



LEGISLATIVE BRIEF | DECEMBER 2018

A State Agenda for America's Workers

18 Ways to Promote Good Jobs in the States

Introduction

An economy that's growing on paper is not translating into better jobs for America's workers. Despite a tight job market and strong corporate profits, paychecks have barely budged. Much of the explanation lies with eroding worker bargaining power – which is resulting in a shrinking sliver of the benefits of prosperity being shared with working families. And the deep structural racism that still pervades our economy means that workers of color and immigrants are struggling the most. Black workers face the greatest of these economic disparities, including large gaps in pay and employment. And the Trump Administration is making matters worse by rolling back the worker protection gains of recent years, scapegoating immigrants, and attacking unions and others who seek to give workers a voice on the job. More than ever, states need to lead the way in fighting back and pioneering new solutions. This agenda for America's workers outlines model policies and best practices for enabling governors and state legislatures to protect workers in their states so that all communities can thrive and grow.

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1. Jump-Start Stalled Paychecks

Raise the Stuck Minimum Wage. At the federal level and in 21 states the minimum wage has been stuck at a paltry \$7.25 since 2009, causing extreme hardship for the nearly one in three U.S. workers who struggle in low-paying jobs. States representing 21% of the U.S. workforce are already gradually ramping up their minimum wages to \$15 an hour—which is what single workers will soon need to afford the basics everywhere in America.

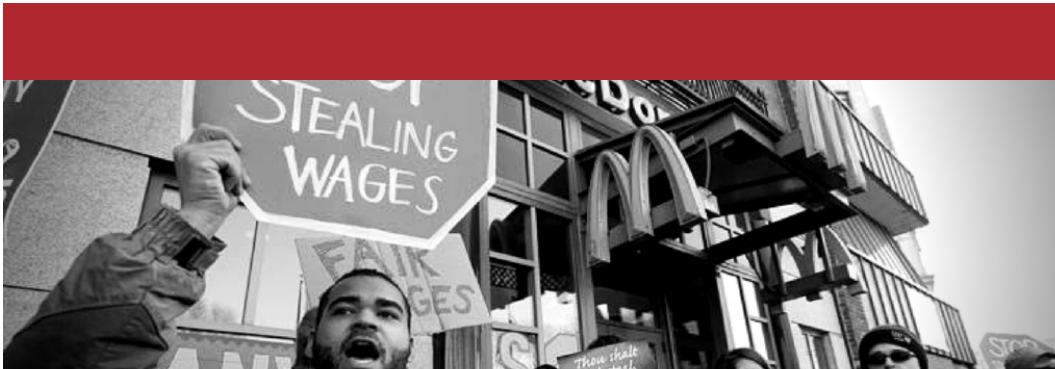
The rest of the states should do the same—and where legislatures won't act, states should put the minimum wage on their state ballots in 2020, the way that Missouri, Arkansas, Arizona, Colorado, Washington, and Maine voters did in 2016 and 2018.

Restore Overtime Pay to Deliver a Middle-Class Raise. It used to be that if your boss asked you to put in extra hours at work, you got overtime pay in return. Not anymore. The share of salaried workers guaranteed overtime pay when they work more than 40 hours a week has plummeted from almost 63% in 1975 to less than 7% today. That's because the salary threshold under which salaried workers are guaranteed overtime when they put in long hours hasn't been updated in years and remains less than \$24,000.

This means that millions of U.S. workers are working 50 or 60 hours a week, losing time with their families, and not getting any overtime pay for their hard work and dedication. It also means that employers aren't hiring workers to do the extra work. The Obama administration ordered a long-overdue updating of the overtime threshold to about \$48,000 a year. But a group of Republican state attorneys general blocked the increase, and the Trump Labor Department is expected to water it down.

California, New York, Pennsylvania, and Washington are already acting to deliver this long-overdue middle-class overtime raise for workers in their states. Governors and legislatures in other states should do the same – and should set a salary threshold of at least \$55,234 by 2022 – which is the equivalent of the 2016 Obama overtime salary threshold updated for wage growth. Importantly, in many states such as New Jersey, Michigan, Wisconsin, Minnesota, Colorado, Oregon, Montana, Pennsylvania, and

Washington State, governors can expand overtime pay on their own through their state labor agencies without need for action by the legislature.



2. Get States Back in the Business of Fighting Wage Theft and Enforcing Other Worker Protections

Every week millions of workers are cheated when employers short their paychecks, force them to work off the clock, fail to pay even the minimum wage, or skirt employment laws by denying that they are employees. This type of wage theft is a national epidemic that robs U.S. workers and our economy of billions of dollars a year and hurts law-abiding employers that can't compete with wage chisellers. But in many states, the agencies responsible for cracking down on employers that cheat their workers have been neglected and defunded. Governors and legislatures need to get their states back in the business of fighting wage theft and enforcing other worker protections, ranging from combatting independent contractor misclassification to preventing employers from defrauding the workers' compensation system. Key best practices for restoring effective enforcement include:

- First and foremost, increasing labor agency budgets to ensure adequate staffing and enforcement capacity
- Developing strategic enforcement priorities, in partnership with worker organizations
- Cracking down on retaliation against workers who speak up
- Reviewing and updating regulations and administrative guidance—for example, to provide clear guidance on business's responsibilities for contract workers, as detailed below.



3. Protect Contracted Workers in our Fissured Economy

A major driver of unstable and insecure work is our increasingly “fissured” economy. Today, much of the workforce for major corporations is employed indirectly through temp and staffing agencies or other contract firms, or labeled—and often mislabeled—as independent contractors. Employees wrongly treated as independent contractors are excluded from the protections of our core labor laws, such as the minimum wage, overtime, anti-discrimination protections, workers’ compensation, unemployment insurance, paid sick leave, and paid family leave. And employees working for major companies indirectly through what are often thinly capitalized, fly-by-night contractors are left wondering [who’s the boss](#). The practice is of particular concern in sectors where workers of color are relegated to low-paid and often dangerous work, such as janitorial, delivery, home care, agriculture, landscaping, security, hospitality, trucking, transportation, and warehousing.

Corporations’ use of these work structures—subcontracting, temp and staffing, and calling workers “franchisees” or “independent contractors”—are key drivers of eroding labor standards and occupational segregation. They shift power away from workers toward corporations, and in many cases, are employed as a tactic to side-step compliance with labor laws.

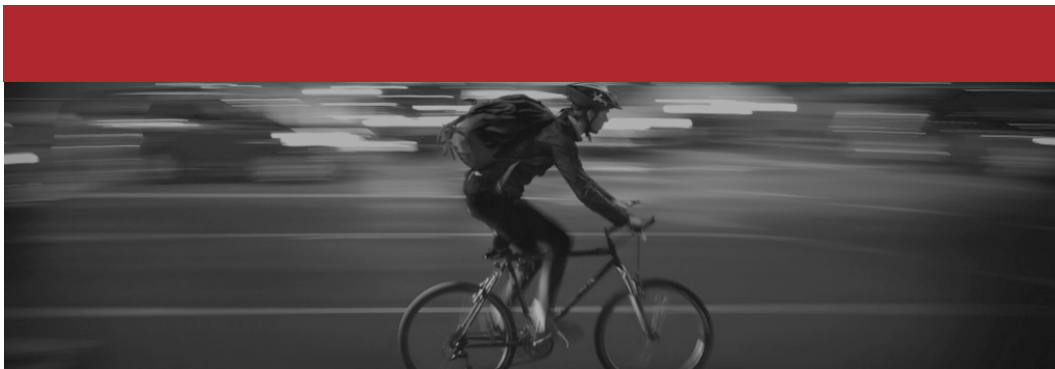
As their workforces struggle with increasingly unstable work, states are responding with policy solutions to hold major companies that are the real economic actors accountable for the treatment of these workers.

Issue Clear Guidance on Business’s “Joint Employment” Responsibilities and Misclassification of Independent Contractors. Under existing employment laws, companies that use contracted workforces to staff their operations can already be held responsible as “joint employers” for those employees’ labor standards. And many purported independent contractors are, in fact, misclassified. Tightening up joint employer and independent contractor standards and improving their enforcement are key strategies for improving accountability and job standards in the fissured economy. In 2016, the Obama Labor Department issued [guidance outlining the basis for broad joint employer enforcement](#) under the Fair Labor Standards Act, and [companion guidance on independent contractor misclassification](#). However, the Trump

Administration [withdrew both](#). Governors and their state labor agencies should protect workers in their states against the Trump rollback by adopting similar guidance or regulations to guide agency personnel, businesses, and workers in interpreting coverage of state employment laws such as wage and hour, anti-discrimination, unemployment insurance, and workers' compensation.

Adopt Temp and Staffing Agency Worker Protection Laws. In 2017, Illinois adopted [model temporary agency worker protection legislation](#). It ensures that temp and staffing agencies report demographic information about the workers they hire; never charge workers for background checks, drug tests, and credit checks; notify temp workers about the types of equipment, protective clothing, and training needed to perform the job; provide transportation back from a job site if transportation was provided to the job site; and place their temporary workers into permanent positions when they become open. Other states should follow Illinois' lead—and build on it with additional key protections to ensure that temp and staffing agency workers receive wages and benefits comparable to that received by direct employees at the companies that employ them.

Make Host Company Responsible for Labor Violations by Contractors. In 2014, California tackled the problem of fly-by-night labor contractors cheating their workers by passing [new protections making host companies jointly responsible](#) when their contractors fail to comply with minimum wage, health and safety, and workers' compensation laws. Other states should replicate this best practice for cracking down on wage theft in our fissured economy.



4. Protect On-Demand Platform Workers and Workers Labeled—and Often Mislabeled—Independent Contractors

For decades, corporations have characterized workers as “self-employed” as a tactic for shifting economic risk downwards onto workers while maximizing revenue for investors and CEOs. In the past, it was sectors like home care, trucking, and delivery that used these tactics. Today it is also the companies that dominate the platform economy

(sometimes called the “on-demand” or “gig” economy) that are aggressively seeking to shed responsibility for the employees performing work for them. By attempting to sidestep basic employment protections—from employer social insurance program contributions, to the minimum wage and overtime, to anti-discrimination and health and safety protections—these companies are leaving their workforces impoverished and vulnerable.

As the platform economy matures, the public is gaining a clearer understanding of the poor quality of these jobs. States and cities are responding by clarifying that these workers are employees covered by our nation’s baseline employment protections, and by promoting innovative sectoral solutions to improve wages and benefits for workers in sectors where work is dispatched both on- and off-platform, including transportation and domestic work. At the same time, the multi-billion-dollar platform corporations are mounting an aggressive lobbying push to try to exempt themselves from responsibility for the well-being of their workers. Governors and legislatures should adopt the following best practices to protect this growing workforce, while fighting carve-out efforts.

Clarify That the Rights and Protections of Employees Apply to Platform

Workers. States should start by clarifying—through interpretation of existing laws or by amending those laws—that state employment laws (such as state minimum wage and overtime, anti-discrimination, unemployment insurance, and workers’ compensation laws) protect platform workers. This will ensure that platform workers are treated as employees, and that platform businesses are accountable for the protections that all other employers provide.

For example, in April 2018 the California Supreme Court issued a unanimous decision in the *Dynamex* case that will make it harder for companies, including digital platform companies, to misclassify their employees as independent contractors. Under the “ABC” test adopted in *Dynamex*, businesses that seek to treat workers as independent contractors have to show that the workers are (A) free from control and direction by the hiring company; (B) perform work outside the usual course of business of the hiring entity; and (C) are independently established in that trade, occupation, or business. This test is simple, clear, and easy to enforce. More than half of the states already have the ABC test in their state unemployment insurance laws, and several including Massachusetts, New Jersey and Connecticut have adopted it for use under their wage and hour protections.

Similarly, Oregon’s labor agency issued [an opinion advising that drivers at transportation network companies such as Uber and Lyft qualify as employees](#) who are covered by the state’s employment laws. [New York has ruled that platform employers](#) are covered under the state’s unemployment insurance law. San Francisco amended its minimum wage protections to clarify that they apply to independent contractors and employees alike. The New York City Council recently passed a slate of laws meant to guarantee a \$15 minimum wage to transportation network company (TNC) drivers and to stop the race to the bottom that has impoverished taxi and TNC drivers alike. Through amendment or interpretation, states should do the same for all baseline employment laws.

Promote Innovative Sectoral Solutions. In addition to clarifying that platform workers are covered by employment laws, states should promote sectoral solutions to improve jobs, including platform jobs. For example, in 2018 Seattle passed an [innovative domestic worker bill of rights](#) that requires “hiring entities” to pay domestic workers the municipal minimum wage, allow them meal and rest breaks, and protect them from retaliation. The Seattle ordinance also sets up a system for setting industry-wide standards for domestic workers, in which domestic workers themselves will have a seat at the table. Portland, Oregon has launched a similar initiative with a newly constituted board to develop standards for drivers for transportation network company (TNC) such as Uber and Lyft.

Fight Employment Protection Carve-Out Bills. On defense, states should fight back against stealth attacks on platform worker rights, such as the “[marketplace platform bills](#)” that online platform employers have passed in several states to carve their workforces out of basic protections such as the minimum wage, unemployment insurance, and workers’ compensation. The idea that it is excessive or burdensome for the multi-billion-dollar tech giants of the platform economy to provide the same basic employment protections that all other employers must follow is outrageous, and should be rejected—as Colorado and other states have done.



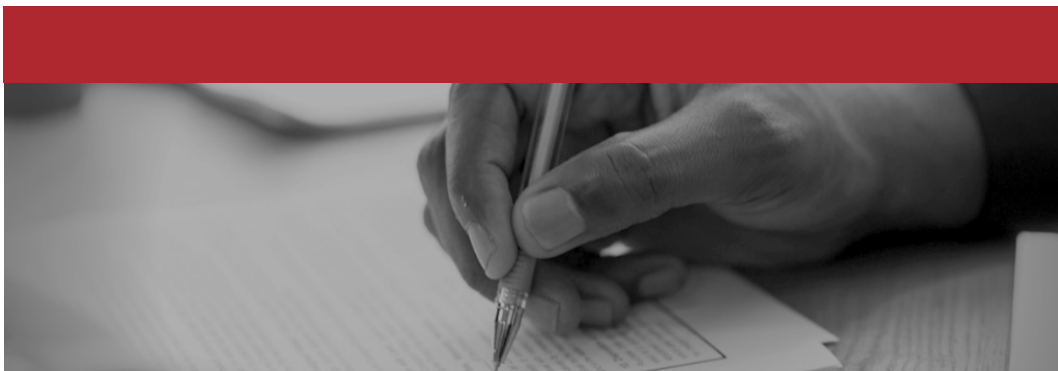
5. Leverage State Employment and Contracting Power to Improve Jobs and Crack Down on Mistreatment of Workers

States have a significant impact on workforce standards in their capacities as employers, and through their contracting and purchasing programs. In their own employment, states should lead by example by adopting model employment practices around fair pay and benefits. And in contracting, states should leverage their vast economic footprint to improve jobs and crack down on mistreatment of workers.

Adopt Labor Standards for Public Employees and Employees of Contractors. Governors and legislatures should start by adopting model employment practices for their own direct employees, for employees of major state-linked institutions, such as state

universities, and for vendors performing state contracts. These standards should include: (1) a \$15 minimum wage for state employees, state university employees, and state contractors, as states such as [Massachusetts](#), [North Carolina](#), and [New York](#) have done in various forms; (2) paid sick leave as the [Obama Administration required for federal contractors](#); and (3) other core employment standards, such as “ban the box” fair hiring protections, as detailed below. In addition, preferences for contracts should be given to unionized workplaces.

Require Public Contractors to Disclose Employment and Labor Law Violations and Related Practices. In addition, states should crack down on employment and labor law violations by state contractors by adopting state responsible contracting rules, following the model of President Obama’s [Fair Pay and Safe Workplaces executive order](#), [which the Republican Congress rolled back](#). States can and should require companies seeking state contracts to disclose all recent federal, state, and local employment and labor law violations, ranging from wage and hour and workers’ comp, to OSHA and NLRA violations, and discourage agencies from awarding contracts to vendors with significant or repeated violations. In addition, as noted below, states should discourage the use of forced arbitration and other coercive waivers by state contractors.



6. Fight Coercive Waivers that Prevent Workers from Enforcing their Rights and Lock Them in Poverty-Wage Jobs

Bad corporate actors are increasingly using forced arbitration and other coercive waivers of worker protections to mask wrongdoing and block working people from vindicating their rights in court. According to the Economic Policy Institute, [more than 60 million U.S. workers](#) are blocked from suing their employers due to forced arbitration clauses, with women, people of color, and low-wage workers disproportionately impacted. And the U.S. Supreme Court recently ruled in its *Epic Systems* decision that employers can force workers into private arbitration with class and collective waivers, meaning each worker has to go it alone or, more likely, not at all.

This employer-dominated process, where settlements are secret and workers are barred from joining together to seek relief as a group, allows years of abusive treatment to remain hidden. [A bipartisan group of all 50 state attorneys general](#) in 2018 called for an end to forced arbitration for sex harassment claims. But [the problem extends beyond just sex harassment and equally prevents workers who have been cheated out of their paychecks](#) from seeking justice.

Issue Forced Arbitration Executive Orders. First, governors should push back against this abusive practice by following the lead of Washington State Governor Jay Inslee and issue [executive orders ensuring that tax dollars are not invested in businesses that use forced arbitration](#), and that companies seeking state contracts must disclose details around their use of this abusive practice.

Adopt Whistleblower Enforcement Laws. Second, to really tackle this urgent problem, governors and legislatures should restore the ability of workers and members of the public to go to court to fight wage theft, racial and sexual harassment and discrimination, and other workplace violations on behalf of the state, by adopting whistleblower enforcement laws as California has done. [Model legislation, the EMPIRE Worker Protection Act](#), is currently pending in New York.

Ban Non-Competes and No Poaching Policies. Third, governors, legislatures, and attorneys general should fight other coercive waivers of workplace rights such as [non-compete and no-poaching requirements](#) imposed by employers on a wide swath of low-wage and other workers. These two increasingly common practices have come under [growing criticism](#) as unfair and unnecessary limits on employees' job mobility that are contributing to stagnant wages across our economy. There is growing recognition that non-compete and no-poaching requirements are pervasive, abusive, and not necessary, as legitimate employer concerns about trade secrets held by higher-paid employees can more appropriately be addressed through non-disclosure requirements. Governors and legislatures should join California, Oklahoma, and North Dakota by prohibiting non-compete and no-poaching requirements and include a private right of action to facilitate the enforcement of such prohibitions.



7. Rebalance our Economy by Restoring Workers' Bargaining Power

Union popularity is the highest it has been since the Great Recession: recent polls show that [62](#) percent of adults support unions, including an overwhelming [75](#) percent of young adults aged 18 to 29. With inequality at record levels and weak wage growth for most workers despite a tight labor market, there's a growing consensus we need strong action to restore workers' bargaining power. By joining together through unions, U.S. workers built the middle class and expanded access to good jobs, especially for women and workers of color. [Strong unions raise pay and improve workplace standards not just for their members, but across the economy.](#)

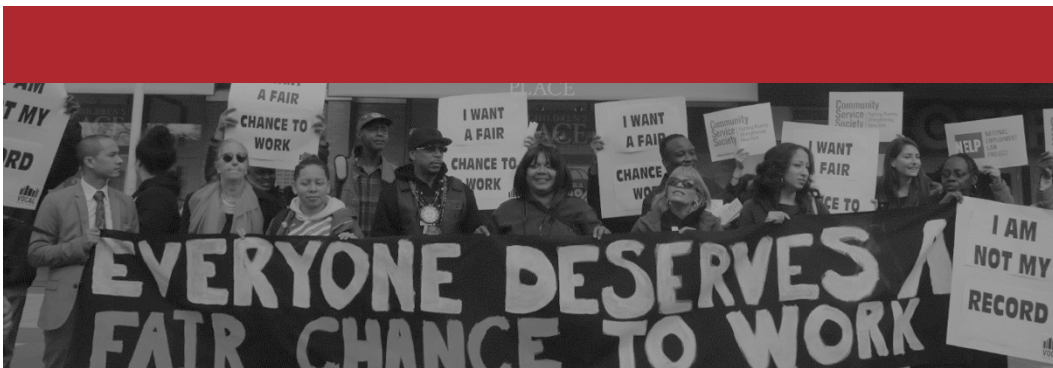
But decades of corporate-funded attacks culminated in the Supreme Court's anti-union *Janus* decision in 2018, and in a spate of attacks on unions and workers by the Trump Administration and by [legislatures in several states](#). Workers need governors and legislatures to defend the right to organize and roll back past legislative attacks.

Restore Bargaining Power for Public Sector Workers. States directly regulate collective bargaining for public sector workers, which means governors and legislatures have a significant role to play. They should step in to defend the [public sector workers who deliver the vital services that sustain our communities but who are under siege and today struggle to afford the basics for their families](#). Governors and legislatures should use their executive and legislative powers to reverse past state attacks that restrict public sector workers' ability to bargain collectively for fair pay, benefits, and treatment on the job, and adopt best practices to promote workable collective bargaining in the face of the *Janus* decision.

Support Union Efforts to Promote Good Jobs for Private Sector Workers. While states do not regulate collective bargaining for private sector workers, they can and should play a role in supporting efforts by unions in the private sector to promote good jobs. For example, in state financed and regulated sectors, such as airports, health care, and subsidized caregiver jobs, which have been characterized by low pay and poor working conditions, unions in many states are pushing to improve wages and benefits. Governors should support these efforts, as leaders in many states are doing.

Repeal Right to Work. So-called “right-to-work” laws, passed in 27 states, make it harder for workers to form strong labor unions through which they can organize and speak with one voice on the job. These laws have led to declining union membership as well as [declining wages and benefits for union and nonunion workers alike](#). At a time of [extreme inequality in our country](#), governors and legislators should make it easier, not harder, for workers to unite. Governors and legislatures should repeal state right to work laws currently on the books and should fight any new right to work efforts – including efforts to adopt right-to-work at the local level.

Expand Collective Bargaining Rights for Agricultural Workers and Other Workers Not Covered by the NLRA. The agricultural workers who grow the food that sustains our communities are some of the lowest paid workers in our economy. Largely migrant immigrant workers, they face not only high poverty, but grueling and dangerous working conditions. And they are excluded from the National Labor Relations Act—meaning that they have no right to join together in a union and negotiate for fair treatment. States, however, are able to regulate collective bargaining for agricultural workers, as well as other workers such as domestic workers and independent contractors who are excluded from federal protections. States should follow the lead of California, which more than 40 years ago adopted the California Agricultural Relations Act. A campaign for similar agricultural workers labor relations legislation is underway in [New York](#).



8. Promote Fair Hiring for People with Arrest or Conviction Records

Roughly [one in three adults in the U.S.](#) has an arrest or conviction record that can show up on a routine criminal background check for employment, undermining the job prospects of the [70 million men and women](#) who have been caught up in the criminal justice system. This legacy of mass incarceration has an especially devastating impact on the employment prospects of people of color, who are 40 percent less likely than white applicants with a record to receive a positive response from a prospective employer.

Adopt Fair Chance Hiring. In response, [33 states, including Georgia, Kentucky, Louisiana, North Carolina, Tennessee, and Virginia](#), have adopted “ban the box” policies to open up job opportunities in state and local government for people with arrest or conviction records and set an example for private sector employers. Eleven states, including large states like California, and more than a dozen major cities across the U.S. extend fair chance hiring protections to private sector employers, in addition to the public sector. Governors from states that haven’t yet joined them should start by issuing executive orders adopting this reform for all state hiring. Then they and their legislatures should push for legislation to extend this best practice to the private sector, as more and more states and cities are doing.

Remove Occupational Licensing Barriers for People with Records. Today, [more than 25 percent of U.S. workers must obtain a state license or certification](#) before they can work in their chosen occupation, and onerous criminal background check restrictions often accompany these state licensing mandates. With broad bipartisan support, [over the past year about a dozen states have taken bold steps to remove unfair restrictions against hiring people with records from their occupational licensing laws](#). In 2018, the governors of several states (Michigan, New Mexico, and Pennsylvania) took executive action directing licensing boards or other state entities to take action to address unnecessary restrictions that limit qualified people from fairly competing for jobs in their chosen professions. Governors and legislatures should follow their lead with executive action and legislation to remove unnecessary licensing obstacles to employment for people with records.

Adopt a Clean Slate Policy for People with Records. Having even a minor criminal record can be a life sentence to poverty; in addition to being a barrier to employment, it is increasingly a barrier to [housing and even education](#) as landlords and colleges use background checks to screen applicants’ criminal records. While most states allow people to petition to have their records expunged or sealed, only a tiny fraction of people eligible ever get the relief they need because they can’t afford a lawyer, pay the court fees, or figure out how to navigate the complex court petition process. Many are not even aware it’s an option. Governors and legislatures should adopt “clean slate” policies that provide for automatic record clearing once someone remains crime-free for a designated period of time. People with criminal records who have remained crime-free for four to seven years [are no more likely](#) than the general population to commit a new crime. [Pennsylvania](#) enacted clean slate legislation in 2018, and several other states, including Colorado, Michigan, and South Carolina, are considering it. A [majority](#) of voters – across party, racial, gender, and education lines – support the policy.



9. Fight Racial and Gender Discrimination on the Job and Combat High Unemployment in Communities of Color

Structural racism and gender discrimination still pervade our economy and labor markets. [African American men are paid just 71 cents](#) for each dollar that white men are paid. [African American women are paid even less—just 66 cents](#), while [white women earn 78 cents](#). And despite a tight labor market and record low unemployment in general, the African American unemployment rate remains nearly double the white rate.

The drivers of these deep racial and gender disparities in our job market include discrimination in hiring and pay, occupational segregation, and weak enforcement systems. Governors and legislatures should work to dismantle them with a multi-pronged approach.

Banning Employers from Asking About Salary History. There is growing national recognition that the common practice of [employers basing employees' pay in part on their salary history perpetuates unequal pay](#) for women and workers of color, since gender and racial pay gaps are often present, even among new entrants to the workplace. In response [eleven states and nine cities have banned employers from inquiring about salary history](#) and basing compensation on it. Governors and legislatures should follow their example and adopt these sensible prohibitions – and require that employers seeking state contracts refrain from such practices.

Strengthening Civil Rights Enforcement. State human rights agencies are a first line of defense in the fight against discrimination on the job. But many have seen their budgets and staff slashed or stagnant and as a result have long backlogs and little capacity to engage in strategic enforcement. At the same time, [human rights agencies are reporting a spike in discrimination and harassment complaints](#)—a trend that is likely fueled by President Trump's hostility to immigrants and people of color. Governors and legislatures should rebuild their state human rights agencies by restoring adequate staffing and budgets—and promoting strategic, targeted enforcement programs by these agencies to help them more effectively combat discrimination in hiring,

promotions and pay, as well as workplace harassment. This includes implementing reporting systems that create greater pay transparency and deepening partnerships with community based organizations. In order to bolster enforcement of civil rights laws, states should also ensure that localities are not preempted from expanding protections beyond what the state law may provide and enforcing local anti-discrimination laws consistent with the state protections.

In addition, in recent years states have begun to enact [stronger laws prohibiting unequal pay for similar work](#)—but have not always included race-based pay inequality in these protections. [California recently expanded its equal pay law, the California Fair Pay Act, to include race-based pay inequality](#). Governors and legislatures in other states should follow California’s lead and adopt state-of-the-art equal pay protections—and be sure that they tackle pay inequality based not just on gender, but on race and other protected statuses as well.

Promoting Targeted Hiring of Workers from High Unemployment Communities. Many [cities are successfully using “targeted hiring” or “first source hiring” programs](#) to ensure that tax-payer funded projects expand access to jobs for workers from communities with high unemployment rates. Given the disproportionately higher rates of unemployment in Black communities that have been shut off from economic opportunity for decades, these targeted hiring programs are an important step toward greater employment equity. For example, on [publicly funded development projects](#), [these programs](#) typically require that construction contractors or end-user occupants like stadiums, hotels or retailers on development projects target a share of their hiring at workers from high-unemployment or high-poverty zip codes, by partnering with community-based job training and referral agencies. Other cities are encouraging [publicly linked “anchor institutions” like universities or hospitals](#) to enter into similar partnerships to fill health sector and service jobs, or requiring that major government service contractors hire from targeted, high unemployment communities. Examples include New York City’s multi-pronged [HireNYC Program](#), which combines targeted hiring for construction jobs, end-user jobs on subsidized development projects, and jobs with major city service contractors.

Governors and legislatures should scale these programs up to the state level by adopting targeted hiring programs for state-linked projects and institutions that generate significant numbers of jobs, such as state-financed economic development, state service contracting, direct state civil service hiring, and state-financed institutions like universities and hospitals. In all of these spheres, states should develop systems for filling a portion of jobs with workers from high-unemployment zip codes, and develop a system of partnerships with community-based job training and referral agencies to make it work.

Inclusive Procurement and Contracting. Another key strategy for ensuring that employment and wealth-building opportunities generated by states’ infrastructure and contracting programs are shared equitably with disadvantaged communities is inclusive procurement and contracting. [Inclusive procurement and contracting involves a suite of policies](#) to ensure that minority and women-owned businesses enterprises (M/WBE’s) are fairly represented among firms selected for contracts or subcontracts on state-

financed procurement and infrastructure projects. Because minority-owned firms are more likely to employ a diverse workforce, inclusive contracting programs can be an effective approach for ensuring that workers of color benefit from the jobs generated by state spending. Governors and legislatures should [review their contracting programs and implement recommended strategies for ensuring equitable inclusion of M/WBE's](#). At the same time, they should ensure that state-financed contracting and infrastructure projects are covered by strong labor standards, including prevailing wages, [community workforce agreements for construction projects](#), and \$15 minimum wages for service contracting, to ensure that they generate quality jobs and do not undercut high road standards.



10. Protect Workers' Health and Safety

Nearly 50 years after Congress adopted the Occupational Safety and Health Act (OSHA) requiring employers to provide safe workplaces, more than 5,000 U.S. workers are killed on the job every year, and nearly three million are seriously injured. Many low-wage jobs are dangerous jobs, including jobs in the poultry and meat industries, agriculture, construction, and home care, where workers suffer much higher rates of serious job injuries. Yet the Trump Administration is rolling back workplace health and safety protections, leaving workers even more vulnerable.

Adopt Responsible State Health and Safety Contracting. Governors and state legislatures should fight these rollbacks by promoting model protections for workers. For example, Massachusetts is considering a model responsible contracting law for health and safety. It requires contractors and subcontractors bidding on state-funded projects to submit their health and safety violations histories—and bars contracting with companies with poor records. Legislatures and governors using their executive authority over contracting should adopt this model.

Stronger State Workplace Protections on Heat Exposure. With climate change, heat exposure is emerging as a very serious workplace health hazard in sectors from agriculture to day labor. But currently there are few standards or protections. Governors and legislatures should adopt new standards and programs to provide stronger protections for workers exposed to dangerous levels of heat, especially farm workers

but also workers in construction, manufacturing, and warehousing—all sectors where workers of color and immigrants are concentrated.

Strengthen Workers’ Compensation Laws. Over the past two decades, state legislatures have engaged in a race to the bottom by hollowing out their workers’ compensation laws, resulting in unfair, weak, or nonexistent benefits for injured workers. Governors and legislatures should work together to prevent any further weakening of benefits and coverage – especially since workers’ compensation premiums and benefits are now at a 30 year low. Key workers’ compensation reforms that are needed in most states include: (1) strong anti-retaliation protections for injured workers; (2) insurance coverage for prompt medical care in contested cases; (3) extending coverage to all workers, including domestic workers, farm workers, and temporary workers; and (4) ensuring that workers have the right to choose their own doctor.

Fighting Sexual Violence on the Job. Low-wage workers such as [janitors, hotel room cleaners, and waitresses are especially vulnerable to sexual assault](#) and violence in the workplace, as many work in isolation and feel powerless to speak up. California responded in 2016 with the [Property Services Worker Protection Act](#), which helps protect janitors from rape on the job by mandating sexual harassment and assault prevention training, and registration of property services contractors. Similarly, cities including Chicago, Seattle, Oakland, and [Long Beach, California have enacted measures to protect hotel room cleaners](#) that require that they be provided panic buttons to use when they enter rooms alone, and also establish workload standards to protect room cleaners. Governors and legislatures should follow the lead of these states and cities in protecting low-wage workers from assault at work.



11. Promote Quality Caregiver Jobs

Our nation is facing a care crisis. States are struggling to provide adequate access to quality affordable home care and child care services for seniors, people with disabilities, and working families, at the same time that they struggle to improve the quality of these vital caregiving jobs. A big part of the problem is chronic underinvestment in the home care and child care workforces, which are some of the lowest paid in our

economy, promoting high poverty rates and workforce instability among these vital caregivers – many of them women of color and immigrants.

Governors and state legislatures should join the states and cities that are tackling this crisis with new approaches that expand access to these vital services for all families, while investing in upgrading the jobs.

Expand, Enforce and Adequately Fund Minimum Wage, Overtime and Paid Sick Days Protections for Caregivers. States finance and regulate a large swath of the home care workforce through their Medicaid long-term services and supports programs. Governors and legislatures should ensure that these vital caregivers receive an adequate minimum wage, overtime pay coverage, and paid sick days protections, along with any other benefits. First, they should ensure that their Medicaid home care programs are implementing – and adequately budgeting for – the Obama Labor Department’s 2015 [“companionship” rule that finally extended federal minimum wage and overtime protections to homecare workers](#). For example, they should follow the lead of states such as California, which budgeted extra funding for its consumer-directed Medicaid funded home care program to account for overtime and travel time between consumers. States must also [ensure that consumers have access to quality and adequate home care services](#) that allow for them to remain at home and within the community. Second, they should guarantee a \$15 minimum wage for Medicaid home care workers – [which governors can do by executive action and negotiate funding for as part of the budget process, as Massachusetts Governor Charlie Baker did](#). Third, they should extend similar \$15 minimum wage to workers in the state’s subsidized family child care provider program – as Massachusetts also recently did as part of a 2018 minimum wage package. Lastly, states should ensure that their state laws cover home care, child care, and other domestic workers – and that they provide robust enforcement mechanisms to ensure workers’ rights are upheld.

Raise Caregiver Wages by Increasing Medicaid Reimbursement Rates for Long-term Care Services. The rates at which Medicaid reimburses providers for the long-term care services they provide seniors and people with disabilities can factor into caregivers’ low-wages. In many states, Medicaid reimburses homecare expenses at hourly rates that may provide too little to adequately pay these workers living wages or even cover homecare agency operating expenses. Increasing these reimbursement rates to ensure workers can earn living wages and have benefits, and requiring that the majority of the increase go to workers’ wages, will ensure that homecare jobs can provide workers with a decent living. States should also ensure that their consumer-directed rates are adequate to ensure home care workers make a living wage.

Create Universal Home Care with Quality Jobs. In Maine, an innovative campaign seeks to establish a [Universal In-Home Care Program](#). It would expand access to subsidized home care services for all Mainers, regardless of income, while simultaneously creating a program board charged with improving wages, benefits, and working conditions for the home care workforce. The campaign to adopt this policy by ballot initiative fell short in 2018, but advocates are hopeful about pursuing similar legislation in the state legislature in 2019.

Expand Affordable Child Care with Quality Jobs. In Alameda County, California, a similar campaign is proposing [to create an expanded subsidized child care program for lower income and middle-class families](#). It combines opening up affordable child care to more of the working class, with upgrading subsidized child care jobs significantly, financed by a half-cent sales tax increase.



12. Update and Defend Social Insurance Programs for All Workers

Vital social insurance programs on which working families rely have been under attack by the Trump Administration and by governors and legislatures in many states in recent years. As new governors and legislatures take office, they should take strategic action to restore these vital programs for workers in their states – and prepare their economies for the next recession or natural disaster.

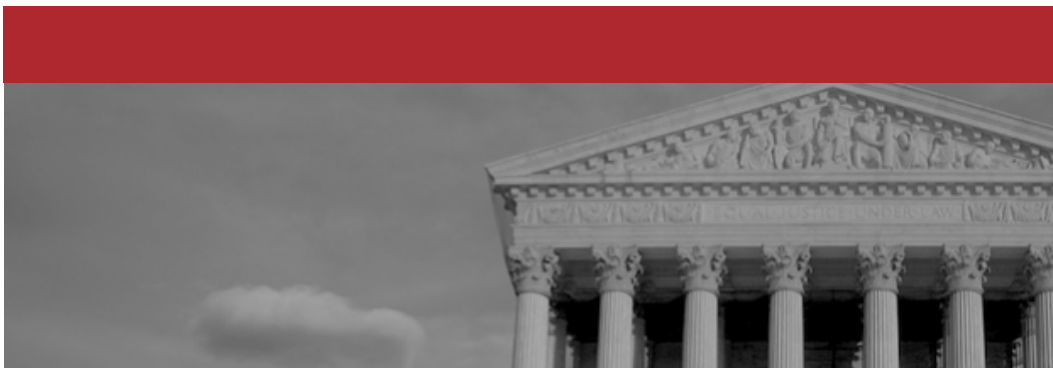
Repeal Medicaid Work Requirements. Several states have instituted or are seeking federal permission to impose short-sighted and punitive work requirements on residents seeking health care coverage under Medicaid. These policies aim to take basic health care away from low-income workers and people with disabilities, many of whom work but are unable to keep up with the burdensome documentation requirements under such programs. New governors and legislatures should reverse such waivers and restore health care access for low-income residents in their states.

Restore a Strong Unemployment Insurance System. After poor financing decisions caused more than 40 states to bankrupt their unemployment insurance (UI) trust funds during the Great Recession, many states slashed their UI programs. Even before the recession, the UI program needed reform; that's even truer today, with only about one in four unemployed workers receiving UI benefits. With another cyclical recession likely in the coming years, states should act to restore hard-earned benefits under their programs to protect workers, their families, and their communities from the inevitable downturn. NELP's [extensive toolkit](#) details a full range of key UI reforms that many states have already implemented. Key reforms include a minimum uniform 26 weeks of benefits, work-sharing programs to preserve jobs in times when companies are

struggling or during a recession, and reforms to provide UI protection for part-time workers who lose their jobs – a significant segment of the workforce, where women and low-wage workers are concentrated.

Prepare for Disaster Unemployment Assistance. For states that face regular natural disasters, modernizing Disaster Unemployment Assistance (DUA) systems is crucial for helping workers who lose their jobs during disaster recover from such devastating losses. All states affected by disasters should make [key reforms](#). First, they should suspend or get rid of the “waiting week,” which only delays support to workers. Second, given the difficult realities and limitations facing those seeking work in a disaster area, the affected states and territories should significantly relax or suspend their work-search mandates. States should also take steps to boost UI benefits and authorize “non-charge” benefits paid as a result of a disaster.

Protect Public Sector Pensions. As the United States faces a looming retirement crisis, many states are looking to slash guaranteed retirement plans for the one segment of the population that still has a modest but secure benefit – public sector workers. While some states skipped contributions to their pension funds, workers have always paid their share. But some policymakers are asking workers to sacrifice their future for the mistakes past lawmakers made. A solid retirement plan is a public good. It helps states and cities attract and retain great teachers, firefighters, and caregivers while also providing a boon to the local economy when those workers retire in their communities. States should maintain and fund secure public sector retirement plans – and work simultaneously to develop new retirement options for private sector workers.



13. Empower Local Communities by Fighting Preemption

In recent years, big corporations and their lobbyists have not only blocked state efforts to raise the minimum wage, guarantee paid sick days, or address other worker needs, but when cities and counties have tried to tackle these problems, the corporations and their lobbyists have [stepped in](#) to tie their hands with “preemption laws.” Like voter disenfranchisement and political gerrymandering, these preemption laws are part of a

[corporate strategy](#) by groups like the Koch Brothers-funded American Legislative Exchange Council (ALEC) to stymie progressive action. These preemption efforts are disproportionately impacting efforts by communities of color to improve local economic conditions and address specific localized concerns. Governors and legislatures should pledge to block or veto any new attempts to limit local power to address worker needs, and should work to roll back existing limits. For example, they should follow the lead of Colorado Governor-elect [Jared Polis](#), who is backing a campaign in the legislature to [repeal wage preemption](#) in that state. At the same time, however, state leaders should fight any local efforts to undercut established worker protections, such as illegal local “right to work” efforts, or punitive local anti-immigrant measures.



14. Enable Workers to Balance Work and Family Demands by Guaranteeing Paid Sick Days, Paid Family Leave and Fair Scheduling

The U.S. lags far behind the rest of the world in ensuring basic protections to allow workers to balance the demands of work and family life such as earned paid sick days and paid family leave. And the growing problem of irregular and unpredictable work schedules, fueled by new scheduling technology, is posing serious hardship for working families. Governors and legislatures follow the lead of the growing numbers of states and cities that are responding by guaranteeing paid sick days and paid family leave, and by adopting fair workweek scheduling legislation.

Paid Sick Days. [More than 34 million workers in this country don't have a single paid sick day](#) — and each time they take needed time off, they risk their families’ economic security and jeopardize the public's health. Governors and legislatures should [join the eleven states and dozens of cities that have adopted earned paid sick days laws](#) to ensure that all workers have access to this most basic of protections.

Paid Family Leave. [Sixty percent of the U.S. workforce does not have access to paid family leave](#) when they need to take time off from work after the birth or adoption of a

baby or in case of illness. As a result, millions of workers either cannot take the time they need, or must take it with no pay – and with no guarantee that their employer will hold their job for them when they return. In response, more and more states are establishing paid family leave insurance programs to provide workers with a share of their wages when they need time to care for a family member with a serious health condition, bond with a new child or deal with their own serious medical issue. Governors and legislatures should follow their lead and adopt paid family leave for their states.

Fair Workweek. There is growing recognition that unpredictable, unstable, and often insufficient work hours are a key problem facing many U.S. workers, particularly those in low-wage industries. Volatile hours not only mean volatile incomes, but add to the strain working families face as they try to plan ahead for child care or juggle schedules in order to take classes, hold down a second job, or pursue other career opportunities. The problem has been made worse by new scheduling technology that has enabled many retail and fast food employers to adopt last minute, “just in time” scheduling. In response, states and cities are starting to adopt “fair workweek” laws that provide workers with greater stability, predictability, and flexibility in their work schedules. In many cases, they also require employers to give part-time staff opportunities to increase their hours before adding new staff. Governors and legislatures should follow their lead and push for fair workweek legislation to protect workers in their states.



15. Protect Immigrant Workers

Immigrant workers are vital members of our communities and contributors to state economies. But President Trump is bent on scapegoating immigrants and driving them back into the shadows. Governors and legislatures should take a strong stand to support immigrant workers rights and protect workers against immigration-based retaliation.

Ensure That Employment and Labor Laws Protect All Workers and Fight Retaliation.

States should affirm that their employment and labor laws, such as the minimum wage and workers compensation, protect all workers regardless of immigration status. All workers need basic protections – and failing to enforce the law for undocumented

workers hurts responsible employers and documented workers alike. It also creates incentives for employers to exploit undocumented workers in their workforces. States should also adopt strong anti-retaliation policies to protect workers who come forward against employer retaliation or ICE interference.

Provide Guidance for Employers About Immigration Status Verification and Worksite Immigration Enforcement. Employers need guidance on immigration status issues to help them avoid over-reacting and inadvertently cooperating with anti-immigrant attacks. States should provide guidance on [best practices for responding to ICE workplace enforcement](#) and immigration status verification, including educating employers that there is no need to re-verify DACA or TPS holders' workplace authorization, and that Social Security Administration no-match letters are not proof of undocumented status.

Protect Civil Rights and Public Safety. States should also promote civil rights and public safety in their communities by keeping immigration enforcement out of policing. As [law enforcement leaders have explained](#), allowing police departments and other state or local officials to cooperate with ICE seriously compromises public safety by eroding immigrant communities' trust in law enforcement. Governors and legislatures should prevent state taxpayer money from being used to enforce the Trump Administration's xenophobic agenda and refuse to subsidize immigration enforcement or incarcerate individuals because of an ICE detainer.

Promote Access to Drivers' Licenses. States should also expand access to drivers' licenses for all workers, regardless of immigration status to promote public safety. [Ensuring that all workers can obtain drivers' licenses](#) improves traffic safety, reduces uninsured motorist accidents, and benefits the economy.



16. Protect Savers from being Ripped Off by Wall Street

In 2016, the Obama Labor Department issued a new rule requiring financial professionals to put their customers' interests first when providing retirement

investment advice. This [“fiduciary rule”](#) required financial professionals to rein in conflicts of interest, like kick-backs and sales contests, that encouraged them to cheat their clients. Every year, retirement savers alone lose more than [\\$17 billion](#) due to financial advisors’ conflicts of interest, and the losses are much greater when one considers all accounts and all products.

Wall Street and its allies in the insurance industry mounted a relentless attack on this common-sense ban on predatory investment practices, since it would have cut into their profits. They [challenged the rule in court and found a sympathetic panel that was willing to block the rule](#). Siding with the industry, the Trump Administration abandoned the rule. Now the Securities and Exchange Commission is in the process of replacing it with a far weaker, watered-down rule backed by the same industry groups that fought against real protections in the first place.

Governors, legislatures, and state regulators can and should step in to protect investors against this Trump rollback by adopting a strong fiduciary rule for financial professionals in their state. Unlike the Labor Department rule, which applied only to retirement accounts, and the SEC proposal, which would apply only to securities accounts, states can adopt a fiduciary rule that applies to *all* financial professionals who provide investment advice, including both securities and insurance professionals, and that protects *all* investors, retirement and non-retirement alike.



17. Promote Economic Development That Generates Broadly Shared Prosperity

After decades of income inequality and wage stagnation, it is increasingly clear that [topline economic growth does not produce bottom line prosperity](#). As a result, states need to pursue equitable economic development policies that spread the benefits of GDP growth more widely, especially to communities of color, which thanks to historically-rooted patterns of discrimination continue to lag the national average in wages, wealth, and social mobility. This kind of equitable economic development is focused not just on topline GDP growth or the total number of jobs in a community, but on the *quality* of the jobs—their wages, benefits, and prospects for upward mobility. It

focuses on boosting the capacity of communities to build their own economic momentum and seeks to bring marginalized and disconnected workers into the labor market, rather than relying solely on outside capital to fuel growth and prosperity. In turn, this requires leveraging existing assets that train these workers, boost the productivity and innovative capacity of existing businesses, and leverage the critical supply chains and industry clusters that globally competitive businesses need to thrive. And it means intentionally extending these efforts into underserved communities, including rural areas and communities of color. This kind of economic development starts with the basic objective of making sure these programs actually deliver on their promises through better accountability and transparency, and then takes a step forward by incorporating equitable development practices into the state economic policy toolbox.

Improve Transparency for Economic Development. Each year, states spend tens of billions of dollars in economic development subsidies designed to lure businesses—and theoretically jobs—to their states. As the highly publicized Amazon HQ2 tax-break sweepstakes has revealed, big economic development decisions are made largely behind closed doors, leaving taxpayers with little to no input. When taxpayers do seek to participate, they often find that they cannot obtain even the most basic information about the deals being considered. The result is that a company's announcement to build in an area, accompanied by the government's announcement of a large subsidy package, is often the first official word the public hears about a development project. Far too frequently, press announcements of economic development deals tout the projected number of jobs that will be created, but the fine print is full of loopholes. Even if a development deal is tied to jobs created or dollars invested, other big accountability safeguards are often missing. Will the actual jobs created and wages paid be publicly disclosed? Will the jobs pay living wages? Provide health and retirement benefits? Give local residents a chance to get hired? Be accessible via public transit? Be environmentally responsible? Create affordable housing? Preserve open space? All too often, governments overspend on development deals, starving the public services communities rely on. Revenue lost to tax breaks would otherwise improve schools, roads, transit, public safety, and other public services that benefit *all* employers and working families.

Require Every Economic Development Project to Actually Create the Promised Jobs Before Awarding Public Dollars. All too often, companies never deliver on the jobs and investment they've promised in exchange for public subsidies. Governors and legislatures should protect taxpayers and ensure these programs are effective by requiring every company that receives a subsidy award to actually create the jobs they promised before they receive any public dollars. In some states, these programs also "clawback" or take back any public dollars that were given to companies once the company fails to meet job creation milestones.

Disclose Economic Development Deals. In many states, governors will inherit an incentive system where economic development deals are poorly disclosed. According to Good Jobs First, only one in four major state development programs reports on the number of jobs actually created or workers trained, and only one in eleven reports on wages actually paid. Alabama, Georgia, Hawaii, Idaho, Kansas, Maine, Nebraska, New

Hampshire, New Mexico, Nevada, South Carolina, and South Dakota all rank in the bottom 15 among the states according to a national survey by the group. Governors should use their administrative powers to [disclose the costs and benefits of every economic development deal](#), online, as has been common practice in many states for many years. Since economic development is an executive branch function, many states have first disclosed incentive deals pursuant to executive action. Some have later codified the practice in law, but legislation is not typically necessary.

Adopt a Unified Economic Development Budget (UEDB). UEDBs compile every kind of state spending for economic development: tax expenditures, program and agency appropriations, grants, loans, and even workforce development. Invariably, they show that tax breaks are literally the bottom of the iceberg, bigger than appropriations by ratios of 4:1, 6:1 and even higher. Yet tax breaks are far less likely to be disclosed, receive a performance audit, or be sunsetted. Governors should require the state Revenue Department to publish a [Unified Economic Development Budget](#), so that lawmakers can see the big picture and make sure priorities are correctly balanced.

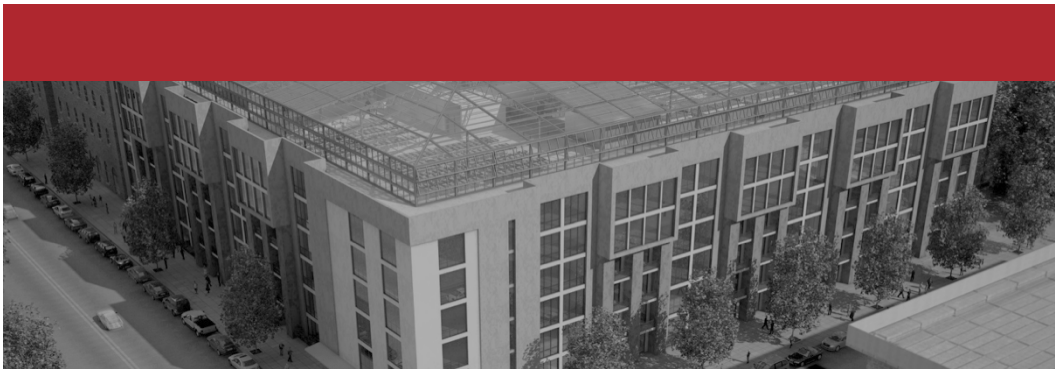
Report Tax Revenue Lost to Corporate Tax Breaks. In 2015, the Governmental Accounting Standards Board (GASB) issued [Statement 77 on Tax Abatement Disclosures](#), which requires most localities (including school districts) and states to disclose the amount of tax revenue they lose annually to economic development tax abatement programs. Only one year's data is out yet, however compliance with Statement 77 is [uneven so far](#). Governors should propose legislation, or when possible direct the state auditor, comptroller, or treasurer to improve compliance with Statement 77, and also to put the new disclosures online. Bernalillo County, New Mexico, issued a recent [report](#) than can serve as a model for cities, counties and states around the country.

Combine Equitable Development Practices with Traditional Economic Development Tools Like Business Incentives. Alongside strong accountability measures, traditional tools like business incentives can be dramatically improved by adopting key equitable development practices. The first is to target incentives to retaining and supporting existing, locally-owned businesses, rather than relying on branch plants and headquarters from outside the state. Dollars spent on locally-owned businesses have long been understood to have a [bigger economic impact](#) as they circulate through the local economy than mobile firms based in other states.

A second key strategy is to direct incentives to firms in key supply chains or in industries supported by comprehensive development strategies that combine workforce training, research and development, and small business development to build out entire sectors. The growth of [biotech and aerospace in North Carolina](#) are good examples. These sector development efforts have been shown to [improve the job creation and investment outcomes](#) for the incentive projects in those industries.

Connect Marginalized Workers to Jobs Through First Source Hiring Agreements with Employers. As discussed above, targeted or first source hiring is a policy designed to ensure that private sector businesses and local governments recruit and hire disadvantaged employees. Local governments and community-based organizations across the country have successfully used first source hiring as a way of targeting

training, economic development, public jobs, and public contracts to residents of the economically distressed areas or neighborhoods that most need job training and employment opportunities. First source hiring policies often require businesses receiving economic development incentives to give preference in their pre-employment screening and hiring processes to potential employees recommended by a specific, named intermediary, often a community college or community-based training organization. For example, a local community college could recruit students from a distressed neighborhood into a customized training program created for a specific employer. The students receive customized training and then are given preference for interviews and screening with the employer once they've completed the program.



18. Promote and Fund Affordable Housing

There is an unprecedented national housing affordability, habitability, and eviction crisis that requires a bold statewide response. Across the country, nearly [11 million renters pay over half of their income for rent and utilities](#), and tenants, manufactured homes residents, and low-income homeowners are rising up for housing justice in response. The affordable housing and eviction crises have grown significantly worse with no minimum wage worker able to afford a 2 bedroom apartment anywhere in the country without paying more than [30% of their income in rent](#). At the same time, the vast majority of tenants are without rent or eviction protections, leaving them at the whim of corporate landlords to raise rents, decreasing families' economic security. According to the [Eviction Lab](#), one out of four severely rent-burdened families spends over 70% of their income on rent and utilities and only one in four families who qualify for affordable housing receive housing assistance.

Key best practices for state based interventions to significantly address the affordable housing crisis and alleviate evictions are (1) expanding state funding for affordable housing, and (2) passing a comprehensive program of tenant protections including rent controls and just cause eviction protections.

Fund Affordable Housing. The greatest housing crisis exists for the lowest income renters who are most at risk of homelessness and displacement. States can alleviate the housing crisis through fully funding public housing and preserving at-risk affordable

housing, as well as through fully funding housing trust funds, rental assistance programs, and state-based affordable housing programs. States should prioritize housing programs for both preservation and new construction for low-income and extremely low-income tenants, defined as those earning under 50% of Area Median Income, with a priority for those earning under 30% of Area Median Income.

Protect Tenants. The vast majority of renters live in unregulated housing without tenant protections, leaving them at great risk to housing insecurity. States should expand and strengthen tenant protections through implementing state-based rent control and just cause eviction protections to limit rents and increase eviction protections—and by repealing preemption to empower cities to adopt such protections. Rent control is a system of tenant and rent protections that can curb the crisis of evictions, displacement, and housing unaffordability. It protects tenants from profiteering landlords through a combination of rent restrictions, just cause eviction protections, and a system of holding landlords accountable for poor and uninhabitable conditions. Beyond rent control, states should increase resources to legal services for eviction defense; implement renters’ tax credits; create anti-discrimination protections for those using Section 8 and other assistance programs; and fund robust code enforcement to improve conditions and services for substandard and uninhabitable housing.

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