or recommendation by the board shall be submitted without the prior vote of no less than a majority of all the members of the board in support of such report or recommendation.
- 43 Note that some cities may not have the authority granted to them by the state to act on all board recommendations. In this case, board recommendations may need to be advisory.
- 44 Andrias, "An American Approach to Social Democracy."
- 45 See for example, Wash. Senate Bill 5690 (2019), §29 which states: "When the workers' board reaches a determination, through consensus or majority vote, the workers' board's determination must be adopted as a policy by the department." Note that the particular requirements for approval or rejection should take into consideration the governing state and local law on administrative process.
- 46 The full text reads, "After receipt of the wage board report and the public hearings on the proposed regulations, the commission may, upon its own motion, amend or rescind an existing order or promulgate a new order. However, with respect to proposed regulations based on recommendations supported by at least two-thirds of the members of the wage board, the commission shall adopt such proposed regulations, unless it finds there is no substantial evidence to support such recommendations." See Cal. Lab. Code §1182(a).
- 47 For example, Seattle's ordinance states that "reasons for the rejection" of board recommendations must be provided. See Seattle Mun. Code §14.23.030(H).
- 48 See also Domestic Workers Bill of Rights Act, S.2112 (2019), §201(e)2(B) and N.J. Stat. Ann. §34:11-56a15.
- 49 Annette Bernhardt and others, "Broken Laws, Unprotected Workers: Violations of Employment and Laws in America's Cities" (Washington: National Employment Law Project, 2009), available at <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>; Celine McNicholas, Zane Mokhiber, and Adam Chaikof, "Two billion dollars in stolen wages were recovered for workers in 2015 and 2016—and that's just a drop in the bucket" (Washington: Economic Policy Institute, 2017), available at <https://www.epi.org/publication/two-billion-dollars-in-stolen-wages-were-recovered-for-workers-in-2015-and-2016-and-thats-just-a-drop-in-the-bucket/>.
- 50 Seattle's ordinance provides for remedies including the payment of unpaid wages, compensation, liquidated damages, and interest; remedies are cumulative. See Seattle Mun. Code §14.23.095(A).
- 51 See Cal. Lab. Code, §§2698-2699.6. Note also that in New Jersey, an employee paid less than the minimum wage rate may bring civil action to collect the full amount of the minimum wage due to them less any compensation already received, or any wages lost due to the retaliatory action, plus costs and attorneys' fees. An employee may bring suit for themselves or those similarly situated. If an employee must resort to a court to enforce a court judgment, the employee shall be entitled to collect costs and attorneys' fees incurred in the enforcement action. See N.J. Stat. Ann. §34:11-56a25. See also Cal. Lab. Code §1194(a).
- 52 Requiring employers and hiring entities to post notices of regulations in an accessible language in conspicuous places around jobsites is another important strategy to raise worker awareness of the standards. For example New York's proposed farm worker bill mandates that "[e]very employer who has complied with section fifty of this article shall post and maintain in a conspicuous place or places in and about his place or places of business type-written or printed in English and Spanish notices in form prescribed by the chairman, stating the fact that he has complied with all the rules and regulations of the chairman and the board and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter..." See N.Y. Senate Bill 6578 (2019), §11.
- 53 For more details on co-enforcement, see Janice Fine and Jennifer Gordon, "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations," *Politics & Society* 38 (4) (2010): 552–585; Janice Fine, "Co-Production: Bringing Together the Unique Capabilities of Government and Society for Stronger Labor Standards Enforcement" (Northampton, MA: The LIFT Fund, 2015), available at http://theliftfund.org/wp-content/uploads/2015/09/LIFTReportCoproductioOct_ExecSummary_4.pdf.
- 54 California recently created a narrower definition of independent contractor in order to avoid employee misclassification. See California State Legislature, "AB-5 Worker status: employees and independent contractors," (September 18, 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20190200AB5.
- 55 California labor law states that, "If after investigation the commission finds that in any occupation, trade, or industry, the wages paid to employees may be inadequate to supply the cost of proper living, or that the hours or conditions of labor may be prejudicial to the health, morals, or welfare of employees, the commission shall select a wage board ..." Cal. Lab. Code §1178. See also, N.J. Stat. Ann. §34:11-56a8 and N.Y. Lab. Law §653. It is worth noting that states may have different definitions of "employee."

- 56 The Seattle ordinance covers domestic workers, meaning “any worker who 1) is paid by one or more hiring entities; and 2) provides domestic services to an individual or household in or about a private home as a nanny, house cleaner, home care worker, gardener, cook, or household manager. ‘Domestic worker’ includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers.” See Seattle Mun. Code §14.23.010. The federal Domestic Workers Bill of Rights Act also cover all domestic workers, defined as “an individual [except as provided in subparagraph (B)], including an employee, who is compensated directly or indirectly for the performance of domestic services ...” See Domestic Workers Bill of Rights Act, S.2112 (2019), §3(5)(A).
- 57 Karla Walter and Kate Bahn, “Raising Pay and Providing Benefits for Workers in a Disruptive Economy: State and Local Policies to Support Independent Contractors” (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/economy/reports/2017/10/13/440483/raising-pay-providing-benefits-workers-disruptive-economy/>. In addition, for more on the legality of covering independent contractors, see Andrias, “Social Bargaining in States and Cities,” p. 17.
- 58 The statute could also enable boards to treat tradeable sectors differently from nontradeable sectors, where capital flight is less of a risk.
- 59 See Seattle Mun. Code Ch. 14.23.
- 60 See N.Y. Senate Bill 6578 (2019).
- 61 See Wash. Senate Bill 5690 (2019).
- 62 Such laws would have to be designed to comply with federal antitrust law, for example, by ensuring that the state authorizes the bargaining and engages in active supervision to ensure that it accords with state policy. See *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101, 1112 (2015); *Parker v. Brown*, 317 U.S. 341 (1943).
- 63 New York’s proposed agricultural bill clarifies the term “employee” to include farm laborers—effectively extending collective bargaining rights to them—and also provides impasse resolution procedures if parties fail to achieve a collective bargaining agreement within 40 days of the certification/recognition of an employee organization. See N.Y. Senate Bill 6578 (2019), §3(c) and §21. Similarly, under Washington state’s proposal, nonemployee workers have the right to “(a) Organize and communicate freely with other workers; (b) Discuss terms and conditions of work with other workers and with contributing agents; (c) Form, join, or assist worker organizations; (d) Testify during board public hearings, without restraint on the content of their speech; (e) Take action with other workers to improve their working conditions or raise work-related complaints with the workers’ board.” Hiring entities may not prevent nonemployee workers from exercising these rights: “There shall be a rebuttable presumption of retaliation if a [hiring entity] takes an adverse action against a person within ninety calendar days of the person’s exercise of rights. The standard of proof for retaliation is that the protected activity was a motivating factor in the adverse action.” Wash. Senate Bill 5690 (2019), §43.
- 64 See Wash. Senate Bill 5690 (2019), §40.
- 65 For more on how unions make democracy worker better for everyone, see David Madland and Nick Bunker, “Unions Make Democracy Work for the Middle Class: Organized Labor Helps Ordinary Citizens Participate More and Have a Greater Say” (Washington: Center for American Progress Action Fund, 2012), available at <https://www.americanprogressaction.org/issues/economy/reports/2012/01/25/10913/unions-make-democracy-work-for-the-middle-class/>; Karla Walter and David Madland, “American Workers Need Unions: 3 Steps to Strengthen the Federal Labor Law System” (Washington: Center for American Progress Action Fund, 2019), available at <https://www.americanprogressaction.org/issues/economy/reports/2019/04/02/173622/american-workers-need-unions/>.
- 66 For more information and an example of how wage boards create a forum for bargaining, see The European Court of Human Rights’ decision in *Unite the Union v. the United Kingdom*, paragraph 58, on file with author. See also Hendy QC and Ewing, “Article 11(3) of the European Convention on Human Rights.”
- 67 For more on the importance of incentives for membership, see David Madland and Malkie Wall, “American Ghent: Designing Programs to Strengthen Unions and Improve Government Services” (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/issues/economy/reports/2019/09/18/474690/american-ghent/>.
- 68 Washington’s proposed workers’ board legislation states that “[a]n employer may not willfully misclassify an employee as an independent contractor. (2) A person may not charge an employee who has been misclassified as an independent contractor a fee, or make any deductions from compensation for any purpose, including for goods, materials, space rental, services, government licenses, repair, equipment maintenance, or fines arising from the employment where any of the acts would have violated the law if the individual had not been misclassified. (3) A person may not require or request an employee to enter into an agreement or sign a document that results in the misclassification of the employee as an independent contractor or otherwise does not accurately reflect the employee’s relationship with the employer.” Wash. Senate Bill 5690 (2019), §6(1). See also California State Legislature, “AB-5 Worker status: employees and independent contractors,” (September 18, 2019), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5.
- 69 For example the Domestic Workers Bill of Rights Act specifies that “[a] written agreement required under this section may not— (A) contain— (i) a mandatory pre-dispute arbitration agreement for claims made by a covered domestic worker against a domestic work hiring entity regarding the legal rights of the worker; or (ii) a non-disclosure agreement, non-compete agreement, or non-disparagement agreement, limiting the ability of the covered domestic worker to seek compensation for performing domestic services after the worker ceases to receive compensation from the domestic work hiring entity for the performance of domestic services ...” Domestic Workers Bill of Rights Act, S.2112 (2019), §110(d)(2).
- 70 The National Labor Relations Act (NLRA) protects employees’ right to engage in concerted activity for mutual aid or protection. Under current law, that protection should extend to participation in workers’ boards. The problem is that the NLRA provides only weak penalties and minimal enforcement mechanisms. In addition, the NLRA does not cover independent contractors, domestic and agricultural workers, and several other categories of workers. For more information, see Andrias, “Social Bargaining in States and Cities,” p. 11.

- 71 “(5)(a) Employers that employ long term care employees who serve as members of the board shall grant reasonable leave to the employees to participate in board activities without loss of compensation. (b) An employer may not penalize or retaliate against a long term care employee because of the employee’s participation in any of the activities of the board. (6)(a) The commissioner may assess a civil penalty in an amount determined by the commissioner against an employer who violates subsection (5) of this section. (b) All moneys collected as penalties under this subsection shall be paid to the Bureau of Labor and Industries to reimburse the board for the costs incurred by the board in performing its duties under this section.” See Or. House Bill 2490 (2019), §1.
- 72 See for example, Washington’s proposed legislation: “(1) The department must adopt rules for organizations to become benefit providers. (2) At a minimum, the rules on benefit providers must require: . . . (b) At least one-half of the organization’s board of directors to be comprised of eligible beneficiaries performing work for contributing agents or representatives of bona fide independent organizations of such workers.” Wash. Senate Bill 5690 (2019), §42.
- 73 For more details, see Madland and Wall, “American Ghent.”
- 74 Ibid.
- 75 “Within ninety days of the department validating an eligible worker representative, all contributing agents in the industry in which a workers’ board has been established must provide the validated worker representatives physical access to the intermediary employees, and submit a list of intermediary employees’ names and contact information to validated worker representatives, including the intermediary employees’: (a) Full names; (b) All known phone numbers, including cellular phones and landline or fixed-line phones; (c) Email addresses; and (d) Physical addresses.” Wash. Senate Bill 5690 (2019), §35(1).
- 76 “Upon a showing made to the board by a constituency association that at least 250 individuals of a particular constituency wish to have that association advocate for their interests, the board shall provide that association with the names and most recent contact information of the other constituents of the particular constituency eligible to vote in the next board election for the purpose of inviting those individuals to join their constituency association. The board shall provide the names and contact information within 7 days of the request. That association shall maintain the confidentiality of the list and may not share the list with the public or any other entity not authorized by the board.” Maine Ballot Initiative, “An Act to Establish Universal Home Care for Seniors and Persons with Disabilities” (2018), §7290(2).
- 77 Note that NLRA election rules requiring employers to provide unions with employee phone numbers and email addresses have been upheld by the federal courts. Celine McNicholas and Marni von Wilpert, “EPI comment on the National Labor Relations Board’s updated Election Rule,” Press release, Economic Policy Institute, April 16, 2018, available at <https://www.epi.org/publication/epi-comment-on-the-national-labor-relations-boards-updated-election-rule/>.
- 78 Washington’s proposed legislation states that “[d]ata required in subsection (1) of this section may not be reported to the department and must be reported directly to validated worker representatives. A third party may be used to transfer this data if appropriate to ensure adequate protection of the data.” Wash. Senate Bill 5690 (2019), §35(6).
- 79 New York City Administrative Code, “Title 20: Consumer Affairs, Chapter 13: Pay Deductions for Contributions to Not-For-Profit Organizations,” available at <https://www1.nyc.gov/assets/dca/downloads/pdf/about/FastFood-Deductions-LawRules.pdf>.

Our Mission

The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

