

Union Trigger Laws 101

How States Can Protect Workers if Federal Labor Law Falls

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Introduction and summary

Policymakers and advocates in New York and California are fighting for workers' rights by enacting union trigger laws. Massachusetts is debating a similar policy, as are several other states. These laws would regulate private sector workers' right to organize and bargain at the state level if the National Labor Relations Act (NLRA)—the primary federal law guaranteeing the union rights of private sector workers—is struck down or ceases to be enforced.¹ Far more states should advance union trigger laws so that workers are able to exercise their rights in the future.

Yet union trigger laws should do far more to promote unions and expand collective bargaining. Existing union trigger laws include needed protections to block corporations from undermining workers' efforts to unionize but are inconsistent in their approach and do too little to reverse decades of decline in union membership.

Specifically, union trigger laws should:

- **Fix workplace-level bargaining:** Workers must be able to unionize free from coercive corporate tactics such as captive audience meetings, companies that break the law should be held accountable with strong penalties, and workers should be empowered to pursue justice through a private right of action.
- **Allow all workers to bargain:** Farmworkers and domestic workers should be included in bargaining protections, and employment definitions should be strengthened so that companies cannot avoid bargaining by misclassifying workers or outsourcing work.
- **Give workers power to bargain for an entire sector:** Processes should empower workers to access industry-wide bargaining.
- **Use government spending to spark unionization and collective bargaining:** Cities and states spend hundreds of billions of dollars every year to support the private sector.² Trigger laws should ensure that companies that receive government funding respect workers' labor rights.

By expanding the scope of these policies, union trigger laws could help millions of workers form unions and bargain collectively in their states as well build support for a broad package of labor law reforms to be advanced once proworker lawmakers gain power in Congress.

Today, the NLRA's protections are so weak that anti-union corporations typically undercut worker organizing and bargaining through both legal and illegal means.³ In addition, American industries have restructured in ways that make bargaining at the workplace level near impossible for too many workers. In 2024, just 6 percent of private sector workers were members of unions, despite union approval rates maintaining their highest levels in decades.⁴

The Trump administration is going further than any previous administration to stop enforcing the NLRA, and cases before conservative courts threaten to invalidate the law or render it unenforceable—with some arguing that these actions have already effectively blocked NLRA enforcement in some jurisdictions.⁵ As a result, millions of American workers who want to form a union may soon have no legally defended path to do so. Also, current union members would not have legal protections to enforce pay and workplace standards included in existing collective bargaining agreements or negotiate future agreements. This creates a climate where states must act to protect workers' rights.

Most of the recommendations detailed in this report could be fully implemented by state legislatures only if the NLRA ceases to preempt state-level actions to regulate private sector labor rights. Others are a necessary element of a state-level bargaining regime but could be adopted separately now.⁶ Drafters should be careful to ensure trigger laws do not preclude immediate action.

Union trigger laws give states the opportunity to rewrite labor laws in ways that build power for workers across their communities and reflect the economic realities of the 21st century. By incorporating strong union trigger laws into a proworker agenda, state policymakers can ensure that private sector workers can bargain for decent working conditions no matter the actions taken by conservative courts and the Trump administration, thereby ensuring that work pays for everyday Americans.

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What is a union trigger law?

For nearly a century, private sector bargaining rights have been protected at the federal level. The NLRA recognizes the right of most American workers employed in the private sector to join together in unions and collaborate to improve work conditions outside of unions. It also establishes procedures for workers to organize, petition employers to recognize their union, bargain for a contract, and hold accountable anti-union companies that violate their rights.⁷ Courts have interpreted the law as preempting states from enacting or enforcing enhanced bargaining protections for workers whose labor rights it protects.⁸ Union trigger laws would permit a state to regulate private sector bargaining if the NLRA is struck down or ceases to be enforced and thus no longer preempts state action.

How do recent actions by the administration and in the courts create the need for trigger laws?

The Trump administration and conservative courts are threatening to eliminate private sector bargaining protections. On January 27, 2025, the Trump administration fired National Labor Relations Board (NLRB) Chair Gwynne Wilcox, effectively shutting down the top adjudicatory body enforcing private sector bargaining, before even nominating new members.⁹ It took nearly six months for Trump to name his nominees, during which time the board has lacked a quorum to decide cases on union representation or hold violators accountable for unfair labor practices.

In fact, the board still lacks a quorum. While President Trump nominated two new members to the board in July, Senate confirmation could take months, during which time workers will continue to have no final redress against violators.¹⁰ In addition, the administration has slashed staffing for the Federal Mediation and Conciliation Service—which helps resolve labor disruptions and work stoppages by offering mediation services to employers and unions—and is proposing to entirely eliminate the agency.¹¹

Finally, companies including Trader Joe's, SpaceX, Amazon, and Starbucks are undermining active worker organizing efforts with lawsuits and legal defenses, arguing that the NLRA itself is unconstitutional due to agency structure and use of administrative law judges.¹² While the Supreme Court upheld government's right to administer laws in this way as early as 1935, recent decisions by the conservative majority on the Supreme Court and the 5th Circuit signal that the courts could fully upend the agency's ability to enforce labor basic rights.¹³

These attacks threaten the well-being of union members and have economic and social consequences for all working people. Research shows that unionization boosts earnings and wealth, improves access to benefits such as health insurance and vacation time, and closes racial wage and wealth disparities.¹⁴ In communities where unions are strong, more citizens vote and more working-class candidates run for office, and children born into poverty have a better shot at climbing into a higher income bracket as adults.¹⁵

How are state and local policymakers responding?

States are beginning to debate and enact trigger laws that would regulate private sector bargaining at the state level should the NLRA cease to be enforced.

- **New York** enacted a union trigger law this year that allows the state’s Public Employment Relations Board—the agency that oversees bargaining rights for state and local government workers—to certify union elections and enforce collective bargaining agreements for private sector workers unless the NLRB “successfully asserts jurisdiction.”¹⁶
- **California’s** law contains several specific triggers—such as the lack of a quorum on the NLRB, the repeal or narrowing of the NLRA, or the failure to receive a timely remedy from the board. It would allow workers to petition the state’s Public Employee Relations Board and grants the agency authority to certify bargaining units, decide unfair labor practice cases, require mediation, and collect civil penalties of \$1,000 per worker per violation to be deposited into an agency enforcement fund.¹⁷
- **Massachusetts’** proposed legislation would empower the state’s Department of Labor Relations and Commonwealth Employment Relations Board to act should the NLRA cease to preempt state laws—including by providing the most extensive remedies, such as backpay, forward pay, triple damages, and civil penalties of no less than \$10,000 per violation.¹⁸ The proposal also strengthens employment definitions to prevent companies from avoiding bargaining by outsourcing workers, bans captive audience meetings, and allows for efficient union selection processes.

States have considerable experience enforcing workers’ labor rights. Today, about 42 percent of unionized workers are state and local government employees.¹⁹ The work of public employee relations boards echoes existing NLRB procedures in several ways; for example, the boards certify public sector union elections and adjudicate unfair labor practice complaints.²⁰ While the types of complaints heard by

public employee boards are often similar to those lodged by private sector workers with the NLRB, state public sector bargaining laws often include procedural differences that make union selection processes run smoother for workers or ban more types of unfair labor practices.²¹

Yet administration of private sector bargaining rights would bring new challenges to states. Adding the oversight of private sector worker bargaining would essentially double the number of workers reliant on an existing state system, and private sector labor relations are far more combative than those of the public sector, with corporations frequently undermining workers' efforts through both legal and illegal means.

In theory, workers should be able to choose to unionize free from company coercion or pressure. Yet the NLRA permits companies to influence employees' decisions through mandatory meetings and one-on-one conversations with supervisors. Moreover, penalties for lawbreaking are so low that many corporations view them as a cost of doing business.

According to 2019 research from the Economic Policy Institute, companies are charged with violating the NLRA—including illegally firing or retaliating against workers for their organizing efforts or threatening to do so—in about 42 percent of all union elections.²² Even after workers win an election, companies may draw out negotiations for a first contract governing wages and working conditions so long that workers give up on the union entirely. Academic research finds that workers in only 1 in 7 organizing drives successfully reach a first contract within a year of certification.²³

This level of employer recalcitrance and outright lawbreaking is far greater than what is typically seen in the public sector, suggesting that countering anti-union corporations could become far more difficult than states' previous experience. As early as 1993, research found that private sector employers were 6 times more likely than public sector employers to commit an illegal unfair labor practice, such as firing a worker for their organizing activities.²⁴

Existing trigger models acknowledge corporate coercion by including reforms to strengthen bargaining protections at the worksite as described above—with Massachusetts' draft legislation being the most extensive. Yet the policies are inconsistent, and even the Massachusetts legislation does not go far enough in

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Greater likelihood that private sector empowers commit an illegal unfair labor practice, compared with public sector employers

some areas. For example, it does not empower workers to pursue justice themselves, with a private right of action. Worse, existing union trigger policies do not acknowledge fundamental shifts in the economy that are increasing barriers to bargaining. Consequently, these proposals will not be enough to reverse decades of declining union membership levels.

Why do trigger laws need to go further?

Private sector workers who want to form a union must contend with more than corporate lawbreaking; over the past several decades, broad shifts in the economy have hollowed out sectors that were previously centers of unionized labor, and industry restructuring has left workers who want to unionize unable to bargain with firms that control workplace practices. As a result, unionization rates have fallen dramatically across the private sector.²⁵ State advocates and policymakers have developed a suite of proposals to boost bargaining across sectors where workers face these sorts of barriers. Yet few of these reforms are incorporated into existing union trigger proposals.

Large companies are driving down costs by shedding their role as employer through a variety of means, increasingly relying on staffing agencies, franchises, and independent contractors, according to Brandeis University's David Weil.²⁶ This makes organizing harder because the company that signs a worker's paycheck may not be the corporation that controls workplace conditions.

Moreover, many fast-growing occupations exist in low-wage industries where few workers have organized.²⁷ And because bargaining happens primarily at the worksite level in the United States—rather than across an entire sector or industry—employers often view unionization efforts as putting them at a disadvantage to nonunion competitors. In recent years, nearly half of nonunion workers have said they would join a union if they could, but only 7 percent of private sector workers were covered by a union contract in 2024, down from nearly one-quarter of private sector workers 50 years ago.²⁸ Worksite-level organizing is unlikely to spark significant or sustainable growth of unions in many of these sectors.²⁹

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Cities and states are beginning to acknowledge these barriers with laws that allow industrywide bargaining for workers in nursing homes, app-based drivers, and fast food workers.³⁰ Similarly, cities and states have long adopted government spending standards that have helped level the playing field for companies that provide decent pay and treat their workers with respect.³¹

Trigger laws are one piece of a pro-worker agenda

Under their existing authorities, progressive cities and states have enacted laws that recognize the bargaining rights of millions of workers excluded from federal protections; ban right to work laws that erode the strength of unions; support sector-wide standard setting through prevailing wage laws and industry boards; and make worker protections real through meaningful enforcement. Yet no jurisdiction has gone as far as it could to enact these best practices.

In addition to advancing trigger laws, the Center for American Progress has developed a series of recommendations that progressive state and local policymakers can implement now under existing legal authorities to empower workers across their communities:

- [8 Ways States Can Build Worker Power](#)³²
- [Government on Workers' Side](#)³³
- [Industry Standards Boards Are Delivering Results for Workers, Employers, and Their Communities](#)³⁴
- [7 Ways State Lawmakers Can Build Public Sector Union Power](#)³⁵
- [State Rideshare Collective Bargaining Policies Hold Great Promise](#)³⁶

What should union trigger laws do?

Union trigger laws should fix the numerous problems that allow corporations to undermine worksite-level bargaining and exclude workers; build new forms of sectoral bargaining that help scale up and sustain unionization in unorganized industries; and ensure government spending incentivizes compliance with workers' rights. Of course, if a law is ultimately triggered, a state will also need to quickly scale up its oversight capacity by increasing funding for staffing, enforcement, and administrative systems.

Specifically, policymakers should focus on reforms that:

- **Strengthen worksite-level bargaining:** Union trigger laws should include standards to prevent anti-union corporations from fighting unions and ensure workers who want to form them are able to do so through efficient and fair processes. This includes banning high-pressure employer practices, such as mandatory coercive anti-union meetings and one-on-one conversations with managers; creating strong consequences for lawbreaking, such as full back pay, treble damages, and civil penalties; and streamlining union selection and bargaining processes to prevent undue employer influence. Penalties on lawbreakers should be used to fund ongoing enforcement efforts. Similarly, workers should be free to pursue justice themselves, with a private right of action and permission to sue employers on behalf of the state when government agencies are unable to do so. The Protecting the Right to Organize (PRO) Act, a federal proposal to ensure workers are able to exercise their right to bargain directly with their employer, should serve as the basis for many of these reforms.³⁷
- **Include all private sector workers:** Trigger laws should eliminate loopholes that exclude certain occupational categories and strengthen employment definitions so that workers are able to bargain with the company that has the power to affect workplace conditions. The NLRA excludes farmworkers and domestic workers, industries that today and previously have been disproportionately occupied by workers of color.³⁸ This is a racist legacy that the NLRA's authors

accepted in 1935 in order to win support from Southern Democrats.³⁹ In addition, workers are frequently excluded from bargaining when their employers misclassify them as independent contractors or hide behind subcontractors or franchisees.⁴⁰ In order to protect the rights of private sector workers, states should follow the model of the PRO Act to close legal loopholes that allow companies that control workplace conditions to avoid bargaining with workers by relying on labor subcontractors or misclassifying their workers. Additionally, several states have enacted protections to ensure that home care and child care workers are able to bargain, and California and New York have recognized farmworkers' right to bargain.⁴¹

- **Give workers power to bargain for an entire sector:** Trigger laws should create processes for workers to access sector-wide bargaining in addition to workplace-level bargaining. Currently, the NLRA primarily encourages workplace-based bargaining, in which unions negotiate with individual employers on behalf of a group of workers at a particular worksite. Workplace-based bargaining helps workers solve worksite-level problems; yet it is increasingly hard to win in sectors where workers are highly dispersed or unionization rates are low.⁴² Cities and states are adopting sector-wide negotiating tools to help alleviate barriers in industries such as fast food, nursing care, and transportation apps. If expanded further, these sorts of sector strategies could lead to significant increases in the portion of workers covered by a bargaining agreement.⁴³ For example, Massachusetts and California have enacted laws that will allow rideshare drivers across all apps to unionize and bargain together. If rideshare workers in just these two states organize, agreements would cover more than 900,000 workers, effectively reversing the past 20 years of union coverage decline.⁴⁴ Trigger laws should permit unions to access sectoral bargaining streams based on obtaining a sufficient number of signatures for workers in the industry. They should also allow unions to petition for certain terms of their contract to set minimums across the industry in sectors where unions have sufficient contract coverage.

- **Use government spending to spark unionization and collective bargaining:** Trigger laws should ensure that only companies that respect workers' labor rights are eligible for government spending. Cities and states spend hundreds of billions of dollars every year to support the private sector through contracts, grants, loans, and tax incentives.⁴⁵ Policymakers have long adopted job quality standards, such as prevailing wage and benefit standards, to ensure that government spending creates decent jobs and gets a good value for its investment.⁴⁶ However, if the NLRA stops being enforced, states will have more freedom to ensure that companies receiving government funds respect workers' labor rights,

and leveraging the power of the purse will encourage companies to respond to the requirements more quickly. Government spending programs should give preference to unionized bidders; mandate recipients to abide by certain behaviors during union selection processes; extend contractor compensation standards across the economy; and bar companies with repeat or serious labor law violations from bidding. States should also extend exemptions that have long allowed workers in the construction sector to benefit from prehire collective bargaining agreements—known as “Project Labor Agreements”—to new sectors and require the use of labor peace agreements in contracted sectors with low rates of unionization or on contracts at high risk for disruption.

Conclusion

Even with support for unions being at a near-record high, the Trump administration and conservative courts are threatening to eliminate private sector union bargaining protections in their entirety. However, the threat of the NLRA falling offers states an opportunity to create bargaining systems that function in the 21st century. Union trigger laws should empower all private sector workers to bargain at the worksite level while also creating new systems of sector-wide bargaining and tools that reinforce bargaining protections and thereby build power for workers across a state's economy. By preparing now, state policymakers can help prevent some of the worst effects of the loss of federal protections and provide a model for rebuilding U.S. labor law in the future.

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