



CALIFORNIA ATTORNEY GENERAL

ROB BONTA

LABOR DAY REPORT

2023

A MESSAGE FROM ROB BONTA

On Labor Day, we celebrate the generations of working people who built – and continue to build - our great state. We owe a debt of gratitude to those who grow our food, teach our children, nurse our sick, and fuel our economy. Thanks to them, our state has the largest, most productive, and most diverse workforce in the nation.

Here in California, the fight for workers’ rights is part of our DNA. Over a century ago, we revolutionized labor practices in the United States, passing critical legislation that many now take for granted: from daily overtime and workers’ compensation laws, to bans on child labor.

That tradition continues today. In the last few decades, California has enacted landmark laws to guarantee paid sick days, provide paid family leave, and protect our most vulnerable workers from abuse and exploitation.

These basic rights were not easily obtained, and they will not be easily retained. They were the result of a robust and sustained labor movement. This year, we have seen that labor movement emerge from a worldwide pandemic and leverage its members’ collective power on an unprecedented scale. Since January, over 270,000 California workers across industries – from education to entertainment, from hotels to hospitals, and from technology to transportation –have joined the picket line, demanding better wages, benefits, and treatment.

My office is proud to support all workers during this historic movement. From cracking down on human trafficking and labor-law violators, to fighting discrimination in the workplace – I am using the full weight of my office to protect labor rights in and beyond California.

This fight is personal to me. I grew up in a labor household. My parents were recruited by the United Farmworkers of America to help Filipino and Latino farmworkers advocate for better wages and working conditions. They showed me how to channel pain into purpose, and purpose into progress. Today, I am proud to carry-on their legacy by standing alongside the next generation of labor leaders and working people to reaffirm a simple but powerful idea: that if you work hard, you can get ahead, and more importantly, you can see your kids and grandkids go even further than you.

In solidarity,

Rob



CALIFORNIA IN CONTEXT: A HOT LABOR SUMMER

Since January 1, 2023, there have been 94 Strikes and 69 Labor Protests. The map below shows the distribution of strikes and protests across the state.¹



¹ This data comes from the University of Cornell's [Labor Action Tracker](#), as of August 16, 2023.

HIGHLIGHTS FROM THE PAST YEAR

Fighting Against Misclassification

What DOJ has done:

[Secured a stipulation for preliminary injunctive relief to reclassify home care workers as employees after filing a lawsuit](#) in the Superior Court of California, Los Angeles County, California, Los Angeles County, against Care Specialist HCS Inc., formerly doing business as TLC Home Care Services, and its prior operators, accusing the company and its operators of misclassifying in-home care workers as independent contractors instead of employees, resulting in a direct loss to the workers of potentially millions of dollars for working grueling 12- and 24-hour shifts without receiving overtime premium pay, as well as other violations of California's labor laws and Unfair Competition Law.

Continued to litigate a landmark case against ride-hail companies Uber and Lyft to hold the companies accountable for years of misclassifying hundreds of thousands of employee drivers as independent contractors and depriving the drivers of minimum wage, overtime, expense reimbursement, and other employee entitlements.

[Joined a coalition](#) of state and local government enforcement agencies in a comment letter in support of a proposal to rescind and replace Trump-era regulations that narrowed the protections of the Fair Labor Standards Act, by making it easier to classify workers as independent contractors and evade the protections of the FLSA.

Supported Assembly Bill 1484 (AB 1484, Zbur), which seeks to support temporary public employees with their employer-employee relations by allowing them the potential opportunity to join an existing bargaining unit of permanent public employees, as specified.

Additionally supported Assembly Bill 594 (AB 594, Maienschein), which seeks to facilitate public prosecutors' ability to enforce state labor laws, and also permits, in an action for willful misclassification, the recovery of penalties by the employee as a statutory penalty or by the Labor Commissioner as a civil penalty.

Why:

Misclassification of employees as independent contractors deprives workers of the legal protections that workers are entitled to, including the right to a minimum wage, overtime, workers' compensation, and other fundamental employment rights. Misclassification also allows companies to evade their obligations to remit payroll taxes and allows them to cut costs to the detriment of law-abiding competitors. No worker should be unlawfully deprived of the broad protections that California law affords to employees.



Protecting Employees from Arbitrary and Unjust Discharge

What DOJ has done:

Joined a coalition of 15 attorneys general in filing an amicus brief in support of the City of New York's Wrongful Discharge Law, which, among other things, protects fast food workers from being fired without just cause.

Supported Senate Bill 497 (SB 497, Smallwood-Cuevas), the Equal Pay and Anti-Retaliation Act, which seeks to create a rebuttable presumption that a negative action against an employee is retaliatory if it occurs within 90 days of reporting a labor or equal pay violation. Additionally, SB 497 would direct recovery of civil penalties for a violation of whistleblower protections to the affected employee.

Also supported Senate Bill 799 (SB 799, Portantino, Durazo, and Holden), which seeks to make workers who are on strike for more than two weeks eligible for state Unemployment Insurance benefits. Additionally supported Assembly Bill 504 (AB 504, Reyes), which seeks to codify a public employee's right to honor a strike, and protect workers from adverse disciplinary actions for striking in solidarity.

Why:

Fast food workers are among the lowest-paid and most exploited working populations in the nation. New York's law is aimed at protecting fast food employees from arbitrary and unjust discharge. When corporate interests filed suit against New York's law, Attorney General Bonta, along with 15 other attorneys general, weighed in to support the City's defense of its law.

Expanding Minimum Wage Protections

What DOJ has done:

Joined a multistate coalition in submitting an amicus brief to the Ninth Circuit Court of Appeals in support of the U.S. Department of Labor in *Nebraska v. Su*. The brief supports the authority of the President under the Procurement Act to include "seasonal recreational services" workers within the protections of the minimum wage for federal contractors, and to raise the minimum wage for such contractors to \$15 per hour.

Why:

In studies cited in support of the rule, higher minimum wages have been shown to benefit employers and consumers by resulting in higher employee retention, productivity, and morale. Moreover, higher minimum wages have also been demonstrated to be instrumental in reducing poverty for workers, which is a burden that falls disproportionately on women and people of color.



Fighting Unfair Mergers that Hurt Workers

What DOJ has done:

Urged the D.C. District Court to temporarily block Albertsons' planned \$4 billion payment of a special dividend to shareholders on November 7, 2022, amid concerns that the payment would dramatically hamper Albertsons' ability to compete. That effort was unsuccessful, but we remain concerned about the proposed merger and committed to careful review.

Supported Senate Bill 627 (SB 627, Smallwood-Cuevas), the Displaced Worker Retention and Transfer Rights Act, which seeks to strengthen worker protections at specified chain employers, including through a notice of an impending closure to employees at the location subject to closure.

Also supported Assembly Bill 647 (AB 647, Holden), which seeks to update existing recall rights for grocery workers when there is a change of control in a grocery establishment to cover workers of a grocery distribution center, and provides the grocery worker legal tools to enforce these protections in a time of renewed market consolidation.

Why

Albertsons and Kroger supply daily necessities to millions of people throughout the United States and employ more than 700,000 workers in communities across the country. As inflation drives up grocery prices, a decrease in competition has the potential to be devastating for hardworking California families and for those who work at these stores.

Combatting Illegal No-Poach and Non-Compete Agreements

What DOJ has done:

Joined a coalition of 21 attorneys general in an amicus brief opposing McDonald's attempt to evade liability for past alleged efforts to stifle competition and undercut wages through the use of "no-poach" agreements. On August 25, 2023, a court of appeals agreed with the states that these no-poach agreements merit a closer look.

Expressed support for the Federal Trade Commission's proposed rule banning non-compete clauses.

Joined a coalition of 21 attorneys general in an amicus brief supporting former employees of Saks department stores who were harmed by agreements between Saks and other luxury retailers — including Gucci, Louis Vuitton, and Prada — not to hire former Saks employees.

Supported Assembly Bill 1076 (AB 1076, Bauer-Kahan), which seeks to protect employees by clarifying that existing law prohibits the inclusion of a no-poach or non-compete agreement in an employee's contract, and would require specified employers to notice their employees that these types of contractual provisions are void.

Why:

No-poach agreements between employers are anticompetitive contracts that prevent worker mobility. These agreements prevent competitors from hiring each other's workers, and harm wages and benefits. Non-compete agreements are anticompetitive contracts that prevent worker mobility. These contracts generally require workers to refrain from accepting new employment opportunities in a similar line of work or establishing a competing business. Even when unenforceable, these agreements can discourage workers from seeking new opportunities, causing workers to mistakenly believe that they cannot pursue or accept a competitor's offer of better pay or working conditions.

Protecting Workers from Heat Injury

What DOJ has done:

Joined a multistate coalition of attorneys general in a petition urging the U.S. Occupational Safety and Health Administration (OSHA) to take emergency regulatory action to protect workers against extreme heat.

Why:

Over the past 35 years, heat has claimed more lives per year on average than flooding and hurricanes combined. As climate change yields longer and more frequent periods of higher temperatures around the world, the risks faced by workers in the United States from heat-related illness and death have become critically urgent, leading to a need to urge federal occupational safety authorities to implement new standards to address the growing danger.

Investigating Claims of Discrimination and Hostile Work Environment

What DOJ has done:

Launched an investigation, in coordination with the New York Attorney General's Office, of the workplace culture of the National Football League, including potential violations of federal and state pay equity and anti-discrimination laws.

Why:

Employers are required to take effective steps to prevent discrimination, harassment and retaliation from occurring in the workplace. The Attorneys General of California and New York are exercising their legal authority to seek information from the NFL regarding allegations of gender pay disparities in compensation, harassment, and gender and race discrimination. No matter how powerful or influential, no institution is above the law.

Supporting Updated Federal Merger Guidelines

What:

Issued a statement applauding the U.S. Department of Justice and Federal Trade Commission's proposed update to the Merger Guidelines.

Why:

The federal Merger Guidelines inform the public on how our federal partners identify potentially illegal mergers. The proposed updates foster innovation and reflect the complex realities of the United States' diverse economy. These new guidelines expressly recognize that potential impacts on workers should be considered in merger analysis.



Defending Workers' Right to Seek Justice in Court

What DOJ has done:

Co-sponsored Senate Bill 365 (SB 365, Wiener), which seeks to add judicial discretion in cases where corporations attempt to force private arbitration without a valid arbitration agreement, and are able to automatically delay court proceedings, directly hampering access to justice for workers and consumers.

Filed an amicus brief before the California Supreme Court in Adolph v. Uber Technologies in support of the plaintiff's efforts to bring suit against Uber under the Private Attorneys General Act (PAGA).

Why:

Many workers are, as a condition of employment, subject to arbitration agreements that often limit their ability to bring claims in conjunction with their fellow workers, and can impede the development of the law by avoiding public court proceedings. DOJ is committed to ensuring that arbitration agreements are not used as a tool to hinder public or private enforcement of workplace rights, as opposed to facilitating dispute resolution.

Advocating for Federal Enforcement of Worker Safety and Health Standards

What DOJ has done:

Joined a coalition of 19 attorneys general in an amicus brief pushing back on a cynical attempt to drastically undermine the U.S. Occupational Safety and Health Administration's (OSHA) ability to establish and enforce federal workplace safety protections.

Why:

While states play a significant role in ensuring the safety of workers, OSHA is a vital partner in protecting health and safety in the workplace nationwide. In 2021, an Ohio-based general contracting company filed a lawsuit challenging OSHA's authority to promulgate occupational safety or health standards under the Occupational Safety and Health Act. The amicus brief reiterated the critical importance of OSHA's workplace standards for millions of people across the country, and the U.S. Court of Appeals for the Sixth Circuit agreed and rejected Allstates' attempt to unwind more than half a century of legal precedent.

Fighting Discriminatory, Non-Job Related Questions in the Application Process

What DOJ has done:

Filed an amicus brief before the California Supreme Court in Raines v. U.S. Healthworks Medical Group pushing back on efforts to undercut the application of the California Fair Employment and Housing Act's (FEHA) anti-discrimination protections to entities acting on behalf of employers.

Why:

The U.S. Healthworks Medical Group — one of the largest providers of occupational health services in California — unlawfully required job applicants to answer highly intrusive, non-job-related, and discriminatory health questions on behalf of prospective employers, including questions on disability status, menstrual health, and hair loss.

Standing Up for Employee Self-Representation

What DOJ has done:

Co-led a coalition of 18 attorneys general in a comment letter urging swift action on a proposal by the National Labor Relations Board to restore a more generous definition of joint employment for purposes of the National Labor Relations Act, rescinding a narrowing of that definition that took place during the Trump Administration.

Why:

The National Labor Relations Board's proposed rule would rescind and replace a 2020 final rule that took effect during the Trump Administration, which unlawfully shielded companies from liability and exposed millions of workers to harmful and unfair labor practices. Because of the broad use of subcontracting and staffing agencies in the modern workplace, a narrow definition of employment deprives workers of the right to organize and bargain with entities that may have substantial effective control over their working conditions, even if they are not the workers' direct employer. In contrast, the current proposal seeks to hold responsible companies accountable and returns the joint employer standard to one that better reflects contemporary employment relationships in the 21st century.

Bolstering Public Service Loan Forgiveness (PSLF) and Temporary Expanded Public Service Loan Forgiveness (TEPSLF) Programs

What DOJ has done:

Issued guidance and tools to help Californians take advantage of recent changes to the PSLF and TEPSLF programs.

Co-led a multistate coalition in filing a comment letter in support of the U.S. Department of Education's continued efforts to improve access to several student loan discharge programs, including the PSLF and TEPSLF programs.

Engaged with the Department of Education on outreach and education to help borrowers take advantage of this important program for public servants and those working in the nonprofit community.

Supported the student loan debt tax exemption that was included in Assembly Bill 111, which is one component of the 2023 budget package.

Why:

Many eligible borrowers still have yet to receive the relief for which they are entitled. Many other students, defrauded by for-profit colleges like Ashford University, continue to face roadblocks to securing loan forgiveness, despite court judgments obtained by state attorneys general finding that these colleges violated the law, and notwithstanding significant actions taken by the Biden administration to deliver student loan debt relief.



Fighting Employer-Driven Debt Arrangements

What DOJ has done:

Issued a legal alert to remind all employers of the state-law restrictions on employer-driven debt.

Why:

Employer-driven debt is debt incurred by individuals through employment arrangements. This can include arrangements where an employer provides training, equipment, or supplies to a worker, but requires the worker to reimburse the employer for these expenses if the worker leaves their job before a certain date. Not only are such arrangements often unlawful as a means for employers to shift normal costs of employment onto their workforce, but also the growth of employer-driven debt products can stifle competition in the labor market and force workers to remain in jobs sacrificing mobility, better wages and opportunity. As outlined in the legal alert, these arrangements can also lead to abusive collection practices that violate consumer protection laws.



Cracking-Down on Human Trafficking:

What DOJ has done:

Secured prison sentences for four members of the Gamos Family, who were convicted of human trafficking and labor-related crimes in the Bay Area.

Partnered with Governor Newsom's Administration and the State Legislature to increase DOJ's capacity to combat wage theft in the 2023 Budget Act (Senate Bill 101).

Why:

The Gamos Family operated Rainbow Bright, an adult residential and childcare company that targeted members of the Filipino community for human trafficking and labor exploitation. Rainbow Bright employees were required to live and work in care homes and daycare facilities for hours far exceeding a normal work day, and forced to sleep on floors and in garages. Some employees reported being locked outside when defendants were not home. Rainbow Bright defendants deterred the employees from leaving the dismal working conditions by regularly threatening to turn the employees over to U.S. immigration officials and by confiscating some employees' passports.

ABOUT THE WORKER RIGHTS AND FAIR LABOR SECTION

The mission of the Worker Rights and Fair Labor Section is to utilize the broad legal powers of the Office of the Attorney General to conduct investigations, litigation, and policy advocacy in order to combat systemic business practices that undermine the economic security, health and safety, and dignity of California workers, and to maintain a level playing field for legitimate businesses operating in the State.

- Wage theft
- Independent contractor misclassification
- Unsafe working conditions
- Payroll tax evasion
- Workers' compensation insurance fraud

Given the broad legal powers of the Office of the Attorney General, the section is able to utilize the full panoply of state laws to fill enforcement gaps that traditional labor enforcement agencies cannot always address, and target third-party facilitators or other non-employer actors that contribute to the flourishing of unlawful employment practices. The section also engages in legal advocacy to support legal and policy developments to advance worker protections and encourage employer accountability.



TEN THINGS YOU SHOULD KNOW ABOUT YOUR RIGHTS IN THE WORKPLACE

1. YOU HAVE THE RIGHT TO ORGANIZE AND JOIN A UNION

Most employees are afforded certain rights to join together to improve their wages and working conditions, including:

- The right to form — or attempt to form — a union in your workplace
- The right to join a union, whether the union is recognized by your employer or not, and
- The right to assist a union in organizing your fellow employees

Federal and state labor laws prohibit most employers from coercing, prohibiting, or otherwise interfering with these rights — and from taking actions meant to discourage union activity. In most cases, if your employer violates any of these rights, you can file an Unfair Labor Practice charge.

2. YOU MAY BE AN “EMPLOYEE” EVEN IF YOU ARE CALLED A “CONTRACTOR”

“Employees,” unlike “independent contractors,” are entitled to a wide range of rights, benefits, and protections under California law. This leads some unscrupulous businesses to misclassify their workers as independent contractors.

Your designation as an “employee” or as an “independent contractor” is determined by how you do your work. Here are some things that do not determine your status:

- Being labeled an independent contractor by your employer,
- Being required to sign an agreement stating that you are an independent contractor, or being paid as an independent contractor, i.e., without payroll deductions and with income reported by an IRS Form 1099, rather than a W-2.

3. YOU HAVE SEVERAL, IMPORTANT WAGE-AND-HOUR RIGHTS

Most employees in California are currently entitled to:

- A minimum wage of \$15.50 per hour (or more in some localities)
- Overtime premiums for work in excess of eight hours per day and forty hours per week; an unpaid 30-minute meal period for every five hours of work; and a paid 10-minute rest period for every four hours of work.

4. YOUR WAGES, TIPS, AND ACCRUED VACATION ARE YOURS

It is generally illegal for an employer to deduct money from your paycheck to offset a cash shortage or breakage unless the employer can show you acted dishonestly, with willful misconduct, or with gross negligence.

Your employer is prohibited from keeping any portion of your tips.

When you are terminated or you quit a job, you are entitled to your unused vacation pay and any unpaid, final wages.

5. YOU MAY BE ENTITLED TO TIME OFF – BOTH PAID AND UNPAID

Under family and medical leave laws, many workers are entitled to unpaid, job-protected leave from work, with continued health insurance, for:

- A pregnancy- or childbirth-related disability
- To bond with a newborn, adopted or foster child
- To recover from a serious health condition
- To care for a seriously ill loved one, including a child, parent, grandparent, grandchild, sibling, spouse or registered domestic partner
- To deal with a family member's military deployment overseas.

Most workers who participate in the State Disability Insurance (SDI) program are also entitled to up to eight weeks of partially paid family leave each year while taking time off from work for any of the reasons listed above.

Workers also may be entitled to up to 52 weeks of partial wage replacement for their own non-workplace-related disability or injury, including pregnancy- or childbirth-related disabilities.

Most workers are entitled to earn and use up to three sick days per year or more in certain localities.

6. CALIFORNIA LAW PROHIBITS SEXUAL HARASSMENT AND DISCRIMINATION IN THE WORKPLACE

Your employer cannot discriminate against you based on any of the following: race, color, ancestry, national origin, religion, creed, age (40 and over), disability (mental and physical), sex, gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, or military or veteran status.

Your employer must take steps to protect you from sexual harassment and gender-based harassment, including unwanted sexual advances; visual, verbal or physical conduct of a sexual nature; and many other forms of offensive behavior, regardless of the sex or gender identity of the harasser.

7. YOU MAY BE ELIGIBLE FOR UNEMPLOYMENT INSURANCE IF YOU ARE FIRED OR QUIT YOUR JOB FOR “GOOD CAUSE”

Most workers are entitled to unemployment insurance benefits if they are laid off.

You are also entitled to benefits if you quit your job for a good reason or if you are fired for a reason other than “misconduct,” i.e., showing serious or intentional disregard for your employer’s interests. For example, repeated tardiness or unexcused absences from work may qualify as misconduct, but “poor performance” is not normally misconduct and should not disqualify you from benefits.

8. YOUR MAY BE ENTITLED TO WORKERS’ COMPENSATION BENEFITS

If you suffer a work related injury or illness, California’s workers’ compensation system is designed to provide you with the medical treatment you need, partially replace the wages you lose while you are recovering, and help you return to work. Report any injury or illness to your supervisor as soon as possible to avoid delays in receiving benefits.

Your employer is obligated to provide you with a claim form; you should file it as soon as possible.

9. YOU CAN REASONABLY REFUSE TO DO UNSAFE WORK

You have the right to refuse hazardous work — and you can’t be punished for doing so — if both of the following are true: performing the work would violate a Cal/OSHA health or safety regulation and the violation would create a “real and apparent hazard” to you or your coworkers.

Before you refuse to perform unsafe work, however, make sure you inform your supervisor about the unsafe condition, and give the company a chance to correct it. If the company does not correct the unsafe condition, and you decide to refuse the work, make sure that you inform your supervisor, preferably in writing or in front of others, exactly why you are refusing to do the work, and that you will return to work as soon as the condition is fixed. Finally, where appropriate, you should contact Cal/OSHA to file a complaint against your employer.

10. YOUR EMPLOYER CANNOT RETALIATE AGAINST YOU FOR EXERCISING YOUR RIGHTS

Generally speaking, employers are prohibited from retaliating against you for exercising the rights on this list, and many other labor and employment law rights. That is true even if you were wrong about your rights, so long as you were seeking to exercise them in good faith. The California Labor Commissioner’s Office enforces more than 45 labor laws that specifically prohibit retaliation, and you can file a complaint with its Retaliation Complaint Investigation Unit.