

HOW UNIONS AND UNIONIZED WORKPLACES ADVANCE THE MISSION OF THE DEPARTMENT OF LABOR

Introduction

The 1913 law establishing the Department of Labor (“the Department” or “DOL”) declares that the Department’s purpose is “to foster, promote and develop the welfare of working people, to improve their working conditions, and to enhance their opportunities for profitable employment.” American labor unions pursue actions that complement the Department’s mission. Unions improve the well-being of American workers by negotiating strong contractual protections and processes to enforce them; by ensuring workers have the knowledge and job security necessary to exercise their statutory rights, including those rights enforced by the Department. Unions also build strong labor-management partnerships and related training programs, support efforts to build safer and healthier workplaces; and advance fair pay and transparency for all workers. Higher levels of unionization therefore complement the Department’s own efforts to protect workers and advance its mission.

I. Unionized workplaces are more attentive to workplace health and safety

The Department’s Occupational Safety and Health Administration (OSHA) is charged with ensuring safe and healthful working conditions for workers by enforcing the Occupational Safety and Health Act (OSH Act). The COVID-19 pandemic brought workplace health and safety to the forefront of national discussions on public health and safety. Studies before and after the onset of the COVID-19 pandemic show that unionized workplaces have fewer traumatic injuries and better health and safety practices than their non-unionized counterparts. Additionally, unions encourage workplaces to pursue health and safety practices that go beyond federal standards.

A 2012 study found that unionized workplaces in the coal mine industry had fewer traumatic injuries and fewer fatalities than non-unionized workplaces.¹ Another study found that states with greater collective bargaining rights for firefighters had fewer firefighter fatalities.² One report surveying OSHA data in the construction industry found that union worksites had 34 percent fewer OSHA violations per inspection than non-unionized worksites, suggesting a positive link between unions and compliance with OSHA standards.³

Recent studies found that unionized workplaces had lower COVID-19 infection rates among workers and were more likely to adopt mask mandates than non-unionized workplaces. Researchers studying the spread of COVID-19 in nursing homes found that unionized nursing homes experienced a 6.8 percent lower worker COVID-19 infection rate and a 10.8 percent lower resident death rate compared to non-unionized nursing homes.⁴ In another study, researchers examining the spread of COVID-19 in schools found that Iowa school districts were more likely to adopt COVID-19 mask mandates where teachers were unionized.⁵ A 2020 study surveying essential workers found that union

¹ Morantz, Alison D., Coal Mine Safety: Do Unions Make a Difference?, *Industrial and Labor Relations Review*, (2012). Available at SSRN: <https://ssrn.com/abstract=1846700> or <http://dx.doi.org/10.2139/ssrn.1846700>. Finding that “unionization is associated with a 13-30% drop in traumatic injuries and a 28-83% drop in fatalities.”

² Wells, Dominic, Do collective bargaining rights save lives? A rare event analysis of firefighter fatalities in the United States, *RHCPP*, Vol.13, No. 2, at 100-117 (2022). (“Using state-level data from 2009 through 2018, this analysis shows that states with duty-to-bargain rights for firefighters have fewer firefighter fatalities than those without duty-to-bargain rights.”). Available at: <https://doi.org/10.1002/rhc3.12224>.

³ Ford, Leah, and Jeffrey Freund, the Connection Between Unions and Worker Safety, U.S. Department of Labor Blog, (2022). Available at: <https://blog.dol.gov/2022/05/11/the-connection-between-unions-and-worker-safety>.

⁴ Dean, Adam, Jamie McCallum, Simeon D. Kimmel, and Atheendar S. Venkataramani, Resident Mortality and Worker Infection Rates From COVID-19 Lower In Union Than Nonunion US Nursing Homes, 2020-21, *Health Affairs*, Vol. 41, No. 5, at 751-759, (2022). Available at: <https://doi.org/10.1377/hlthaff.2021.01687>.

⁵ Dean, Adam, Jamie McCallum, Simeon D. Kimmel, and Atheendar S. Venkataramani, Iowa School Districts Were More Likely to Adopt COVID-19 Mask Mandates Where Teachers Were Unionized, 2020-21, *Health Affairs*, Vol. 40, No. 8, (2021). Available at: <https://doi.org/10.1377/hlthaff.2020.02518>.

members were more likely than non-union members to regularly use personal protective equipment at work (“PPE”), to receive PPE and other disinfecting or sanitizing resources from their employers, to receive paid sick leave if they had symptoms of COVID-19, and to report being tested for COVID-19.⁶

Unions are effective in promoting workplace safety because they negotiate for health and safety provisions in collective bargaining agreements, including worker education and health and safety committees that engage workers in identifying workplace hazards and recommending solutions. Union health and safety committees and union health and safety programs result in greater worker knowledge of their health and safety risks and rights, greater worker awareness in identifying workplace health and safety violations, greater reporting of violations, and, as a result, greater OSHA enforcement. For example, one study found that unionized workplaces promote the enforcement of the OSH Act because unions increase the probability that employees will contact the OSHA to raise safety and health issues.⁷ The study demonstrated that unionized establishments were more likely to receive OSHA inspections and “pay higher penalties for violating health and safety standards than comparable non-union establishments.”⁸ A more recent study of National Labor Relations Board (“NLRB”) and OSHA data also showed a positive link between union certification and the rate of OSHA inspections, the share of inspections carried out in the presence of a worker representative, violations cited, and penalties assessed.⁹

Both the OSH Act and the Federal Mine Safety and Health Act (“Mine Act”) explicitly recognize the central role of workers and their representatives in advancing the administration and enforcement of these laws. Under the OSH Act and the Mine Act, workers and their representatives are explicitly involved in workplace inspections, may participate in pre- or post-inspection conferences, and are allowed to participate as parties in the enforcement process.^{10,11} The Susan Harwood grant program reflects the importance of worker knowledge and involvement in the OSH Act process by awarding grants to organizations, including unions and other worker advocacy organizations, to better ensure that workers are informed of and able to exercise their statutory rights.¹²

In sum, unionized workplaces are associated with less traumatic injuries and fatalities, better health and safety practices, including practices that go above and beyond federal requirements, greater OSHA inspection and enforcement activities, and greater likelihood of compliance with health and safety standards than non-unionized workplaces.

II. Greater bargaining power achieved through a union can help protect workers vulnerable to wage theft

The Department’s Wage and Hour Division promotes and achieves compliance with labor standards including the Fair Labor Standards Act (federal minimum wage and overtime law), the Davis-Bacon and Related Acts (prevailing wage on certain federal or federally assisted construction contracts, among others), and Service Contract Act (prevailing wage on federal service contracts). Greater bargaining power at work, including having a unionized workplace, can help

⁶ Hertel-Fernandez, Alexander, Suresh Naidu, Adam Reich, and Patrick Youngblood, *Understanding the COVID-19 Workplace: Evidence from a Survey of Essential Workers*, *Roosevelt Institute* (2021).

⁷ Weil, David, *Enforcing OSHA: The Role of Labor Unions*, *Industrial Relations*, Vol. 30, No.1, at 20-36. (1991) Available at: <https://doi.org/10.1111/j.1468-232X.1991.tb00773.x>.

⁸ Weil explains that there are several reasons to conclude that union health and safety programs influence employee exercise of OSH Act rights and affect overall inspection activities. “First, unionized workers are more likely to have information concerning the nature of health and safety risks in their workplace since on-the-job risk education is a common component of union health and safety programs, thus unionized workers should be better equipped to identify potential risks requiring OSHA attention. Unionized workers also have greater knowledge of their rights under the OSH Act, and hence their recourse under the law, and finally unions provide their members protection from unjust dismissals through contract provisions governing firing procedures, particularly dismissals arising from employee exercise of a legal right. Thus, unionization likely reduces the potential dampening effect of employer retaliation against employees who exercise their OSHA rights.” Weil, at 21 (1991).

⁹ Sojourner, Aaron, and Jooyoung Yang, *Effects of Union Certification on Workplace-Safety Enforcement: Regression Discontinuity Evidence*, *ILR Review*, Vol. 75., No. 2, (2022). Available at: <https://doi.org/10.1177/0019793920953089>

¹⁰ 29 U.S.C.A. § 657(e); 29 C.F.R. § 1903.8 (a).

¹¹ 30 U.S.C.A. § 813; <https://arlweb.msha.gov/s&hinfo/minersrights/minersrights.pdf>

¹² <https://www.osha.gov/harwoodgrants>.

protect workers against the rampant problem of wage theft, or failure to pay wages required by law.¹³ Researchers from the University of Pennsylvania, Temple University, and the University of Minnesota considered whether workers with less bargaining power in their employment relationship are more likely to both have lower wages and to experience more violations of their workplace rights.¹⁴ They found that higher average wages, lower labor market concentration, and a higher union coverage rate are all associated with fewer workplace law violations. The research suggests that workers with less bargaining power are more likely to have lower wages, more violations of their labor rights, and are less likely to report violations to enforcement agencies.¹⁵

Researchers studying wage theft from 2007 to 2009 found that the probability a low-wage worker was paid less than the applicable minimum wage was somewhere between 10 percent and 22 percent.¹⁶ Notably, the researchers found that low-wage workers of color, women, and non-U.S. citizens were especially likely to be subject to wage theft.¹⁷ Other studies examining wage theft estimate that American workers lose \$15 billion dollars annually from minimum wage violations alone.¹⁸

Unions play a central role in curbing wage theft by negotiating contractual guarantees of workers' wages, together with a process for enforcing these guarantees, by encouraging state and local legislation against wage theft,¹⁹ by helping low-wage workers vulnerable to wage theft understand their statutory rights, and by empowering workers to report violations of their rights.

III. Unions provide job security that empowers workers to report violations of law to the Department

Agencies around the Department rely upon workers to come forward and report workplace violations – or cooperate with other investigations – to enforce the laws in their jurisdiction. Unions provide job security to workers that enables them to feel more secure reporting labor and employment law violations with less fear of retaliatory discharge. The vast majority of non-unionized workers in the United States are subject to the legal principle of employment “at-will,” which means their employers are free to discipline or fire them for good reasons, questionable reasons, or no reason at all so long as the employers’ justification is not otherwise unlawful.²⁰ Even if a worker believes they have been fired for an unlawful reason—like in retaliation for reporting a suspected violation of federal employment law—“the burden is on the worker, not the employer, to collect the necessary evidence, prove [retaliation], and mount a legal challenge.”²¹

Despite anti-retaliation clauses in federal labor and employment laws, findings from an October 2020 national survey of U.S. workers show the extent to which workers’ fear of retaliation prevents them from reporting violations of law in the workplace.²² For example, 31 percent of women surveyed said the fear of retaliation might prevent them from reporting

¹³ Mangundayao, Ihna, Celine McNicholas, Margaret Poydock, and Ali Sait, More than \$3 billion in stolen wages recovered for workers between 2017 and 2020, EPI, at 2, (2021). Available at: <https://files.epi.org/uploads/240542.pdf>. Noting a study by Cooper and Kroeger (2017) that “investigated just one type of wage theft and found that in the 10 most populous states in the country, 17% of eligible low-wage workers reported being paid less than the minimum wage, amounting to 2.4 million workers losing \$8 billion annually. Extrapolating from these 10 states, Cooper and Kroeger estimate that workers throughout the country lose \$15 billion annually from minimum wage violations alone.”

¹⁴ Marinescu, Ioana, Yue Qiu, and Aaron Sojourner, Wage Inequality and Labor Rights Violations, NBER Working Paper No. 28475, (2020). Available at SSRN: <https://ssrn.com/abstract=3673495> or <http://dx.doi.org/10.2139/ssrn.3673495>.

¹⁵ Marinescu et al at 4 (2020).

¹⁶ Fine, Janice, Daniel Galvin, Jenn Round, and Hana Shepherd, Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession, *Equitable Growth*, (2021).

¹⁷ Fine et al (2021).

¹⁸ Mangundayao et al at 2 (2021).

¹⁹ Doussard, Marc and Ahmad Gamal, The Rise of Wage Theft Laws: Can Community—Labor Coalitions Win Victories in State Houses? 2015, *Urban Affairs Review*, Vol. 52., No. 5, (2016). Available at: <https://doi.org/10.1177/1078087415608008>.

²⁰ Andrias, Kate, and Alexander Hertel-Fernandez. 2021. Ending At-Will Employment: A Guide for Just Cause Reform. New York: *Roosevelt Institute*, at 4, (2021). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2945/

²¹ Andrias et al at 4-5 (2021).

²² Tung, Irene, Paul Sonn, and Jared Odessky, Just Cause Job Protections: Building Racial Equity and Shifting the Power Balance Between Workers and Employers, National Employment Law Project, at 15 (2021).

workplace sexual harassment, and 22 percent of all respondents said that fear of retaliation would prevent them from speaking up about or refusing to work in unsafe or unhealthy working conditions.²³ Black and Latinx workers were most likely to fear retaliation for reporting unsafe working conditions, with 34 percent of Black workers and 25 percent of Latinx workers indicating they would be concerned about employer retaliation in such circumstances.²⁴

There are decades of evidence “demonstrating that workers are more likely to exercise rights in the presence of a labor union,” and one reason why is that union-negotiated job protections empower workers to raise workplace concerns and report violations.²⁵ Union-negotiated collective bargaining agreements advance the enforcement of federal labor and employment laws by providing workers with job security through the adoption of just cause standards for disciplinary actions, including termination. Under a just cause standard for discipline or termination, included in most collective bargaining agreements, employers can only fire workers for well-documented cases of poor performance, misconduct, or other legitimate business reasons.²⁶ Scholars maintain that these protections explain why unionized workers are more likely to report violations of health and safety issues—among other workplace violations—than non-unionized workers.²⁷ Unionized workplaces with just cause standards for discipline or termination offer greater protections for workers reporting violations of law by providing fair disciplinary processes through a grievance and arbitration system, by requiring employers document all disciplinary decisions, and thereby limiting employers’ ability to disguise retaliatory firings as lawful employment decisions.

The Department’s enforcement of federal employment laws heavily relies on worker reports, and the “just cause” provisions of most collective bargaining agreements empower unionized workers to speak out and report violations more than workers without these protections.

IV. Unions are integral to successful apprenticeships and training programs

DOL promotes apprenticeships as a proven quality job training model. Unions have played a key role in the development and successful implementation of high-quality apprenticeship programs. Labor-management partnerships have long been a part of the creation and implementation of apprenticeship programs that produce skilled workers and provide opportunities for upward mobility for the workers from underserved and disadvantaged communities. Jointly sponsored union-employer apprenticeship programs have spurred the advancement of women and underrepresented racial and ethnic groups into higher paying job sectors and have helped propel their apprenticeship graduates into middle-class jobs.²⁸ A Keystone Research study of Pennsylvania apprenticeship programs from 2000 to 2016 found that “while jointly sponsored union-employer apprenticeship programs made up 85 percent of all construction trade apprentices, they accounted for over 90 percent of apprentices who were women and non-white men.”²⁹ Graduation rates were also higher in joint union-employer programs. For apprentices enrolling between 2000 and 2012, graduation rates for men from unrepresented racial and ethnic groups, women, and veteran participants were 25 percent higher than for those in non-union programs. Additionally, starting and completion wage rates were 36 percent and 60 percent higher, respectively, for apprentices in joint union-employer programs than in non-union ones.³⁰

²³ Tung et al (2021).

²⁴ Tung et al (2021).

²⁵ Weil, David *The Fissured Workplace: Why work became so bad for so many and what can be done to improve it*. Harvard University Press. at 287. (2017)

²⁶ Andrias et al at 5 (2021).

²⁷ Weil at 22 (1991).

²⁸ Freund, Jeffrey, *Apprenticeships and the Labor Movement*, U.S. Department of Labor Blog, (2021). Available at: <https://blog.dol.gov/2021/11/19/apprenticeships-and-the-labor-movement>.

²⁹ Freund (2021).

³⁰ Freund (2021).

V. The Department of Labor's Role in Ensuring Fiscally Responsible, Democratic Unions

Another area where the Department's and unions missions are linked is in ensuring the financial integrity, transparency, and democratic practices of labor unions.

Unions are democratic membership organizations with strict laws governing their responsibilities to operate in a fiscally responsible, fair, and democratic manner. The Department's Office of Labor-Management Standards ("OLMS") enforces key pieces of the Labor-Management Reporting and Disclosure Act ("LMRDA"), which requires financial safeguards, fair election procedures, financial transparency, and other fiduciary responsibilities for labor organizations to ensure that they operate in a manner that best represents their members. OLMS often partners with international or national labor unions through its Voluntary Compliance Partnership program to assist their local and other affiliate unions comply with requirements of the LMRDA. In this way, labor unions are a key partner in advancing the Department's efforts to keep unions fair, democratic, accountable to their members, and fiscally responsible.

Conclusion

The mission of the Department of Labor is "to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights." The Department accomplishes this mission through its various programs, partnerships, and its enforcement of the myriad of statutes Congress entrusted to it. As discussed above, labor unions pursue several actions that complement and advance DOL's mission. By providing information on the positive impact unions can have on worker protections enforced by the Department, DOL is ensuring workers, employers, unions, and the public understand how unions complement its mission.

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