

Center for American Progress



# Strategies To Build Worker Power in Maine

10 Recommendations That Will Improve Maine's  
Economy and Democracy

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# Introduction and summary

Maine faces several overlapping challenges—including low wages, economic inequality, pay gaps across race and gender, and a political system that too often bends to the will of the rich and well-connected, not to mention the ongoing COVID-19 pandemic and associated recession. By adopting policies to strengthen the power of workers, the state can take significant steps to address these challenges.

The need for action in Maine is clear. In 2019, the median real earnings in the state were just above \$35,000—slightly below the national median.<sup>1</sup> Worse, median household income in Maine has hardly budged in three decades—and only in 2019 recovered to levels above what it was before the Great Recession.<sup>2</sup> In recent years, wage growth for Maine’s lowest earners has outpaced national averages, likely due to increases in the minimum wage.<sup>3</sup> However, the highest-paid earners continue to accumulate a larger share of the gains, with the top fifth of households capturing nearly half of all income in 2018.<sup>4</sup> More than 12 percent of Mainers live under the official federal poverty line,<sup>5</sup> and more than 1 in 3 families do not earn enough to pay for basic expenses.<sup>6</sup> In 2018, nearly half of Mainers reported that they would not be able to cover an unexpected \$400 expense.<sup>7</sup>

Job quality is also a concern for many Mainers. For example, one-third of Maine workers do not have full-time, year-round employment, and there is a high prevalence of part-time and seasonal jobs, especially in the tourism sector.<sup>8</sup> Both precarious employment and underemployment undermine workers’ economic well-being. Furthermore, roughly 1 in 3 private sector wage and salary employees work for businesses with fewer than 50 employees, where they have “far lower rates of access to paid sick time, family and medical leave (paid or unpaid), and employer-sponsored health insurance.”<sup>9</sup> Policies are needed to ensure that workers across industries have access to good benefits.

Meanwhile, Maine’s economy continues to favor white workers and men over people of color and women. The prime-age labor force participation rate for workers of color was 8 percentage points lower than for white workers in 2018.<sup>10</sup>

Furthermore, 19 percent of workers of color in Maine reported experiencing job discrimination—nearly three times the rate of white workers.<sup>11</sup> People of color and women both earn less than white men.<sup>12</sup> Occupations that employ Mainers of color also tend to provide worse benefits and schedules and are more likely to skirt workers' rights.<sup>13</sup>

The COVID-19 pandemic and resulting economic recession have exacerbated these long-standing problems. According to an analysis by the state Department of Labor, Maine has experienced the worst job losses in 50 years.<sup>14</sup> Workers of color in Maine are more than twice as likely to be unemployed as their white counterparts,<sup>15</sup> and if national trends are any indication, that gap has likely persisted or even widened during the pandemic.<sup>16</sup> One in 4 Maine households, representing almost 270,000 adults, said they found it “somewhat” or “very difficult” to pay their usual household expenses in the past week during the pandemic, according to the U.S. Census Bureau's Household Pulse Survey.<sup>17</sup>

Unfortunately, most workers in Maine do not have a strong voice on the job to help them address these issues. While public sector union density in the state is 45.7 percent, higher than the national average of 33.6 percent, only 5.5 percent of private sector workers belong to a union.<sup>18</sup> Worse, union membership in Maine has declined sharply over recent decades, causing many workers to be left behind: As the Maine Center for Economic Policy has noted, “Since 1964, [as] union membership in Maine has halved, ... the scale of income inequality has more than doubled.”<sup>19</sup>

Research shows that unions help Mainers earn higher wages and benefits,<sup>20</sup> even after controlling for age, education, occupation, and other factors, as well as help reduce gender and racial pay gaps.<sup>21</sup> Union members across the country are also much more likely to vote, take political action, join other groups, and be more charitable, which forces politicians to be more responsive to the will of the people<sup>22</sup> rather than just the wealthy. Additionally, research demonstrates that unions reduce racist attitudes among white workers.<sup>23</sup>

While many other reforms are also necessary to address the state's challenges—including reforms that improve workplace standards, enforce anti-discrimination rules, and lessen the influence of money in politics—among the most important reforms are those that ensure that workers have a strong collective voice.

There are several strategies that Maine can follow to strengthen worker power. Though federal law places limits on what state governments can do to strengthen workers' collective voice, states still have significant ability to act. Indeed, Maine has already taken a number of recommended steps, though it still has much more to do.

Specifically, this report recommends the following 10 strategies:

1. Provide workers a voice in setting and enforcing public health standards.
2. Ensure that government spending creates good jobs.
3. Improve workforce training by more fully involving worker organizations.
4. Create workers' boards to provide workers a voice in determining minimum industrywide pay and benefits.
5. Partner with worker organizations and provide workers with a private right to action to ensure that workplace standards are enforced.
6. Involve worker organizations in unemployment insurance modernization.
7. Strengthen public sector unions.
8. Use business permitting and licensing standards to support high-road businesses.
9. Close loopholes that allow employers to skirt legal responsibilities and undermine worker power.
10. Implement broad anti-retaliation protections.

With the federal government gridlocked over many major issues in recent years, states have become the staging ground for a variety of progressive pro-worker policies; many of today's most innovative labor policies have emerged at the state and municipal levels. States such as California, Washington, and New York are often seen as leading the way, but policymakers in a wide range of states—from Alaska to Connecticut and from Minnesota to Texas—have passed the types of policies recommended in this report. Indeed, Maine was the first state to mandate that most private employers provide earned paid time off for any reason,<sup>24</sup> and it has taken some leading efforts in support of policies to build worker power, such as with the passage of the state Green New Deal for workforce development policies.<sup>25</sup> Still, there is room and need to push further.

Strengthening worker power and improving workplace standards should be top priorities for Maine because they would do so much for the state. It would help raise wages, reduce economic inequality, close racial and gender pay gaps, and make the state's democracy more responsive to the public. This report provides a blueprint for the path forward.

# Strategies to build worker power in Maine

A number of reforms are needed to ensure that working Mainers have a voice in their workplaces and economy. Below, this report presents 10 strategies that Maine could use to strengthen worker power in standard setting, training, and enforcement.

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## Provide workers a voice in setting and enforcing public health standards

Hundreds of thousands of Americans have died from COVID-19. Although Maine has fared better than some states,<sup>26</sup> the coronavirus continues to pose a serious threat to public health and the state economy. Unfortunately, under the Trump administration, the federal Occupational Safety and Health Administration (OSHA) largely abdicated its responsibilities to set and enforce workplace safety standards during the COVID-19 pandemic, though the incoming Biden administration has promised significant changes.<sup>27</sup> Where OSHA has not set standards, states are free to act,<sup>28</sup> and Maine has even more authority to set standards for state and local public sector workers. Though Maine has issued guidelines for economic reopening, workers have expressed concern about their lack of specificity, and compliance remains an issue.<sup>29</sup>

While workplace safety standards are critical to setting a floor, worker voice and power are essential to ensuring these standards actually meet the needs of workers and the public and are properly implemented and enforced. Indeed, research shows that unions are critical to improving workplace safety and to ensuring that safety protections are actually followed.<sup>30</sup> Policymakers can pursue these dual goals—of promoting worker health and safety and worker power—using a number of related tools:

- **Guarantee workers a right to refuse work under dangerous conditions.**

Workers should not have to choose between their lives and their livelihood. Workers who reasonably believe that workplace conditions would expose them or the public to COVID-19, should be able to refuse to work without losing their jobs.<sup>31</sup>

- **Require the use of worker safety committees or worker safety compliance officers to communicate safety procedures.** Work-site-level monitoring is important for ensuring that individual workplaces actually comply with established standards. These officers or committees would be chosen by workers, have access to company health and safety records, train colleagues on the most recent COVID-19 guidance, educate workers about their rights, and promote compliance.<sup>32</sup> The Los Angeles County Board of Supervisors, for example, recently voted to create workplace public health councils.<sup>33</sup> The Los Angeles plan will certify third-party organizations, such as unions, “to train councils on coronavirus health protocols. Employers are encouraged but not required to pay workers for their time participating on the councils, to allow councils to meet on-site and to help third party organizations reach out to interested workers.”<sup>34</sup> Likewise, a proposed New York state executive order recommends the creation of safety councils in each workplace to “allow workers to come together and raise health and safety concerns to the employer.”<sup>35</sup>
- **Partner with unions and worker organizations to train workers on safety standards.** A related approach for strengthening compliance is to partner with labor unions and worker centers as part of a co-enforcement model, described in more detail below.<sup>36</sup> Collaborating with community worker advocates gives labor agencies access to on-the-ground information and can help reluctant workers come forward. By providing funding for this work, states and localities can ensure that enforcement efforts are sustainable far into the future.
- **Guarantee workers the right to collect unemployment insurance if they quit their job due to unsafe working conditions.** In some cases, it may be necessary for workers to quit their jobs to protect the health of themselves or their families. Workers deemed to have separated from employment for a good cause should be eligible to collect unemployment insurance, as recommended by the National Employment Law Project.<sup>37</sup>
- **Workers who contract COVID-19 should be presumed to have an occupational disease and thus can access workers’ compensation.** Workers’ compensation provides essential income support to sick workers.<sup>38</sup> Therefore, Maine should ensure that its workers’ compensation program covers COVID-19 as well as any associated quarantine. Workers’ compensation should be available to all workers, regardless of immigration status.

- **Guarantee whistleblower protections for raising health or safety concerns.** To ensure that workers feel comfortable reporting workplace violations, policymakers should institute whistleblower protections.<sup>39</sup> These laws should protect workers from retaliation regardless of whether they submit complaints through formal health and safety forms or by notifying fellow workers and the public.
- **Provide a private right of action to enable enforcement of safety standards.** Furthermore, to deter employers from taking advantage of workers, workers should have the right to go to court to seek redress and combat retaliation.<sup>40</sup>
- **Ensure public sector workers are appropriately represented on the state board of occupational safety and health.** By Maine statute, the public sector occupational safety and health board must comprise 10 members, including three representatives of employers, three representatives of employees, two representatives of the public, and one representative of an insurance company licensed to insure workers' compensation.<sup>41</sup> Unfortunately, worker representatives selected by the governor do not always represent the interests of workers. Maine should ensure that representatives actually represent worker interests, such as by requiring the selection of candidates who have demonstrated they represent a sufficient number of workers or by holding elections.<sup>42</sup>

Workers can provide unique insights to help address workplace health and safety challenges. By giving them and their representatives a role in creating, implementing, and enforcing standards, Maine can ensure that public health standards meet the needs of workers and that employers comply with those standards.

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## Ensure that government spending creates good jobs

Maine's state government spends roughly \$7 billion each year.<sup>43</sup> While much of this money funds government programs and pays salaries, a significant percentage is paid to private sector companies through contracts, grants, loans, and tax expenditures. Policymakers should ensure that these dollars support quality jobs and provide good value for taxpayers by ensuring that all forms of government support to private sector employers come with requirements for decent wages, safe and discrimination-free workplaces, and a voice on the job.

During the last legislative session, state policymakers passed a number of measures to increase fairness for workers in the public contracting system: L.D. 1564 explicitly authorized public entities to enter into project labor agreements (PLAs),



reversing a ban by the former governor;<sup>44</sup> L.D. 1386 increased fairness in contracting by expanding the definition of “public works” and strengthening the process for determining prevailing wage rates;<sup>45</sup> and L.D. 1282, more commonly known as Maine’s Green New Deal,<sup>46</sup> mandated that initially 10 percent and ultimately 25 percent of employees working on electricity generation projects be registered apprentices.<sup>47</sup> Still, there is more work to be done to ensure that these standards govern more funding streams, industries, and types of work.

Going forward, state policymakers should take steps to extend strong worker protections to new sectors and more types of spending. For example, policymakers could attach strings to grants and contracts as well as loans and tax breaks for businesses. These requirements could also be extended across the public sector, including to entities such as community colleges and public universities. In addition, it is important that the government implement meaningful enforcement strategies to ensure compliance. Among other things, policymakers should apply the following standards to all work that Maine taxpayers finance or subsidize:

- **Pay prevailing wages and benefits.** Maine should require that any worker paid directly or indirectly through taxpayer funds receive wages and fringe benefits that are comparable to those paid to other similarly placed workers in the region. In addition to covering the construction sector, policymakers should extend prevailing wage mandates to service work. A report by the Center for American Progress provides more detailed guidance to state and local policymakers looking to strengthen and expand the coverage of prevailing wage laws.<sup>48</sup>
- **Encourage labor peace.** To promote good relations between workers and employers on key state projects at risk of labor disruption, policymakers should encourage the use of labor peace agreements: contracts between companies and unions that prohibit strikes, work stoppages, and lockouts.<sup>49</sup> Furthermore, large building and infrastructure projects should require contractors to use PLAs and community workforce agreements—prehire agreements between unions and construction managers that set the terms of employment for all craft workers on a given project. Community workforce provisions can mandate that part of the workforce be hired from targeted communities.
- **Promote the development of a skilled workforce.** Maine should require that 15 percent or more of labor hours on large-scale infrastructure projects be performed by apprentices participating in programs that meet federal and state registered apprenticeship standards. Targeted-hire and pre-apprenticeship initiatives that help ensure that affected groups—such as local residents, women, people of color,

workers with disabilities, and other disadvantaged groups—are able to access these jobs, are also important.<sup>50</sup>

- **Mandate compliance as a requirement for receiving government funding.**

Finally, the state government should implement meaningful enforcement strategies to ensure compliance. In the government contracting space, responsible bidder laws are an effective tool for ensuring that only contractors and other funding recipients that comply with the law receive contracts.<sup>51</sup> Relatedly, employers who persistently violate workplace laws should be explicitly prohibited from bidding on new contracts. Maine can go even further in this space by creating explicit preferences for bidders with good workplace practices. Furthermore, policymakers can require companies to submit detailed cost analyses with their contract bids to discourage artificially low bids that squeeze workers.

These measures will help ensure that government dollars uphold strong workplace standards and protect high-road employers that pay good wages and benefits and that comply with the law, from unfair competition.

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## Improve workforce training by more fully involving worker organizations

With the oldest population in the nation and many residents nearing retirement age, Maine could face a serious worker shortage in the next couple years.<sup>52</sup> A legislative task force found that the shortage of skilled workers applies to a range of both professional and support occupations.<sup>53</sup> Meeting the labor shortfall will require a number of strategies, including efforts to attract new workers to the state.<sup>54</sup> Maine should also ramp up workforce training to ensure that workers are qualified to fill the most in-demand jobs.<sup>55</sup> Unfortunately, Maine currently underinvests in workforce development. Worse, the training that the state offers does not always lead to a good job. Going forward, the government should take a number of steps to not only increase funding for workforce development, but also better involve unions in the workforce training system to ensure that training actually leads to quality employment;<sup>56</sup> research shows that involving unions in joint labor-management training leads to more training and better results.<sup>57</sup> These steps include:

- **Promote labor-management training programs.** To encourage these types of programs, Maine should amend or create new training standards to require that training for specific occupations or industries be provided by labor-management

partnerships.<sup>58</sup> In addition, the state should create a dedicated public funding stream for labor-management training programs—which often include, but are not limited to, registered apprenticeships.

- **Attach job quality requirements to public training dollars.** To prevent the subsidization of low-quality jobs, all public training dollars should come with wage standards, including a \$15-per-hour floor, paid leave, and other benefits. For example, policymakers could include wraparound benefits—such as transportation benefits and child care—to encourage participation.
- **Promote registered apprenticeships.** Registered apprenticeships are popular among workforce advocates, workers, and employers alike as a way to ensure quality training.<sup>59</sup> Although Maine has had an apprenticeship program since 1941, the number of individuals participating in the program has grown dramatically in recent years.<sup>60</sup> In 2019, the program served more than 1,100 people, a 44 percent increase over the prior year. About 40 percent of apprentices worked in construction, and roughly an additional 40 percent were in health care and professional services.<sup>61</sup> Despite growing interest in registered apprenticeships, state investments in these programs remain flat. In recent years, the state’s general fund allocated just \$200,000 for apprenticeship training reimbursements. Maine allows the state Department of Labor to reimburse apprenticeship sponsors for up to 50 percent of classroom training costs.<sup>62</sup> But due to an increasing number of sponsors requesting reimbursement and the available funding level, reimbursements have more than halved, from roughly \$1,200 per apprentice in recent years to up to \$500 in 2019.<sup>63</sup> With fewer dollars available per person, employers may find it increasingly impractical to seek out approved apprenticeships. In order to ensure continued program utilization and effectiveness, policymakers in Maine should increase funding for and investments in registered apprenticeships. The state should also adopt apprenticeship utilization requirements, discussed above, to incentivize the use of apprentices on construction projects.
- **Institute training requirements or certifications for certain occupations.** One way that Maine can professionalize and raise standards in certain industries is by creating training requirements. A well-known model for this is the Service Employees International Union (SEIU) 775 Training Partnership in Washington state.<sup>64</sup> Washington recognizes the right of home care workers paid through Medicaid funds to unionize, while also requiring that those workers become certified as home care providers. The training requirements help raise standards throughout the industry. At the same time, collective bargaining ensures that training actually leads to higher wages in ways that encourage worker growth and quality services.<sup>65</sup>

In a different type of training requirement, Massachusetts requires individuals to complete an approved training program in order to receive a welding permit.<sup>66</sup> These certifications help protect the public by limiting risks of fires and moderate training in that industry.<sup>67</sup> Ultimately, it is important that workers and employers partner to develop training requirements that reflect the needs and expertise of the industry.<sup>68</sup>

- **Use workforce training to strengthen the public sector workforce.** Maine could also use occupationally specific training partnerships in hard-to-fill in positions in the public sector. With high levels of retirement leading to staffing shortages, Maine could use these types of labor-management training partnerships to recruit new workers to public sector jobs. For instance, New York City has partnered with American Federation of State, County and Municipal Employees (AFSCME) District Council 37 to create an information technology (IT) apprenticeship, in order to attract and retain workers from diverse backgrounds to IT positions in government.<sup>69</sup> Similarly, in Pinellas County, Florida, the school district and the Pinellas Classroom Teachers Association partnered to create a boot camp for early-career teachers in order to boost teacher retention across the district.<sup>70</sup> Project coordinators hope that these programs will provide workers with relevant work experiences and also help state and local governments attract workers who would otherwise go to the private sector. In addition, with most government workers continuing to work from home due to the pandemic, government agencies could partner with unions to train employees on the online work environment. Maine could even use these types of partnerships to help public sector employees navigate state benefits, as Oregon has recently done by launching a pilot program with SEIU Local 503.<sup>71</sup>

Taking steps to involve worker organizations in all aspects of training could help Maine improve outcomes for workers and employers alike.

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## Create workers' boards to provide workers a voice in determining minimum industrywide pay and benefits

Different workers in Maine may have different needs. The challenges faced by direct care workers, for instance, differ from those faced by workers in retail or trucking. To address the needs of particular sectors and occupations, Maine could pass legislation to establish sectoral workers' boards. Workers' boards—sometimes called wage boards—are tripartite bodies that bring together representa-

tives of labor, industry, and government to set things such as minimum wage rates, benefits, and workplace standards for industries and occupations.<sup>72</sup> Workers' boards can even create wage scales that account for skills and experience to allow for greater flexibility, making it possible to increase compensation for both low- and middle-wage jobs. Moreover, they can establish scheduling requirements, paid leave policies, training standards, portable benefit contribution rates, and safety requirements. Indeed, some states are considering legislation that would create industry-specific worker committees to set workplace safety standards during COVID-19.<sup>73</sup>

More generally, research indicates that broad-based bargaining and standard setting—which workers' boards are an example of—are useful strategies to close racial and gender pay gaps, reduce economic inequality, and encourage companies to compete based on greater productivity rather than low pay.<sup>74</sup>

Boards can create a new forum for worker representatives to come together for the first time, thus providing an opportunity to boost worker power while also boosting standards.

A handful of states and localities already have laws that allow for workers' boards. New York state, for example, empaneled a wage board to raise the minimum wage for fast-food workers to \$15 an hour.<sup>75</sup> In Seattle, there is now a workers' board governing domestic workers.<sup>76</sup> Legislators in Washington state and Oregon have also considered proposals to create sectoral boards.<sup>77</sup> In fact, workers' boards have even been proposed in Maine. In 2018, Mainers considered an unsuccessful ballot initiative to establish a Universal Home Care Trust Fund that would have included a home care board responsible for promulgating minimum wage and workplace standards and administering the program.<sup>78</sup> By implementing these types of sectoral workers' boards in Maine, policymakers can boost job standards, including for workers in occupations and sectors that are heavily fissured with layers of contracting.

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Partner with worker organizations and provide workers with a private right to action to ensure that standards are enforced

A worker experience survey conducted by the Maine Center for Economic Policy estimated that 15,000 hourly workers were paid less than the statutory minimum wage in 2019, likely costing workers more than \$30 million in lost wages.<sup>79</sup> An unknown number suffer wage theft as the result of other illegal workplace prac-

tices, such as being asked to clock in late or clock out early or requiring that tipped workers split tips with management. Unfortunately, many of these instances of wage theft—not to mention violations of paid leave protections and other labor and employment laws—go unchallenged, in part because the authorities lack adequate resources.<sup>80</sup>

Due to hiring freezes in the state Labor Department and other agencies during the previous LePage administration, the department has limited staff capacity to investigate and enforce labor laws.<sup>81</sup> In 2018, for example, the Wage and Hour Division of Maine’s Labor Department had just six full-time equivalent positions.<sup>82</sup> Seeking to address this, state lawmakers in the last session considered legislation to make it easier for the state attorney general’s office to take speedy action against violators.<sup>83</sup> To ensure that the Labor Department has sufficient staff capacity going forward, the state should also fully fund its enforcement division. A complementary strategy the government could use to bolster its traditional enforcement activity is co-enforcement.

Under a co-enforcement model, government agencies work closely with unions and worker organizations to expand their on-the-ground capacity and improve compliance.<sup>84</sup> These partner organizations act as intermediaries between workers and government to educate workers on their rights and provide guidance to workers seeking to redress issues in their workplaces. Co-enforcers can also directly alert government agencies to violations, making it easier for agency inspectors to levy penalties. Furthermore, this model gives workers an opportunity to interact with worker representatives, ensuring greater exposure for those organizations and the benefits they provide.

Several cities and states use this approach to enforce minimum standards in hard-to-reach workplaces. For example, San Francisco’s Office of Labor Standards Enforcement funds worker centers and other community-based organizations to conduct education and outreach around local labor laws in low-wage minority and immigrant communities,<sup>85</sup> while Los Angeles trains trade unions to enforce prevailing wage laws on school district projects.<sup>86</sup> California’s Division of Labor Standards Enforcement also pursued these efforts at the state level.<sup>87</sup> Maine could take a similar approach by partnering with state and local unions to enforce its minimum wage, paid time off, and health and safety standards at individual work sites. With increased occupational risks due to COVID-19, active workplace enforcement is more important than ever.

In addition to bolstering state enforcement mechanisms, policymakers should ensure that workers are able to bring a lawsuit in court to recover unpaid wages and hold employers accountable for labor and employment violations. Since retaining legal representation is expensive and often cost-prohibitive, it is also important that the prevailing plaintiff be able to recover attorneys fees and costs.<sup>88</sup> A good policy would also allow attorneys who successfully enforce workers' rights in court to provide financial support to nonprofit organizations who refer those cases.<sup>89</sup> Private right to action constitutes an important part of any good enforcement toolkit because the threat of legal fees and a judgment in civil court can act as a larger deterrent to violators than state fines. With public agencies' enforcement priorities likely to shift over time, private enforcement also ensures that workers always have an avenue to protect their rights.<sup>90</sup>

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## Involve worker organizations in unemployment insurance modernization

The COVID-19 pandemic has highlighted the urgent need to reform state unemployment insurance systems. Tens of thousands of Mainers relied on unemployment insurance in 2020. In addition, there are likely thousands of other unemployed workers who need unemployment insurance but are not getting it.<sup>91</sup> During normal times, roughly 3 in 4 laid-off workers do not apply for unemployment insurance.<sup>92</sup> Furthermore, national research shows that workers of color and those with less education are less likely to apply for and receive unemployment benefits.<sup>93</sup> A number of policy changes are needed to modernize fractured unemployment insurance systems, expand access, and boost uptake rates. Among other things, lawmakers should extend eligibility to part-time workers and independent contractors, increase benefits amounts, and provide better guidance for workers seeking those benefits. States can also encourage employers to use work-sharing or short-time compensation programs as an alternative to layoffs.<sup>94</sup>

In addition, the state should consider giving labor unions and other worker organizations a more formalized role in the jobless benefits system. For instance, Maine could establish a funded navigator function for unions and worker organizations to connect workers with unemployment insurance benefits.<sup>95</sup> By making workers aware of jobless benefits, helping workers to complete application forms, and protecting workers from retaliation, labor unions can help boost access to unemployment insurance and close gaps for workers of color and those with less education.<sup>96</sup> Indeed, unions in Maine have played an important role during COVID-19

in helping workers sign up for unemployment insurance. As of November 2020, the Maine AFL-CIO had directly supported more than 3,500 workers filing, navigating, and troubleshooting unemployment insurance.<sup>97</sup> The union established a portal on its website where the unemployed can request help and trained a team of 10 to 15 volunteers to assist workers with navigating the system; it also established a Facebook group to provide resources to workers seeking help.<sup>98</sup> Furthermore, the Maine AFL-CIO was able to use its familiarity with the system to encourage the Maine Labor Department to implement systematic and technological improvements to its system.<sup>99</sup>

As CAP describes in a separate report, similar arrangements—wherein trade unions receive government funds to help administer public unemployment insurance—have long been used successfully in several northern European countries.<sup>100</sup> The Ghent system, for example, provides labor unions with a formalized role in helping workers sign up for unemployment insurance, leading to high-quality public services; incidentally, it creates a framework for recruitment and retention of new members.<sup>101</sup>

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## Strengthen public sector unions

In 2019, more than 45 percent of public sector workers in Maine belonged to a union.<sup>102</sup> Although Maine's public sector union density is higher than the national average of 33.6 percent,<sup>103</sup> further action is needed to ensure that those workers are able to effectively exercise their voice, especially in light of the U.S. Supreme Court taking action to weaken public sector unions.<sup>104</sup> Strong public sector unions are also important for helping employees bargain for higher wages and benefits, at a time when the lack of competitive wages is impeding government agencies in their efforts to recruit and retain staff.<sup>105</sup>

Recognizing the important role of public sector employment, the Maine Legislature took some steps in 2019 to support public sector employees and their access to unions.<sup>106</sup> Yet more policy change is needed to ensure that public sector workers are able to exercise their voice on the job.<sup>107</sup> For example, Maine should enact laws permitting workers to sign up for membership electronically and pay dues through payroll deduction. Lawmakers should also ensure that most public sector workers have the right to strike, an important tool for collective organizing and bargaining.<sup>108</sup> Moreover, to ensure that public sector union membership remains high in the face of the impending wave of Baby Boomer retirements, poli-



cymakers should ensure that new public sector employees receive training about their rights under the law as well as the benefits of union membership as part of their official new hire orientations.<sup>109</sup> State and local governments could also provide unions with a role in workforce training,<sup>110</sup> benefits delivery, and standards enforcement.

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## Use business permitting and licensing standards to support high-road businesses

Maine can also use its power to issue business licenses and permits as a way to structure industries, improve job quality, and ensure that low-road competitors do not drive down standards. A number of cities and states around the country condition permitting and licensing on wage and hour compliance and workplace safety requirements. Austin, Texas, for example, uses an incentive-based model to encourage businesses to take the high road: Real estate developers who participate in a certification program to ensure that subcontractors pay living wages and provide safe workplaces become eligible to receive expedited building permits.<sup>111</sup>

Maine could also take a more targeted approach and impose more stringent licensing requirements in industries with a history of labor violations, as California has done in the car wash industry using labor bonds.<sup>112</sup> Moreover, there are instances of government agencies coordinating on standards.<sup>113</sup> The San Francisco Department of Public Health can suspend or revoke health permits for restaurants found to violate wage and hour laws.<sup>114</sup>

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## Close loopholes that allow employers to skirt legal responsibilities and undermine worker power

Employers use numerous legal strategies to avoid recognizing workers' rights, and long-standing legal loopholes allow them to do so. Worker misclassification—where workers are illegal classified as “independent contractors” with few rights—for example, is a persistent and growing issue in a number of industries, including construction, home care, and the app-based economy.<sup>115</sup> State reports have estimated that 11 percent of employers in Maine misclassify their employees as independent contractors, costing the state millions of dollars in lost workers' compensation, unemployment insurance, and income tax revenues.<sup>116</sup> Because Mainers of color are more likely than white Mainers to work in industries where misclassification is most common, this also drives racial inequities in the state.<sup>117</sup>

Corporations' use of "fissured" work structures—through subcontracting, temp and staffing agencies, and franchising—also make it difficult to hold employers accountable.<sup>118</sup> For example, in the fast-food industry, corporations commonly use franchising as a way to outsource responsibility for their restaurant workers while maintaining control over business operations.

Maine should work to address the persistent problem of employee misclassification in many sectors of the state's economy. Additionally, it should take active steps to ensure that workers, particularly gig workers, receive the legal protections they are entitled to. For example, Maine should clarify that employee rights and protections apply to on-demand platform workers and issue clear guidance on businesses' joint employer responsibilities and independent contractor misclassification, as recommended by the National Employment Law Project.<sup>119</sup> The state must also fight any attempt by online platform employers to exempt their workforce from coverage under workplace standards laws, including through carve-outs from minimum wage, unemployment insurance, and workers' compensation laws.<sup>120</sup> Maine could even pursue more innovative sectoral solutions and follow the lead of states such as Washington,<sup>121</sup> which has proposed legislation to establish a workers' board as well as portable benefits for nonemployee workers—effectively creating a way for those groups to join together and set high industrywide standards.

Furthermore, Maine should provide that all workers who are excluded from coverage under the National Labor Relations Act, including farmworkers,<sup>122</sup> domestic workers, and independent contractors, have the right to join a union and bargain collectively. This is especially important, because these occupations are frequently performed by people of color.

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## Implement broad anti-retaliation protections

Anti-retaliation protections help prevent employers from threatening, firing, or otherwise retaliating against workers who raise concerns about employment law violations. Importantly, they also ensure that workers are able to take advantage of existing programs, such as universal paid time off. A 2019 survey found that between one-quarter and one-third of Maine workers "didn't use some or all of their [paid time off] leave because they feared employer retaliation or because their employer made it too difficult to use."<sup>123</sup> Language stripped from Maine's original paid-time-off bill would have allowed employees to sue employers if they believed they were retaliated against for taking time off,<sup>124</sup> yet the state failed to

address those retaliation concerns even when it finalized its paid-time-off rules.<sup>125</sup> A bill to generally strengthen Maine’s whistleblower protections has not yet been taken up by the Legislature, either.<sup>126</sup>

Maine policymakers can protect workers from retaliation by passing strong whistleblower and anti-retaliation protections. A National Employment Law Project report highlights four key measures in anti-retaliation legislation, including fines, monetary damages, recovery of attorneys fees, and a private right of action.<sup>127</sup>

# Applying these strategies to specific sectors

The above strategies are intended as a menu of what is possible in this space. These strategies could be applied broadly across the state, as well as targeted to specific sectors. Ultimately, Maine should adopt all of the recommendations and apply them to as many workers as possible, but there may be reasons to focus on certain sectors.

The caregiving sector, for instance, could benefit from the state implementing a number of the strategies described above. The caregiving industry is a significant and growing employer in Maine: Registered nurses are the second-biggest occupation in the state—comprising more than 15,000 people<sup>128</sup>—and roughly an additional 15,000 Mainers work as personal care aides and nursing assistants.<sup>129</sup> However, Maine’s aging population, combined with a decline in young workers, portends a coming worker shortage in long-term care services.<sup>130</sup> The fact that many care occupations tend to be some of the most underpaid, further complicates the issue. In Maine, the median hourly wage for direct care workers is just \$13.33 per hour.<sup>131</sup> Policy interventions are needed to stabilize the workforce and ensure that these workers are properly compensated for the essential services they provide, especially because a large percentage of care jobs are reliant on public funding.<sup>132</sup> Policymakers could, for example: ensure that government spending creates good jobs by adjusting the rate-setting or reimbursement process to produce higher standards and greater worker involvement; use workers’ boards to set industrywide standards; enact licensing standards that support stable, high-road employers; and allow home care workers to negotiate with the government over rates.<sup>133</sup>

Similarly, policymakers could take a number of steps to ensure that construction jobs are quality jobs. As the third-biggest industry in Maine, construction supplied employment to nearly 37,000 people in 2018.<sup>134</sup> Yet union density in private construction—an industry that is typically unionized at higher-than-average rates—sits at a mere 3.6 percent in Maine.<sup>135</sup> Policymakers could take steps to boost worker power in the construction industry by addressing misclassification; ensuring that all government spending promotes high standards and rights for workers; and using business licensing and permitting standards to support stable, high-road employers.

Workers in other sectors, including education and hospitality and tourism, also stand to benefit from reforms. Policymakers should work with worker representatives and businesses to identify sector-specific challenges and tailor policies to meet those needs. By using a number of the above strategies in combination, policymakers can work toward the strongest outcomes for the greatest number of workers.

# Conclusion

Working Mainers face a number of challenges, including low wages and benefits, inconsistent job quality, and persistent racial inequities. The COVID-19 pandemic has brought on additional concerns over health and safety. Yet weak worker protections and low rates of union membership too often prevent workers from taking necessary action, and key policy reforms are needed to improve standards and ensure that workers have a strong collective voice. By empowering workers across occupations and industries, state policymakers can improve job quality for individual workers while also ensuring a safer and more equitable economy for all Mainers.

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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.

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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.

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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.

