



ATTORNEY GENERAL
ROB BONTA'S
LABOR DAY REPORT
2021

A MESSAGE FROM ROB

Labor Day is a time to reflect upon the generations of working people who have built this great state, and to honor their legacy. Despite our challenges, California has always been — and remains — a beacon for people willing to work hard in order to make a better life. Not only have working people built California, they have pushed and organized and fought for the most expansive worker protection laws in the country.

Well over a century ago, California enacted the first daily overtime law, helping establish the eight-hour workday; outlawed child labor; passed a compulsory workers' compensation law, protecting those injured on the job; and established the Industrial Welfare Commission, which promulgated workplace regulations that continue to protect workers today. In more recent years, California has enacted landmark laws to guarantee paid sick days, provide paid family leave, and to protect our most vulnerable workers — including garment workers, farmworkers, and people who are undocumented — from abuse and exploitation. In each case, California has led the way — with other states often following suit.

Together, we have shown the world that California can respect and protect its workers, while simultaneously building and maintaining one of the most robust and innovative economies in the world.

This year, as we continue to grapple with an unprecedented public health crisis, we honor and pay tribute to all the frontline workers — the first responders and warehouse workers, the farmworkers and grocery clerks, the nurses and electricians, and people up and down this great state who have risked their own safety to help others and to provide essential services.

On Labor Day, as we honor our workers, we must also not shy away from hard truths. Too many of our workers are the victims of discrimination, harassment, and wage theft. Too many are denied basic rights — from equal pay to a safe and healthy workplace. There is much work that remains to be done to realize the promise of dignity for all workers.

This is why we truly honor our working families — and our proud labor history — by continuing the fight for justice in the workplace. This has always been personal to me. I grew up in a labor household. My family helped Filipino and Latino farmworkers advocate for better wages and working conditions, alongside Dolores Huerta, 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.

I pledge to continue that fight now and in the years ahead.

In solidarity,



Rob Bonta



HIGHLIGHTS FROM THE PAST YEAR

At the California Department of Justice, we're deeply committed to protecting the rights of all working people. That's part of the mission of our recently established Worker Rights and Fair Labor Section (WRFLS): to protect the welfare of California workers and maintain a level playing field for legitimate businesses operating in the state. Here are a few highlights from the WRFLS and across the Department from the past year.

"It's not just about ensuring people can get a living wage, it's about opening doors for our children and breaking the cycle of intergenerational poverty."

- ATTORNEY GENERAL ROB BONTA

At the federal level, Attorney General Bonta is already helping [lead the charge](#) for workers' rights, heading a coalition of 17 attorneys general in calling on the U.S. Senate to pass the Protecting the Right to Organize Act of 2021 (PRO Act). The PRO Act would strengthen and modernize the National Labor Relations Act (NLRA), which enshrines the fundamental rights to organize, unionize, and bargain collectively.

Here at home, the Attorney General, in May, [announced the arraignment](#) of several Bay Area restaurant owners on criminal charges, including sales tax evasion and grand theft of labor. The arraignment was the result of an investigation by the [Tax Recovery in the Underground Economy \(TRUE\) Task Force](#), which is a DOJ-led, multi-agency collaboration to combat wage theft, tax evasion, and other crimes in the underground economy.

ARRAIGNMENT ALLEGATIONS:

\$893,000 STOLEN IN WAGES FROM THEIR EMPLOYEES

\$287,697 EVADED IN SALES TAX

\$171,820 EVADED IN EMPLOYMENT TAXES

We also continue to vigorously prosecute our driver misclassification lawsuit against Uber and Lyft. In October, a California Court of Appeal unanimously [affirmed](#) our prior preliminary injunction where the trial court concluded there was an "overwhelming likelihood" we would prevail on the merits of our case. Following changes in the law, the case is still moving forward, focusing on addressing years of unpaid wages, benefits, and business expenses for workers.

As a Department, we helped hold the line against a torrent of Trump Administration anti-worker initiatives, including pushing back on efforts to [deny](#) workers their rights under the Fair Labor Standards Act, to [depress](#) farmworker wages, and to [weaken](#) critical safeguards for agricultural workers.

In November, the Department also [secured](#) a court decision blocking the Trump Administration's cynical effort to implement a rule that would have undermined the organizing rights of more than half a million healthcare workers in California's In-Home Supportive Services (IHSS) Medicaid program.

The Department continues to defend worker protection laws in court, including Assembly Bill 5 (AB 5), which codified and expanded the standard for determining employee status under the ABC Test. Securing wins in similar cases in courts across the state, we also recently [prevailed](#) in the 9th Circuit where the court concluded that AB 5 was not preempted by the Federal Aviation Administration Authorization Act (FAAAA) as applied to motor carriers.

And, just last month, Attorney General Bonta [filed](#) an amicus brief in support of the City of San Diego’s “right to return” ordinance — also known as right to recall — as part of the broader effort to help protect workers hit hardest by the economic consequences of the pandemic. The ordinance requires certain employers to grant workers who were laid off as a result of COVID-19 the first opportunity to get rehired for newly reopened positions.

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, and 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 \$13 or \$14 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 also prohibited from keeping any portion of your [tips](#). And 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; or 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 to: bond with a newborn baby or newly adopted foster child; care for a seriously ill parent, parent-in-law, grandparent, sibling, child, grandchild, or spouse or registered domestic partner; or to deal with a family member’s military deployment overseas. 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.

Finally, 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.

And 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

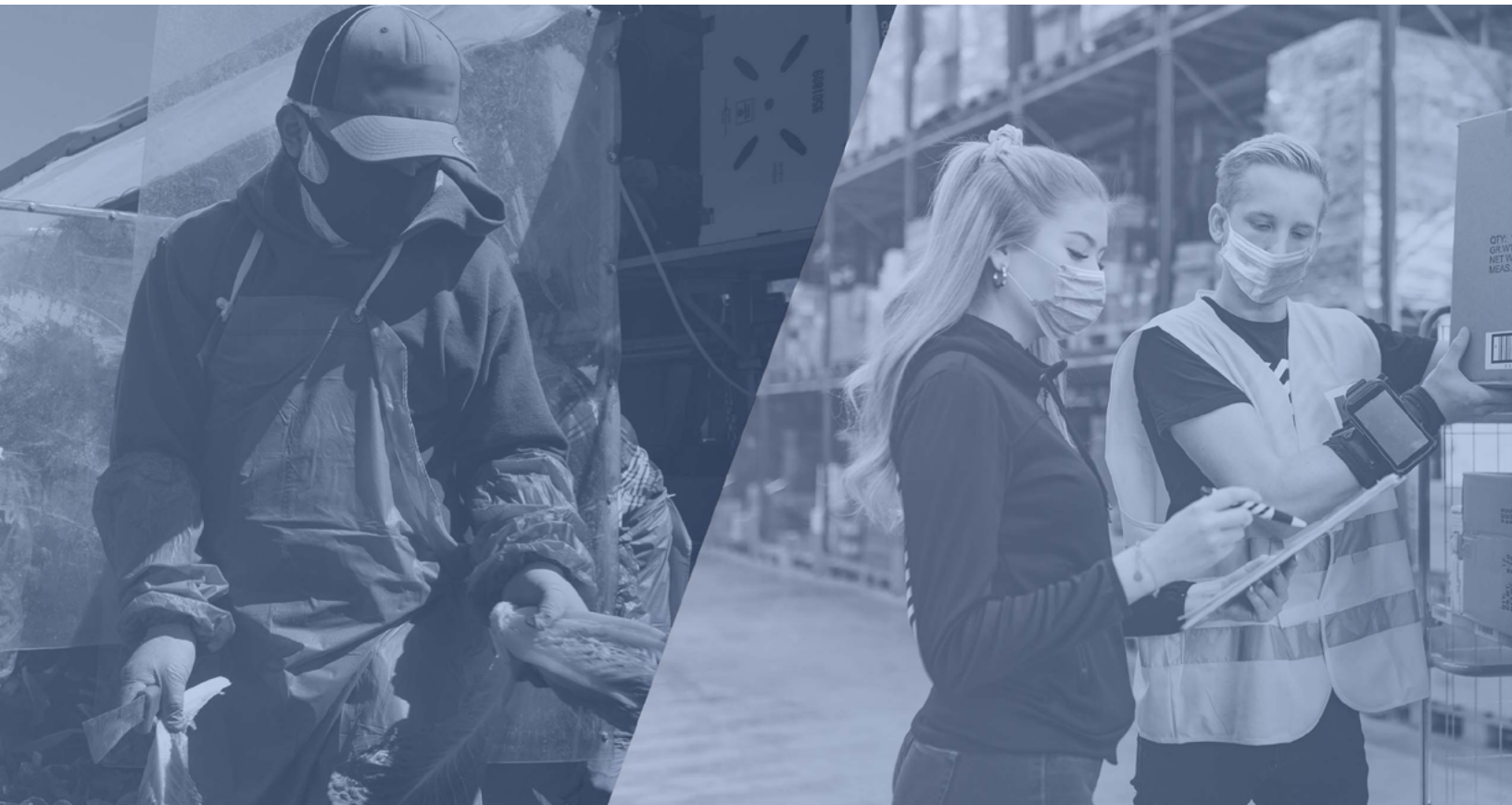
If you suffer a work related injury or illness, California’s workers’ compensation system is [designed](#) to provide you with the medical treatment you need, partially replace the wages you lose while you are recovering, and help you return to work. Report any injury or illness to your supervisor as 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. And 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.*

WOMEN WORKERS IN THE PANDEMIC

The COVID-19 pandemic has introduced a lot of uncertainty to our lives. But one thing is beyond dispute: this pandemic has disproportionately harmed women, especially women of color in low-wage occupations. Women have left or lost their jobs in droves during the pandemic, often taking the lead to care for young children, to supervise online learning for school-age kids, and to care for family members who contracted COVID-19.

As of November of last year, despite accounting for 48% of the workforce, nearly 450,000 more women than men have been displaced from work by the pandemic.

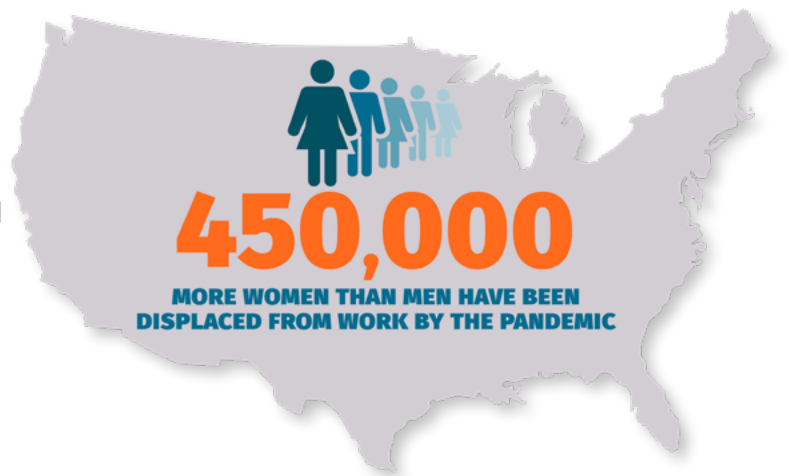
In fact, more than 2.3 million women dropped out of the labor force between February 2020 and February 2021. This reduced women's labor force participation to its lowest rate since 1988. And this historic reduction has disproportionately harmed Black women and Latinas — who have experienced approximately double the rate of job loss as women overall — and women with less than

a high-school education — who, as compared to pre-pandemic levels, had an unemployment rate that was ten percentage points higher than their male counterparts. Forward-looking projections indicate that employment recovery for women is likely to take 18 additional months compared with men, creating the prospect of an employment gap that will persist well beyond initial recovery.

Outdated notions that families can easily absorb these losses are false. Nearly two-thirds of women are the primary or co-breadwinner for their families.

In the face of these catastrophic scenarios — and all the harm that will follow in the months and years ahead — it is my hope that Congress, in particular, will take decisive action at the national level on key legislation currently before it. California has already demonstrated leadership on several related fronts by enacting its own model legislation. Congress should follow suit.

First, Congress should enact [the Pregnant Workers Fairness Act](#) (H.R. 2694). This is a critical measure to remove barriers to women's workplace participation and promote healthy pregnancies. It would require employers to reasonably accommodate workers and job applicants who need accommodations due to pregnancy, childbirth, and related medical conditions. Pregnant workers, especially women in low-wage and physically demanding jobs, routinely experience dire economic consequences when pushed out or terminated for needing accommodations. Those who are pushed onto leave early often burn through the leave they hoped to reserve to recover from childbirth and bond with their child. Then, unable to afford more time without a paycheck, they return to the workforce much earlier than planned or medically advisable.



Second, Congress should enact [the Federal Paycheck Fairness Act](#) (H.R. 7). Women who work full time, year-round are still paid, on average, only 82 cents for every dollar paid to men, resulting in a gap of \$10,157 each year. The gap exists in every state, regardless of geography, occupation, education, or work patterns. And it is worse for women of color: On average, Latinas are typically paid 55 cents, Native American women 60 cents, and Black women 63 cents for every dollar paid to white, non-Hispanic men. To combat these discrepancies, the Federal Paycheck Fairness Act would modernize and expand current federal equal pay law, helping to break longstanding and harmful patterns of pay discrimination.



Third, Congress, as set forth in the current budget reconciliation framework, should enact comprehensive paid family and medical leave to allow workers to care for themselves and their loved ones without risking their livelihood. Only 21% of workers in the United States have access to paid family leave through their employers, and just 40% have access to personal medical leave through employer-provided short-term disability insurance. And the racial disparities in meaningful access to leave are stark: about 71% of Latino workers, 67% of American Indian and Alaska Native workers, 61% of Black workers and 54% of Asian American and Pacific Islander workers are either not eligible for or cannot afford to take unpaid leave under the Family and Medical Leave Act. An effective federal paid leave program would provide workers with a portion of their wages for at least 12 weeks per year to address serious health and caregiving needs.

While there’s always more work to be done, we should all encourage Congress to see this work through, and pass these laws, which will play a critical role in helping alleviate the burden on women who have suffered disproportionate harms during this pandemic.

