

CALIFORNIA ATTORNEY GENERAL

**ROB BONTA**

**LABOR DAY REPORT**

**2022**

# A MESSAGE FROM ROB

On this Labor Day, I would like to celebrate the generations of working people who make California the great state that it is today. The California Dream is the product of California workers - from farmworkers to firefighters, from teachers to technicians. It is through their collective efforts that California remains a beacon of hope for people willing to work hard in order to make a better life.

California is home to the largest and most diverse economy of any state in the country – a testament to the resilience and skills of its workforce. When workers advocate for fair wages and dignified workplaces, they uphold one of the most fundamental tenants of our nation: the idea that if you work hard, you should be able to get ahead, retire with dignity, and leave something behind for the next generation. While some argue that fair wages and profitable economies are mutually exclusive, California serves as proof that a state can respect its workers and maintain one of the most robust economies in the world at the same time.

California has a long, proud history of enacting some of the most expansive worker protection laws in the country. Well over a century ago, California passed daily overtime laws, outlawed child labor, instituted workers' compensation, and established the Industrial Welfare Commission, which promulgated workplace regulations that continue to protect workers today. These freedoms, though revolutionary at the time, became the cornerstones of the strongest middle class in the world.

In more recent years, California has enacted landmark laws to guarantee paid sick days, provide paid family leave, and protect our most vulnerable workers — including garment workers, farmworkers, and workers who are undocumented — from abuse and exploitation. In each of these cases, California has led the way — with other states often following suit.

California's leadership reflects the evolving attitudes of our country. Momentum to protect and empower workers is building nationwide. Union popularity is at a [fifty-year high](#), and unionization campaigns are succeeding in a range of new industries—from coffee shops to warehouses.

While we have come a long way – we still have work to do. Even in California, too many of our workers are the victims of discrimination, harassment, and wage theft. Much work remains to be done to realize the promise of dignity for all workers.

In the last year alone, our office secured a first-of-its-kind settlement with Amazon over COVID-19 safety violations, fought for pregnant workers' right to safe workplaces, cracked down on labor exploitation, and advocated for expanding eligibility for the minimum wage.

The fight for justice in the workplace is personal to me. I grew up in a labor household. My parents helped Filipino and Latino farmworkers advocate for better wages and working conditions, alongside Dolores Huerta, Larry Itliong, Philip Vera Cruz, and Cesar Chavez. Today, I am proud to stand side-by-side with the next generation of labor leaders and working people — and to re-affirm a simple, yet powerful idea: working people, in solidarity, can change the world.

In solidarity,



# HIGHLIGHTS FROM THE PAST YEAR

At the California Department of Justice, it is our mission to protect the rights of all working people. Here are a few highlights from the past year:

## RESPONDING TO COVID-19 IN THE WORKPLACE

- **What DOJ has done:**
  - Secured a first-of-its-kind stipulated judgment requiring Amazon to:
    - o End harmful labor practices concealing COVID-19 case numbers from workers,
    - o Provide key information on existing workplace protections, and
    - o Pay \$500,000 toward further enforcement of California’s consumer protection laws.
  - Supported subsequent efforts to protect Amazon’s workers, including submitting a legal brief in support of the New York Attorney General’s case, which alleged that Amazon retaliated against workers who demanded better treatment and COVID-19 protections.
- **Why:** COVID-19 has caused undue hardship for workers. We are working tirelessly to ensure that businesses comply with all relevant requirements to keep our workers safe.

## STANDING UP FOR EMPLOYEE PROTECTIONS

- **What DOJ has done:** Successfully defended Assembly Bill 5 (Ch. 296, Statutes of 2019), which protects workers from misclassification and safeguards their ability to access key employment benefits, at every level of the judicial system.
- **Why:** Some companies, including those in the gig economy unfairly label certain workers as independent contractors, denying them the right to minimum wage, overtime, workers’ compensation, and other fundamental employee rights. Misclassification also shifts risk from a company to an individual, sometimes leaving workers open to liability.

## COMBATTING ILLEGAL NON-COMPETE AGREEMENTS

- **What DOJ has done:**
  - Issued an [alert](#) reminding employers and workers that non-compete agreements are not enforceable in California.
  - Filed [a comment letter](#) in support of the State Bar of California’s efforts to strengthen and clarify a lawyer’s legal obligations when it comes to illegal employment contract provisions, like non-compete clauses.
- **Why:** Non-compete agreements generally require workers to refrain from accepting new employment opportunities in a similar line of work or establishing a competing business, usually for a specified period of time and within a geographic area. Even when invalid, 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.

## **FIGHTING FOR PREGNANT WORKERS**

- **What DOJ has done:** Urged the U.S. Senate to strengthen pregnancy protections for working Americans and their families by passing the Pregnant Workers Fairness Act (PWFA) — federal legislation that would ensure pregnant workers have the right to reasonable accommodations at work.
- **Why:** Under federal law, there is no explicit right to workplace pregnancy accommodations.

## **PROTECTING WORKERS FROM HEAT INJURY**

- **What DOJ has done:** Joined a coalition of six attorneys general in a [comment letter](#) calling on the federal Occupational Safety and Health Administration (OSHA) to act quickly to implement a national standard to protect workers from heat-related injury and illness in the face of a warming climate.
- **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, workers in the United States will almost certainly face increased risk of heat-related illness and death.

## **ADVOCATING FOR WORKERS' RIGHT TO ORGANIZE**

- **What DOJ has done:** Joined a coalition of 16 attorneys general in an [amicus brief](#) urging the National Labor Relations Board to strengthen protections for workers seeking to organize a union.
- **Why:** On average, unionized employees have higher wages, better benefits, and safer working conditions than their counterparts. In recent decades, courts and lawmakers have weakened union protections. Under current law, workers are often denied workplace freedoms and face a Herculean task joining a union. Since 1983, the number of Americans represented by unions has fallen from 20% to just over 10%.

## **DEFENDING WORKERS' RIGHT TO SEEK JUSTICE IN COURT**

- **What DOJ has done:** Joined a coalition of 18 attorneys general in an [amicus brief](#) before the U.S. Supreme Court in *Southwest Airlines v. Saxon* to uphold the rights of transportation workers to resolve work-related disputes in court.
- **Why:** When workers are, as a condition of employment, subject to arbitration agreements — which typically include confidentiality provisions and other protectionist terms — it can make it more difficult for states to gather information about the pervasiveness of unlawful practices.

## **ADVOCATING FOR EXPANDING ELIGIBILITY FOR MINIMUM WAGE**

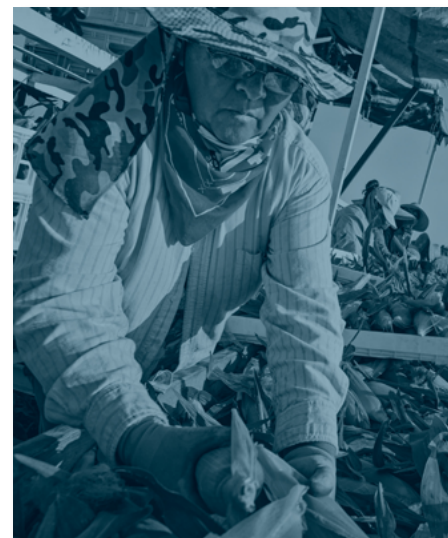
- **What DOJ has done:** Joined a multistate coalition of attorneys general in filing [three amicus briefs](#) in support of minimum wage protections for federal contractors.
- **Why:** Numerous studies and reports have shown that fairer, higher wages improve the morale, productivity, and performance of employees and reduce turnover. This, in turn, leads to improved services and better consumer experiences.

“Strong wage protections respect the dignity of work and they are a critical part of enabling access to the American Dream. Here in California, we will continue to support fair pay and the rights of workers everywhere.”

– Rob Bonta

## **ADVOCATING FOR FEDERAL ENFORCEMENT OF LABOR LAWS**

- **What DOJ has done:** Co-led a coalition of 11 attorneys general — as well as several local agencies from across the country — in a [letter in support](#) of the U.S. Department of Homeland Security’s (DHS) plan to change its worksite enforcement practices to support enforcement of wage protections, workplace safety, labor rights, and other employment laws and standards. Among other things, the letter recommends DHS create a deferred action program to proactively support workers cooperating with labor law enforcement agencies, make it explicit that state and local agencies that enforce workplace laws can certify certain visas, and limit enforcement based on potentially retaliatory tips from employers.
- **Why:** Many vital industries depend on immigrant workers to meet their labor demands and provide critical services to our communities. At the same time, immigrant workers, especially those who are unauthorized to work in the United States, are particularly susceptible to abusive and unlawful labor conditions, and are especially vulnerable when bringing these violations to light.



# SPOTLIGHT ON: TRUE TASK FORCE

The Tax Recovery in the Underground Economy (TRUE) Task Force was created to ensure multi-agency collaboration and to combat wage theft, tax evasion, and other crimes in the underground economy. Over the last year, TRUE cracked down on white collar crime, protecting the dignity of California's work force.

## CRACKING-DOWN ON HUMAN TRAFFICKING

### HUMAN TRAFFICKING AND LABOR SCHEME

- **What DOJ has done:** [Secured guilty verdicts](#) against members of the Gamos family for human trafficking and labor-related charges while operating Rainbow Bright, a California adult residential and child care company.
- **Facts:** Rainbow Bright employees were required to live and work in care homes and day care 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 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. The defendants took over \$500,000 in the commission of the scheme.

### STATEWIDE TRAFFICKING RING

- **What DOJ has done:** [Secured guilty pleas](#) from three individuals involved in a statewide organized crime trafficking ring that included sex trafficking, labor trafficking, and money laundering.
- **Facts:** As part of the trafficking operation, the crime ring used Backpage.com to place advertisements for sex and deprived individuals of their liberty in order to force them to commit sex acts at multiple brothel locations. In addition, as a form of labor trafficking, the ring also withheld at least one survivor's passport and threatened future job opportunities.

## HOLDING LABOR-LAW VIOLATORS AND TAX EVADERS ACCOUNTABLE

### TAX EVASION AND LABOR-LAW INVESTIGATION

- **What DOJ has done:** [Investigated and charged](#) three individuals with sales tax evasion and other labor law violations at the Bay Area restaurants they owned and operated.
- **Facts:** The defendants were arraigned on 65 counts, including filing a false tax return with intent to evade paying taxes, failure to pay unemployment insurance and training tax, failure to pay disability insurance, failure to collect and pay income tax, and grand theft of labor.

### TAX AND WORKERS' COMP FRAUD

- **What DOJ has done:** Secured the [conviction](#) of an owner of multiple Los Angeles and San Francisco Restaurants for involvement in a five-year fraud scheme.
- **Facts:** From 2011 through 2016, the two defendants failed to report over \$7.5 million in sales to the California Department of Tax and Fee Administration and over \$2.9 million in wages to the Employment Development Department. During that time, the defendants defrauded the state of workers compensation insurance, undermining the general fund.

# 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:
  - o The right to form — or attempt to form — a union in your workplace
  - o The right to join a union, whether the union is recognized by your employer or not, and
  - o 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:
  - o Being labeled an independent contractor by your employer,
  - o 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:
  - o A [minimum wage](#) of \$14 or \$15 per hour (or more in some localities)
  - o [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:
  - o A pregnancy- or childbirth-related disability
  - o To bond with a newborn, adopted or foster child
  - o To recover from a serious health condition
  - o To care for a seriously ill loved one, including a child, parent, grandparent, grandchild, sibling, spouse or registered domestic partner
  - o 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. YOU 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.

\*\*This list is not legal advice, regulatory guidance, or an opinion of the Attorney General. Employment laws are subject to change. If you have any questions about your own specific circumstances, please consult an attorney or the relevant public agency.



# 2022 LABOR DAY HIGHLIGHT: AMAZON WORKERS

The COVID-19 pandemic has shone a light on our country's dependence on frontline workers across industries— including the 150,000 Amazon workers here in California. As our nation's principal mode of commerce abruptly switched to online ordering, troubling reports began to emerge about the treatment of many of those servicing the supply chain, particularly at Amazon, the state's largest private employer.

Through a detailed investigation of Amazon's records, the DOJ discovered that the corporation had systematically issued untimely and defective COVID-19 Employee Notifications to its California workforce and that it failed to provide timely notifications to local health authorities about the names, numbers, occupations, and affected worksites of employees with laboratory-confirmed COVID-19 cases. This prevented both workers and public health authorities from receiving timely and accurate information about the prevalence of COVID-19 at Amazon warehouses.

As a result, California Attorney General Rob Bonta secured a first-of-its-kind stipulated judgment requiring Amazon to end harmful labor practices that concealed COVID-19 case numbers from workers and to provide key information on workplace protections in line with California's "right-to-know" law, Assembly Bill 685 (AB 685, Ch. 84, Statutes of 2020).

## IMPACT

As a result of the investigation, Amazon was required to implement a series of "first-in-the-nation" changes to its COVID-19 notifications in California. Specifically, the judgment requires that Amazon update COVID-19 notification policies and take specific actions to help protect workers, including by:

- Issuing notifications to its tens of thousands of warehouse workers that identify, within one day, the exact number of new COVID-19 cases in their workplaces;
- Ending its practice of issuing notifications that inadequately inform workers of the company's disinfection and safety plan and employees' COVID-19-related rights;
- Notifying local health agencies of COVID-19 cases within 48 hours so they can intervene in potential workplace outbreaks;
- Submitting to monitoring by the Office of the Attorney General regarding its COVID-19 notifications; and
- Paying \$500,000 towards enforcement of California's consumer protection laws.

"Amazon.com Inc.'s recent settlement with California over employee Covid-19 notifications is the latest example of how pandemic-related workforce safety has emerged as a top environmental, social and governance concern for corporate boards. . . .The settlement shows that Covid health and safety concerns are a fundamental responsibility for boards of directors, corporate law experts say. It comes as asset managers, pension funds and activist investors press more companies about their Covid responses as an important social responsibility." -Lydia Beyoud, "Amazon Covid Settlement Spotlights Board Focus on Workforce, ESG", [Bloomberg Law](#) (Nov. 29, 2021)

# ABOUT THE WORKER RIGHTS AND FAIR LABOR SECTION

The Worker Rights and Fair Labor Section of the Office of the Attorney General is focused on addressing systemic business practices that undermine the working conditions of California's most vulnerable low-wage workers. The section conducts both civil and criminal investigations and prosecutions to combat unlawful employment practices including:

- 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.



# WHO TO CONTACT FOR CALIFORNIA LABOR LAW VIOLATIONS

The state agency with the authority to adjudicate wage claims and enforce labor laws is the Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE). Examples of possible wage claims include the nonpayment of wages, overtime, or vacation. Examples of possible labor law violations include failure to provide workers compensation insurance, child labor, cash pay, unlicensed contractors, minimum wage and overtime claims, failure to provide rest and/or meal periods, and discrimination or retaliation for exercising employee rights or engaging in protected activities. To file a wage claim or report a labor law violation, please contact the DLSE district office closest to the city/location/community where you performed work. A list of DLSE district offices and their contact information is available [here](#).

The Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) is responsible for enforcing California laws and regulations pertaining to workplace safety and health. To report a workplace accident, or to file a complaint, please contact the Cal/OSHA enforcement unit district office closest to the workplace where the accident occurred or the complaint conditions exist. A list of Cal/OSHA district offices and their contact information is available [here](#).

If you have information that an employer is committing tax evasion, please contact the appropriate state and/or federal tax enforcement agencies. These agencies may be contacted as follows:

**State income tax:**

Franchise Tax Board  
Investigations Bureau  
P.O. Box 942857  
Sacramento, CA 94257-0540  
Telephone: 916-845-4037  
[Franchise Tax Board Website](#)

**State payroll tax:**

Employment Development Department  
Underground Economy Operations  
P.O. Box 276262  
Sacramento, CA 95827-6262  
Telephone: 1-800-528-1783  
[Employment Development Department Website](#)

**State sales tax:**

State Board of Equalization  
Investigations Division  
450 N. Street  
P.O. Box 942879 MIC: 42  
Sacramento, CA 94279-0042  
Telephone: 1-888-334-3300  
[State Board of Equalization Website](#)

**Federal income tax:**

Internal Revenue Service  
Criminal Investigations  
Fresno, CA 93888  
[Internal Revenue Service Website](#)

If your employer retaliates against you because of your efforts to report alleged wrongdoing, you may wish to seek whistleblower protection pursuant to California Labor Code Section 1102.5. You may do so by filing a complaint with the Division of Labor Standards Enforcement, Retaliation Complaint Investigation Unit. [How to file a retaliation/discrimination complaint \(ca.gov\)](#).

This Retaliation Complaint Investigation Unit handles complaints from employees who are retaliated against by their employer for disclosing information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of a state or federal statute, or violation or noncompliance with a state or federal regulation, including, laws enacted for the protection of corporate shareholders, investors, employees, and the general public. This agency also handles complaints from employees who are retaliated against by their employer because they

refuse to participate in an activity that would result in a violation of a state or federal statute, or noncompliance with a state or federal rule or regulation.

In addition, individuals who experience violations of law can often file a lawsuit in court. You may wish to consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you. You may obtain a referral to a certified lawyer referral service by contacting the State Bar at (866) 442-2529 (toll-free in California) or (415) 538-2250 (from outside California), or via their website [here](#).

The California Department of Justice’s Public Inquiry Unit is available for individuals to contact regarding general comments and questions. Complete the [General Comments/Questions Form](#) and mail the form to:

Public Inquiry Unit  
Office of the Attorney General  
P.O. Box 944255  
Sacramento, CA 94244-2550

Individuals may also complete an online version of the form on the Office of the Attorney General’s website, [here](#).



