

Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession

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By Equitable Growth

Overview

The coronavirus pandemic and resulting recession combine to create a uniquely dangerous time for low-wage workers in the United States. Employers are more likely to break labor laws and take advantage of low-wage workers during times of high unemployment, even as the fiscal crisis makes it even more difficult for state and local labor enforcement agencies to respond to these rising violations. It is therefore critically important that federal, state, and local labor standards are vigorously enforced during times of economic stress using two complementary frameworks:

- **Strategic enforcement**, in which labor standards enforcement agencies target high-violation industries and maximize the use of enforcement powers to increase the cost of noncompliance
- **Co-enforcement**, in which agencies partner with worker centers, unions, legal advocacy organizations, and other community-based organizations embedded in low-wage worker communities and high-violation sectors

This factsheet examines the factors that make U.S. workers particularly vulnerable to wage theft during times of high



unemployment and key policy solutions, based on the essay “Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession,” by Janice Fine of Rutgers University, Daniel J. Galvin of Northwestern University, Jenn Round of Rutgers University, and Hana Shepherd of Rutgers University. The essay is part of *Boosting Wages for U.S. Workers in the New Economy*, a compilation of 10 essays from leading economic thinkers who explore alternative policies for boosting wages and living standards in the United States, rooted in different structures that contribute to stagnant and unequal wages.

Evidence from the Great Recession shows how high unemployment will likely lead to dramatically increased minimum wage violations for vulnerable workers

High levels of unemployment weaken the labor market power of those low-wage workers who remained employed, leaving them vulnerable to minimum wage violations and other forms of wage theft. Recent research on minimum wage violations during the Great Recession by Fine and her co-authors found dramatic increases in these violations that disproportionately harmed noncitizens, Latinx, Black, and women workers.¹

State and local governments are facing massive budget deficits, and existing complaint-based labor enforcement approaches miss violations against vulnerable workers

In addition to the extraordinary job losses in the private sector caused by the coronavirus recession, the shuttering of the U.S. economy also sharply reduced public-sector revenues. Even in times of economic prosperity, there is little funding for labor standards enforcement, and the reductions in state and local budgets have likely reduced funding further, even when violations are expected to rise.

Another issue with labor enforcement agencies' existing approach to enforcement is that it is overwhelmingly complaint-based, a reactive approach in which agencies only investigate violations that workers report.² This approach has failed to keep up with changes in labor and supply chains, including the increasing “fissuring” of the employment relationship.³ And research shows workers in some of the industries with the worst conditions are much less likely to complain about wage theft.⁴

Strategic enforcement and co-enforcement approaches are necessary to effectively protect low-wage workers and enforce U.S. labor standards

To take more proactive investigative approach to protecting vulnerable low-wage workers during times of economic stress, state and local governments can use two interrelated approaches for labor enforcement:

- Strategic enforcement is a form of systemic regulation that conceives of each violation as a potential signal of a broader pattern of labor market violations.⁵ Unlike complaint-based enforcement, in which each case is typically processed as an isolated or

idiosyncratic incident, a strategic enforcement model analyzes complaints for underlying causes and targets enforcement resources to high-violation industries.

- Co-enforcement refers to sustained partnerships with worker centers, unions, legal advocacy organizations, and other community-based organizations that are embedded in low-wage worker communities and high-violation sectors.⁶

More broadly, policymakers should work to maintain hard-fought state and local gains and consider passing additional federal worker protections that empower agencies, proactively target high-violation sectors, protect workers from retaliation, impose meaningful damages and penalties, and partner with organizations vulnerable workers trust.⁷

Read the full essay

“Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession,” by **Janice Fine, Daniel J. Galvin, Jenn Round, and Hana Shepherd**

This essay is part of Boosting Wages for U.S. Workers in the New Economy, a compilation of 10 essays from leading economic thinkers who explore alternative policies for boosting wages and living standards, rooted in different structures that contribute to stagnant and unequal wages.

Endnotes

- 1 Janice Fine and others, “Maintaining Effective U.S. Labor Standards Enforcement through the Coronavirus Recession” (Washington: Washington Center for Equitable Growth, 2020), available at <https://equitablegrowth.org/research-paper/maintaining-effective-u-s-labor-standards-enforcement-through-the-coronavirus-recession/>.
- 2 Janice Fine, “New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships Between Government and Civil Society Are Showing the Way Forward,” *The University of Chicago Legal Forum* 2017 (7) (2017): 145, available at <https://chicagounbound.uchicago.edu/uclf/vol2017/iss17/>.
- 3 David Weil, “Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division” (Boston: U.S. Department of Labor, 2010), available at <http://www.dol.gov/whd/resources/strategicEnforcement.pdf>.
- 4 David Weil and Amanda Pyles, “Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace,” *Comparative Labor Law and Policy Journal* 27 (1) (2005): 59, available at <https://hctar.seas.harvard.edu/>

[files/hctar/files/hro8.pdf](#); Janice Fine and Jennifer Gordon, “Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations,” *Politics and Society* 38 (4) (2010): 556, available at <https://www.doi.org/10.1177/0032329210381240>.

- 5 Tanya Goldman, “Tool 4: Introduction to Strategic Enforcement.” In Pronita Gupta, Janice Fine, and Jenn Round, eds., *The Labor Standards Enforcement Toolbox* (Washington and New Brunswick: CLASP and the Rutgers School of Management and Labor Relations, 2018), available at https://smlr.rutgers.edu/sites/default/files/2018_introductiontostrategicenforcement.pdf.
- 6 Janice Fine and Tim Bartley, “Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States,” *Journal of Industrial Relations* 61 (2) (2018): 257, available at <https://www.doi.org/10.1177/0022185618784100>.
- 7 Janice Fine and others, “Maintaining Effective U.S. Labor Standards Enforcement through the Coronavirus Recession.”

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 info@equitablegrowth.org

1156 15th St NW Suite 700
Washington DC 20005
202-545-6002