

How Local Government Can Stand Up for Workers When States Try to Stand in Their Way

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Executive Summary¹

Local governments are increasingly expanding their mission to include improving and safeguarding workers' rights. Localities nationwide have taken a range of measures: passing laws; creating labor agencies; establishing worker boards; setting labor standards for government contractors and permit holders; and more.

As they navigate this new worker-protection role, many localities face new abusive preemption in which conservative states limit local authority, in an effort to quash the power of local governments to enact policies reflecting constituents' values in areas such as workplace rights. Meanwhile, all localities face limitations placed by longstanding preemption under certain federal labor laws.

Despite these limitations, localities facing this double preemption have considerable space to maneuver and protect workers' rights. This report outlines concrete options for such localities, including:

- Creating dedicated local labor agencies that—even if they cannot enforce laws directly because of preemption—can play other key roles, such as
 - ▶ Providing public education about workers' rights;
 - ▶ Offering navigation services to help workers with claims;
 - ▶ Publicizing violations data on local employers;
 - ▶ Implementing labor requirements for government contractors and permit/license-holders;
 - ▶ Commissioning or issuing studies or reports on the conditions of workers within the jurisdictions;
 - ▶ Partnering with worker organizations or public interest law offices that enforce workers' rights; and
 - ▶ Convening legal and other local resources to serve workers' needs.
- Establishing worker boards to institutionalize worker voices within local government, highlight labor issues in the media and public debate, inform state and federal policy, and provide a forum for leadership development in worker organizations.
- Improving working conditions for their own public employee workforces through increased wages, collective bargaining rights, paid leave, etc.
- Enacting and implementing measures to improve working standards by government contractors.
- Enacting and implementing measures to ensure compliance with wage laws and other labor standards by government contractors and permit/license holders.
- Using tax or other incentives to galvanize pilot improvements by private employers.
- Enlisting district attorneys or other local prosecutors to pursue employer crimes against workers (e.g. wage theft, labor trafficking, etc.) under existing penal, criminal, or other state statutes.

- In their role as shareholders managing public pensions, urging corporations to improve labor practices when doing so would serve to minimize avoidable risks to public pensions.
- Administering grants or contracts programs in which worker or community organizations educate workers about their rights.
- Exercising public leadership through use of the bully pulpit, education, outreach, solidarity actions, and more.

Finally, this report shares examples of ways that localities are pushing back against abusive state preemption, and trying to regain the power to legislate in ways that will improve their constituents' lives.

Local pro-worker policies and actions are especially crucial now as trillions of dollars are flowing to local and state governments via historic federal spending bills. Local governments have the opportunity to ensure that federally-funded projects—whether planned and implemented by a municipal workforce, procured via local government, or sited in their jurisdictions—create good jobs for local residents.²

How School Districts Can Stand Up for Workers

Although this report is focused primarily on the role of city and county governments, school districts can also creatively exercise their authority to support workers and may find some inspiration in this report. Some key applications are as follows:

- School districts employ millions of workers, many of whom struggle with low or inadequate pay, whether as teachers, school support staff, or other positions.³ This report's section on improving working conditions for local government workers can be applied to school districts. Similarly, school districts procure a wide array of services and goods, and should ensure that government contracting results in good quality jobs, and that government contractors do not have history of wage or similar violations.
- School districts also have an educational role to play in relation to workplace rights. In 2023, the state of California enacted a law mandating that public high schools create a Workplace Readiness Week to teach students about their rights at work, their protections as underage employees, and the process of joining and forming unions.⁴ Individual school districts could do the same.
- In addition, school districts can help curb child labor violations.⁵ They can educate students and families about child labor laws, the work permit process, and age-appropriate employment opportunities. They can also help identify students who may be working in prohibited occupations or during prohibited time periods, and refer cases to state or federal child labor enforcers.

Introduction

The growing role of localities in relation to workers' rights

In the past decade, a number of local governments have begun to play a critical and growing role in relation to workers' rights, using a range of tools and strategies. We discussed these in detail in our 2022 report, [The role of local government in protecting workers' rights](#).⁶ Some key developments are as follows:

- Many localities have passed cutting-edge **workplace laws** that strengthen existing rights or create new rights. They have also made sure to enforce these laws, often strategically and in collaboration with worker organizations.
- Over twenty localities have created **dedicated departments or sub-units focusing on workers' rights**. These include large cities like New York, Chicago and Los Angeles, and also cities in states with abusive preemption, like Austin and Columbus.
- Several cities and counties have created **worker boards or councils**, that provide workers with a formal role in local government as well as the ability to inform, and in some cases participate in, policymaking.
- Some localities have created **grant programs** providing funds for outreach, know-your-rights community education, and legal services related to workers' rights.
- A number of local governments have incorporated **labor-related requirements** (e.g. wage compliance) into their processes **for procurement** (purchase of goods and services) **and issuance of licenses and permits**.
- Some localities have improved working conditions for their own public employees.

The opportunities presented by historic federal funding

Thanks to historic and unprecedented federal investment—through the Inflation Reduction Act (IRA), the Infrastructure Investment and Jobs Act (IIJA), and the CHIPS and Science Act—trillions of dollars will be flowing into local communities, leading to the construction of new manufacturing facilities, clean energy projects, and more. These federal bills already have some provisions to incentivize high labor standards, (particularly in the construction industry), but some have insufficient enforcement mechanisms.⁷ Local governments have an important role to ensure that the benefits of this federal spending accrue to working people.⁸ Although federal funding is disproportionately flowing to states⁹ where abusive state preemption limits local regulatory authority, there are still many strategies that local governments can deploy.

- **Build publicly-owned projects and raise standards for municipal workers.** Programs like the elective (direct) pay provision of the IRA can be used to fund municipal solar, EV transition and infrastructure, and disaster resilience centers. Local governments have the most authority when raising standards for their own workers, so energy cost savings can be used to help raise standards for municipal technicians and other staff.
- **Ensure that government spending supports high quality jobs.** Jobs created through government spending—or procurement—too often pay very low wages, have poor working conditions, or do little to ensure that local residents benefit. Local governments have an opportunity to incentivize and mandate high quality jobs.
- **Leverage permitting authority to drive compliance and high quality jobs.** Even when federal funding does not flow directly through local governments, they may have the opportunity to drive compliance with worker protection laws and incentivize higher job quality via various permitting or other local government approval processes.

Preemption

State preemption

Since local governments started to answer the call of the Fight for 15 campaign to raise local minimum wages, conservative state legislatures have increasingly used legislation to preempt local policymaking authority. This new preemption has often been referred to as “abusive preemption” because it disproportionately harms working people and communities of color and suppresses the voices of those communities.¹⁰ One feature that distinguishes this new abusive preemption is that it does not represent an effort by state governments to achieve uniform statewide policy on a given subject; instead, state governments withdraw local authority on an issue without implementing any statewide policy at the same time. For example, states have preempted local governments’ authority to raise local minimum wages without setting a higher statewide minimum wage.

This anti-democratic trend has spread beyond the issue of minimum wages: conservative state legislatures have enacted exceedingly broad preemption proposals that would virtually end local policymaking over a wide range of subjects ranging from gun safety to LGBTQ rights to environmental protection.¹¹ In relation to workplace matters specifically, conservative states have preempted local efforts to increase the minimum wage, require paid sick leave, require fair scheduling, regulate gig employers, set prevailing wages for municipal contracts, require workplace heat protections, and more. In some cases, states have gone beyond targeted preemption of specific policies and sought to eliminate all local regulation of the workplace.¹²

Federal preemption¹³

In addition to the new abusive state preemption, federal laws have long had varying kinds of preemptive impact on state and local action. Some federal laws broadly preempt state and local action; others do not preempt states and localities at all; and others have limited preemption.

The [National Labor Relations Act](#) (NLRA), which gives workers the right to organize, take collective action, and form and join unions, has broad preemption. Two main categories of NLRA preemption are known as *Garmon* and *Machinists* preemption, named after U.S. Supreme Court cases articulating the doctrines:

- Under *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), states and localities are preempted from passing laws arguably protected or prohibited by the NLRA. For example, a locality would be preempted from passing a law making it illegal for NLRA-covered employees to organize a union, because that right is protected by the NLRA. Similarly, a locality would be preempted from enacting a law creating its own local penalty for employers who commit unfair labor practices under the NLRA, because those acts are already prohibited by the NLRA.
- Under *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), state and local governments are precluded from enacting laws that regulate or overly influence the course of bargaining — what Congress intended to be controlled by “the free play of economic forces.”¹⁴ In relation to local worker protection laws, this means that localities cannot functionally “put

their finger on the scale” to help unions. For example, in the 1980s, the Los Angeles City Council conditioned renewal of a taxicab company’s operating franchise (essentially, their permit) on settlement of an ongoing labor dispute by a certain date. This was held preempted under *Machinists* because this kind of municipal assistance to the union limited an “economic weapon” available to the employer and was not contemplated by Congress when it passed the NLRA.¹⁵

- **Exceptions to NLRA preemption:** Even within these broad limitations, however, there are exceptions. Importantly, states and localities may act as a “market participant” in a proprietary capacity — in other words, not as policymakers, but rather to protect their interests as purchasers of goods and services.¹⁶ They are also not preempted from action that addresses “matters deeply rooted in local feeling and responsibility,” which include generally-applicable labor standards laws (minimum wages, for example), as well as police-related matters like violence or trespassing.¹⁷ Indeed, many states have taken non-federally-preempted [actions in recent years](#) that have ultimately helped strengthen worker power in various ways.¹⁸

The [Occupational Safety and Health Act \(OSHA\)](#), which protects workplace safety and health, has far more limited preemption. States and localities may take action to protect worker safety and health in three primary situations:

- 1 Where states have become an OSHA-approved “state plan” responsible for all workplace safety and health within the state;¹⁹
- 2 Pursuant to state statute or their traditional police powers, so long as there is no OSHA “standard” addressing a particular and specific workplace hazard; or
- 3 Where there is an OSHA standard, but the law, regulation, order, or government action protects the general public, and any protection of workers is incidental.²⁰

Two examples: although OSHA has proposed a rule on workplace heat,²¹ there is currently no effective OSHA standard on this hazard; as a result, OSHA does not preempt states and localities from legislating on this topic. Also, a construction-related building code provision that protects pedestrians (and also incidentally protects workers) would not be preempted.

Several federal workplace laws do not preempt state or local action; they act as a floor and states/localities may enact higher standards. These include the [Fair Labor Standards Act](#) (minimum wage, overtime, child labor), the [Family and Medical Leave Act](#), and [Title VII of the Civil Rights Act of 1964](#) (prohibits workplace discrimination based on race, color, religion, sex, and national origin).

Opportunities for Action by Localities Despite State and Federal Preemption

The following discussion is intended to provide a range of potential options that, in our view, are generally fairly likely to survive preemption as it exists today under federal law and state preemption laws.

This report, however, does not constitute legal advice. Both federal and state preemption are fluid and changing: the Supreme Court issued a ruling on NLRA preemption in 2023,²² and conservative state legislatures continue to consider new preemptive measures in 2024. Additionally, the language and scope of preemption statutes vary by state. **Local advocates and legislators exploring potential avenues to pursue should consult with attorneys knowledgeable about the specifics of preemption within their jurisdictions.** Leaders in any given jurisdiction will, of course, need to also assess the political feasibility in analyzing the outlined possibilities.

With those caveats, we offer a menu intended to spark impactful governing and action.

Enacting Legislation

Enacting legislation may be the most challenging way for state-preempted localities to fulfill a worker protection mission. This is because many conservative states have preempted some or all of the most obvious areas for action, such as wages, scheduling, and paid leave. Nonetheless, we have identified several areas for action that may be among the more promising for local legislation.

- **Workplace safety and health ordinances:** With the exception of Covid-related matters and states like Texas where an extremely broad preemption law has been passed, state preemption of specific labor standards has not yet focused extensively on workplace safety and health matters, perhaps because localities have not generally sought to legislate in this area. However, if localities do seek to pass laws on these matters, states may focus preemption efforts in this area: for example, Miami-Dade County was considering a potential workplace heat ordinance, and the state of Florida swiftly moved to preempt it.²³
- Measures addressing workplace impacts of climate change may be particularly worth considering. Miami-Dade County enacted an ordinance prohibiting retaliation against non-essential employees for complying with County evacuation orders (e.g. during an impending hurricane) or other County Executive Orders issued during a declared state of local emergency.

- **Anti-wage theft ordinances:** Although many states preempt local governments from setting higher minimum wages, they typically do not preempt localities from enforcing already-existing state minimum wages. Several localities in Florida have passed ordinances setting up administrative processes that make it easier for workers to file a complaint and recoup stolen wages without retaining a lawyer.²⁴ This local action is especially important in a state like Florida where there is no state-level wage enforcement.²⁵
- **Consumer-oriented ordinances** may also present opportunities. Newark and New York City have enacted laws requiring hotel guests to be alerted about disruptions of service resulting from a number of causes, including a labor strike or picket; such laws also require penalty-free reservation cancellations.²⁶ In the service sector, consumer laws could be used to protect customers when employers steal tips that consumers intended for workers.²⁷ Laws focusing on consumer fraud may offer promise to also assist workers.
- **Ordinances requiring education and outreach about workers' rights:** Localities could mandate the creation of a local webpage about workers' rights with links to relevant resources, or they could require a local agency to conduct outreach activities to educate workers. Research shows that many workers lack knowledge about their employment rights.²⁸ In fact, California recently passed a state law requiring workers' rights education in high schools to address this serious problem.²⁹ School boards could seek to include such topics in their local curricula.
- **Ordinances requiring creation of public disclosure resources,** such as an online database, listing employers within the jurisdiction that have violated state or federal wage and hour laws. OSHA press releases about violations were found to deter violations by similarly-situated employers,³⁰ suggesting that public disclosure could help raise awareness and prevent violations. In addition, consumers may wish to know the records of local businesses that they patronize. Some examples: New Jersey enacted a "Workplace Accountability in Labor List" (WALL) statute.³¹ Austin, Texas, passed a wage theft ordinance in late 2022 that, among other things, requires creation of a publicly available database of certain employers that have a record of wage theft in the city.³² New York City Councilmember Carmen de la Rosa introduced a bill³³ requiring creation of a publicly available database of workplace deaths.³⁴
- **Licensing ordinances** may provide opportunities for enhancing compliance: Localities could require high-violation industries to obtain a license as a condition to operate. Licensing requirements could include compliance with applicable federal and state wage-related laws, and could also include posting of a wage bond to cover potential wage claims. Such licenses and bonds are required for car washes in New York City and bonds are required for nail salons in New York State.³⁵

Again, the above possibilities provide examples of the kinds of legislative openings that may be available despite state preemption. The realistic opportunities to maneuver will depend on each locality and state's specific situation.

A Note on Heat

Workers have been significantly affected by rising temperatures due to climate change. Several local governments have begun to act on this critical issue. Phoenix passed a workplace heat ordinance requiring city contractors and subcontractors to provide outdoor workers with access to rest, shade, water, and air conditioning, as well as training for workers on recognizing signs of heat stress.³⁶ Boston's City Council is currently considering legislating on workplace heat.³⁷ But even if states preempt localities from setting broad workplace standards when it comes to heat (as Florida did recently³⁸), local governments have many tools that they can use to protect workers from extreme heat. For example, localities can:

- Designate a Chief Heat Officer. Miami-Dade County's Chief Heat Officer is responsible for improving coordination and accelerating existing heat protection efforts and initiating new work that reduces the risks and impacts of heat stress and extreme heat for vulnerable communities in the county.³⁹ Phoenix and Los Angeles have also appointed chief heat officers.⁴⁰
- Educate employers, workers and the public about workplace heat and how to protect against heat-related illness on the job. The essentials are relatively simple: employers should provide rest breaks, water, and shade/cooling areas. They should have an advance workplace heat prevention plan, train employees and supervisors, and gradually acclimatize new workers to the heat. Local governments can engage relevant departments (like the small business administration or economic development agencies) to get the word out.
- Provide employers with a template workplace illness prevention plan to complete. Many employers may be unfamiliar with what is needed to keep workers safe.
- Use public service ads and other communications approaches to educate workers and the community about keeping safe in the heat and about the signs of heat exhaustion and heat stroke.
- Provide shaded areas, cooling centers, and drinking water in relevant areas.
- Issue reports about workplace heat and local workplace heat related hospitalizations or fatalities.
- If not preempted, use procurement, licensing, and permitting powers to encourage employers to provide rest and water breaks, access to shade and air conditioning, training for signs of heat stress, workplace illness prevention plans, etc, as Phoenix has done.

Creating Dedicated Labor Agencies or Units Within Local Government

Establishing an agency or unit within local government that is focused exclusively on worker issues can be transformative. It creates a one-stop point of contact for workers, worker organizations, service providers, and others needing help or orientation. It also allows for city or county staff to develop specialized expertise about issues and laws affecting workers, and also develop ongoing relationships with stakeholders like worker organizations, advocacy groups, service providers, employer associations, and other government enforcement agencies. A dedicated office also can be mobilized to address emerging needs, as happened during the COVID-19 pandemic. Most importantly, establishment of a dedicated office institutionalizes and embeds the work within local government, ensuring that the focus on workers and their challenges will continue beyond a particular administration.

Given the constraints facing localities in states with preemption, it may initially seem curious to propose a local agency or unit devoted to workers' rights. After all, what could the agency even do, if there are essentially no laws to propose or enforce? But government agencies do a lot more than passing and enforcing laws, which leaves considerable room for local action even in preempted jurisdictions. A range of focused measures can have a meaningful effect on helping protect and empower workers. Notably, many of the activities listed below can be undertaken even without a designated, dedicated unit or agency, but however the work is organized, these initiatives will require dedicated staffing and resources to implement.

Even in states with preemption, local labor agencies could:

- **Educate workers about their rights and employers about their obligations:** Local labor agencies can conduct extensive public education for workers about their rights, such as multilingual outreach in person, social media campaigns, advertisements, and know-your-rights education added on to other kinds of community outreach. At the very least, a locality can create a well-designed web page with basic labor rights information and a listing of other resources for seeking help.⁴¹
- **Provide navigator services:** A number of government agencies have used navigators to help people manage complex bureaucracies and processes. For example, this model has been used for people seeking unemployment benefits, applying for health insurance under the Affordable Care Act, or navigating the criminal justice system.⁴² Navigators help people learn about and connect to resources, complete paperwork, and generally overcome obstacles in seeking government services. A local government office could play this role: educating workers about their rights, screening potential complaints, helping workers complete complaint forms, and connecting them with resources for legal redress (e.g. relevant government enforcement agencies, public interest or contingency-fee lawyers). Also, a local agency navigator could create a unified complaint form and play a "traffic cop" role of helping workers reach the right state and federal enforcers, since there are different agencies that deal with wage and hour, discrimination, and workplace safety complaints. In Denver, the city's Office of Financial Empowerment and Protection plays a navigator function in relation to wage theft cases: along with connecting workers to labor enforcement agencies, the office helps workers access other support, such as food assistance.⁴³

- Infuse worker considerations within other local government agencies and activities:** A local labor agency could:

 - ▶ Help the locality’s procurement team develop methods to ensure that egregious labor law violators do not get local government contracts and to analyze ways to promote high quality jobs through government contracting.⁴⁴
 - ▶ Provide orientation to district attorney staff on worker exploitation prosecutions and assist in investigating and/or developing a case pipeline for them.
 - ▶ Collaborate with the locality’s small business agency to help them provide education about workplace obligations to employers, especially small, immigrant, or minority-owned businesses that may not have ready access to counsel or legal information.⁴⁵
- Play a leading role in incorporating labor considerations into the local licensing and permitting process:** A dedicated local labor agency could help permitting and licensing agencies assess how to instill labor factors into their processes, either by creating prerequisites (that will prevent violations) for obtaining a license/permit, or by implementing consequences for license/permit holders and applicants with unresolved state labor violations, as has been done in relation to restaurants in San Diego and Santa Clara Counties in California (discussed in more detail below).
- Convene and enlist local resources to address worker needs:** Local labor agencies or leaders can convene and enlist pro bono or contingency fee attorneys, service providers, and other local resources in addressing constituents’ workplace issues. For example, the Massachusetts Attorney General’s Office, for years, has held a monthly free wage theft legal clinic in law school-donated space in Boston, to help workers whose cases the office cannot handle. The clinics are conducted in partnership with a range of other organizations that serve workers’ needs: legal services offices, volunteer and nonprofit lawyers, contingency fee attorneys, law school clinics, worker centers, and more.⁴⁶ Local labor agencies could follow this model. They could also hold regularly-scheduled convenings of worker organizations along with relevant state and federal agencies, thereby serving as a connector or hub for disparate players in the local workers’ rights landscape who may not routinely be in contact.
- Publish local enforcement data of state and/or federal labor enforcement agencies:** As noted above, localities can enact laws requiring the creation of a database or public resource listing labor law violators within the jurisdiction. But this can also be done without passing an ordinance—San Diego County has done precisely that.⁴⁷ In addition, localities could take inspiration from the New York City Public Advocate’s annual “Worst Landlord Watchlist”⁴⁸ and create a similar designation for labor and employment matters, highlighting employers in the jurisdiction with egregious violations.
- Administer a grants program:** A dedicated local labor agency could administer a grants program providing public funding to worker advocacy groups or public interest law offices, thereby helping constituents with wage theft cases. Such government grants programs are commonly used in a range of settings; for example, the Massachusetts Attorney General’s Office recently announced a grant program to legal services organizations, to protect consumers from unlawful seizures by creditors.⁴⁹ In relation to workers’ rights, such funding programs exist in Iowa, with grants from several cities and the county administered to the Center for Worker Justice of Eastern Iowa; in

Washington, D.C., where the Attorney General's Office administers a grant program established by local legislation; and in Palm Beach County (FL), where the County issues a grant to a local legal aid office to handle wage theft complaints.⁵⁰ A number of city labor agencies enter into contracts with worker organizations to assist with education and outreach, but these are generally in relation to agencies' own enforcement. In contrast, in Iowa, D.C., and Palm Beach County, the grants are standalone programs unrelated to local agency operations and enforcement.

- **Collaborate with state and/or federal labor enforcers:** Enforcement of wage and related laws involves many steps: outreach, intakes, interviews with witnesses (workers and others), review of payroll and other business records, and much more. Local labor agencies could accept incoming complaints for state or federal labor agencies, conduct initial interviews, and help prepare or package cases for other agencies to follow up on. Such relationships can be formalized through a Memorandum of Understanding or other formal agreement among agencies.
- **Commission/author, and publicize studies or reports on working conditions within the locality:** Government-issued studies or reports can identify and highlight work-related problems that urgently need addressing, which helps shape public conversations about state policy.⁵¹ In addition to commissioning and/or issuing a report, a local labor agency could hold public hearings or events to raise visibility and awareness of worker issues.⁵²
- **Helping enforce state-level wage-related judgments:** State labor departments often struggle to collect unpaid wages even after final agency determinations against an employer.⁵³ San Diego County's Office of Labor Standards recently created an innovative \$100,000 Workplace Justice Fund from which the County provides \$3,000 payments to victims of wage theft with final unpaid wage orders from the state labor commissioner. The County will use its resources and staff to pursue the outstanding payments from the offending employer, and will remit to workers funds recovered, less the \$3,000 initially paid and a percentage to cover the County's collection activities.⁵⁴
- **Create wage theft recovery or mediation programs:** As noted above, numerous Florida localities have created wage theft recovery or mediation programs of various kinds. Also, Palm Beach County created a Wage Dispute Division within the county civil court.⁵⁵

Establishing Worker Boards

Worker boards are government-established bodies with worker representation. They provide workers with an institutionalized voice in local government. Their functions vary: some have a formal role in setting standards in particular industries,⁵⁶ others conduct education and outreach, while others have an advisory role in relation to local policymaking on worker issues. Worker boards can investigate challenges facing workers by conducting hearings and outreach activities, issuing reports on findings, and making policy recommendations about wages, benefits, and other workplace standards. Even where localities are preempted from setting minimum labor standards, worker boards can still provide workers and worker organizations with official status and a structured vehicle for informing and influencing local government decision-making in non-preempted areas.

Some examples from states with varying levels of preemption are as follows:

- **Harris County, Texas** created an Essential Workers Board in 2021 to advise the county on programs and policies that support essential workers.⁵⁷ Its purview relies on local governmental authority protected by the Texas Home Rule Amendment, like budgetary action and procurement, or protected by federal law, like the disbursement of federal funds. The Board:
 - ▶ Advises the county on its overall approach to protecting essential workers' rights;
 - ▶ Provides a public forum for discussion and highlighting worker issues;
 - ▶ Provides feedback on the county's "purchasing and contracting policies, workforce development programs, tax abatement and incentive policies, community benefits agreements, distribution of federal COVID-19 relief and recovery funds, disaster preparedness and recovery programs, OSHA trainings, independent monitoring of local, state, and federal public health and labor laws, and inclusive economic development planning."
- **Durham, North Carolina** in 2019 formed the Workers' Rights Commission to advise the city council on working conditions in Durham.⁵⁸ The aims of the commission include:
 - ▶ Providing a public forum for discussion of workers' rights;
 - ▶ Conducting studies;
 - ▶ Recommending pro-worker policies for the city council's state legislative agenda;
 - ▶ Crafting a workers' bill of rights;
 - ▶ Developing a voluntary recognition program to highlight employer compliance;
 - ▶ Proposing minimum standards that City employers would be encouraged to meet;
 - ▶ Expressing solidarity and support for workers in organizing campaigns; and
 - ▶ Providing a communication channel between organized and unorganized workers.
- **Detroit, Michigan** in 2021 passed an ordinance creating a structure for industry standards boards.⁵⁹ A standards board in a given industry can be established by the city council, at the request of the mayor, or by petition of at least 150 workers in the industry. The standards boards are composed of workers, employer representatives, and other individuals appointed by the mayor and city council. Boards are tasked with:
 - ▶ Investigating industry conditions;
 - ▶ Conducting outreach to workers;
 - ▶ Making recommendations regarding pay, benefits, training opportunities and scheduling; and
 - ▶ Forwarding complaints to relevant enforcement agencies.
- In response to serious occupational safety and health issues arising from the COVID-19 pandemic, **Los Angeles County** in 2020 established public health councils to promote employer compliance with county safety guidelines.⁶⁰
 - ▶ Implemented and overseen by the county's Department of Public Health, the program empowers workers to form public health councils at their worksites to monitor compliance in the following industries: food and apparel manufacturing, warehousing and storage, and restaurants.

Improving Working Conditions for the Locality's Own Public Employees

Local governments typically have the ability to set working conditions for their own employees. Some have exercised this authority to raise labor standards for municipal employees and to enable and support collective bargaining.

The impact of these local efforts can be significant:

- **Improved working conditions for public employees:** The most obvious and direct impact is on employees of local government themselves, who will benefit from higher wages, paid sick leave, etc.
- **Improved public services:** Raising labor standards also helps local governments provide higher-quality public services, because it helps attract better-qualified workers and reduces turnover.⁶¹
- **Spillover benefits:** In regions where municipal employers are among the largest employers, improving their working conditions can have spillover effects. For example, providing paid sick leave to public employees can help prevent the spread of illness, and providing secure employment with higher pay can be a stabilizing force for the local economy in times of recession.
- **Upward pressure in labor markets:** By exemplifying practices of a model employer, local governments create upward pressure in local labor markets. They also play a leadership role for private and nonprofit employers, helping to create local norms that lift local working standards generally.
- **Race and gender equity:** Improving working conditions for public employees advances important equity goals, since women and Black workers are disproportionately represented among local and state government workers.⁶²

The following are some specific ways local governments can improve conditions for their own workers.

Raising labor standards

Many local governments have increased the minimum wage paid to their own employees; recent examples include Allegheny County, Pennsylvania; Atlanta, Georgia; Jersey City, New Jersey; Milwaukee, Wisconsin; New Orleans, Louisiana; North Miami Beach, Florida; Tallahassee, Florida; and West New York, New Jersey.⁶³ More than 100 localities have passed paid family or parental leave policies for their local government employees.⁶⁴ These include localities in heavily preempted jurisdictions; for example, Fort Bend County in Texas enacted paid parental leave for county employees in 2024.⁶⁵ Several localities have adopted a four-day workweek for their employees.⁶⁶

Facilitating collective bargaining/unionizing among public employees

Collective bargaining gives public sector workers a voice and raises working standards significantly. It can help reduce racial and gender pay gaps and create high-quality public sector jobs.⁶⁷ In addition to the benefits for workers, collective bargaining can help attract workers to local government, and also

considerable additional advantages to public employers, as articulated in a multi-state amicus brief submitted in relation to the 2018 *Janus* Supreme Court case:

- “Giving workers a voice in the agreement that will govern the terms and conditions of their employment reduces the likelihood that they will resort to strikes and work stoppages to achieve their demands.”
- Public sector unionization helps in “maintaining workforce stability by providing services to workers that minimize labor unrest.” This includes advising employees about pay benefits, and workplace rights and communicating with management to resolve errors in processing of employee pay or benefits. It also involves playing a key role in the grievance administration system by “serving as the gatekeeper for workplace disputes,” thereby alleviating “the administrative burden of organizing, prioritizing, and raising issues in the workplace that would otherwise fall to the employer.”
- The union’s “informal support of workers in the workplace plays an important role in improving their day-to-day experience and reducing the possibility that daily resentments will metastasize into full-scale labor unrest.”⁶⁸

In some jurisdictions, localities can play a role in enabling or facilitating collective bargaining and unionizing among their municipal workforces. Indeed, while the National Labor Relations Act establishes unionization rights for *private sector* workers, local government employees’ right to form and join unions varies by state and by the type of municipal worker.

Some state statutes expressly authorize collective bargaining by certain groups of public employees.⁶⁹ Where this exists, local governments can codify and support their employees’ right to organize and collectively bargain.

- In Louisiana, local governments are permitted to collectively bargain with all municipal workers.⁷⁰ In 2023, the New Orleans City Council passed an ordinance codifying city employees’ right to organize, creating collective bargaining processes and timelines, and requiring the council to hire a “labor relations advisor” to mediate potential disputes.⁷¹ Ordinance supporters noted its potential to assist with hiring and retention in city government.⁷²
- In 2022, Colorado’s state legislature passed a bill granting employees in counties with more than 7,500 employees the right to collectively bargain. Before then, all localities, including counties, decided individually whether to grant such rights, and only a very small fraction of localities in the state (16 out of approximately 270) had collective bargaining agreements with any of their workers.⁷³

In some states, collective bargaining for local employees is neither guaranteed nor prohibited by state law. In these cases, localities can typically facilitate unionization of their own workforces by passing local ordinances permitting collective bargaining.⁷⁴

- A 2020 Virginia law lifted a previous state ban, thereby allowing localities to recognize and collectively bargain with unions if these localities have passed an ordinance to this effect.⁷⁵ Several Virginia localities and school districts subsequently passed such ordinances.⁷⁶ Most

recently, in June 2024, public school employees in Fairfax County, Virginia—one of the country’s largest school districts—voted overwhelmingly to form unions; the two votes (with teachers and with other school employees) covered more than 27,000 workers.⁷⁷

In addition, localities can facilitate public employee union access to government workers. A number of states passed laws to this effect in response to the Supreme Court’s *Janus* decision which had the potential to reduce public employee union resources and potentially their stability. Specifically, states such as California, Maryland, New Jersey, and Washington passed measures to facilitate public-sector unionization, requiring, for example, the inclusion of public employee unions in new employee orientations, and provision to these unions of names and contact information of new and current employees.⁷⁸

Without passing any laws at all, however, local governments could:

- Facilitate exposure to public employee unions during the hiring process for job applicants and onboarding process for new employees;
- Develop guidance and labor relations materials for managers and supervisors regarding unfair labor practices and neutrality in union organizing campaigns; and
- Increase and visibly support workers’ right to organize, including know-your-rights initiatives concerning the right to organize and collectively bargain.⁷⁹

Improving Job Quality for Government Contractors

A. Procurement / Contracting

Local and state governments spend an estimated \$2 trillion in goods and services every year.⁸⁰ Given the immense amount of public money transferred to the private sector through government contracting, local governments can leverage their power as purchasers to ensure that their contracting funds lead to family-supporting employment, and not low-road, underpaid, precarious jobs. Although conservative state legislatures are increasingly targeting local procurement power,⁸¹ there are still opportunities for local governments in heavily preempted jurisdictions to creatively leverage opportunities to require disclosure or higher standards. For example:

- **Austin, TX** has enacted a living wage ordinance that requires city contractors and subcontractors to pay their employees working on the contract at least \$20 per hour for fiscal year 2023.⁸²
- **Houston, TX** has a contractor “Pay or Play Program,” which requires city contractors with contracts over \$100,000 and subcontractors with subcontracts over \$200,000 to either contribute prescribed amounts to the Contractors Responsibility Fund (CRF) for their uninsured employees, or provide their employees a minimum specified level of healthcare benefits.⁸³ The CRF helps offset the costs of caring for uninsured residents and provides various health programs that are affordable to those who are uninsured.

- As described previously, **Phoenix** passed an ordinance requiring employers to provide access to rest, shade, water, and air conditioning, as well as training for workers on recognizing signs of heat stress. The rule applies to city contractors and their subcontractors who work outdoors, including construction and airport workers.⁸⁴
- **Nashville, TN** has a proposed ordinance that would establish a contract and compliance board to review the city's construction contracts.⁸⁵ The proposal outlines several objectives from creating a uniform system to audit contracts across all departments, upholding workers' rights, and ensuring compliance with equal business opportunity programs.

Numerous local governments across the country have passed laws requiring contractors that are bidding for public projects (above a specific dollar threshold) to meet certain "responsible contractor" criteria that may include, for example, previous compliance with worker protection laws (i.e., laws prohibiting wage theft, misclassification, etc.), appropriate insurance coverage (i.e., for workers' compensation), participation in a registered apprenticeship training program, and appropriate professional licenses.⁸⁶ Some examples:

- **New Orleans** recently passed a responsible contractor ordinance after the collapse of the Hard Rock Hotel which was under construction; three workers died in the collapse. Under the ordinance, the primary contractor must ensure compliance by subcontractors.⁸⁷
- Many local governments in **Indiana** have passed responsible bidder ordinances that incorporate labor standards considerations into the procurement process.⁸⁸
- **Toledo, Ohio** has enacted an ordinance that requires payment of prevailing wages for contracts of \$10,000 or more, and prohibits awards of such contracts to bidders who have been convicted or found liable under the city's wage-related law in the previous five years.⁸⁹ For construction projects valued over \$75,000, local law requires the city to consider bidders based on criteria that includes continuity and experience of the workforce, local hiring, whether there is an apprenticeship program, whether the employer provides benefits (health insurance and retirement or pension plan), and the bidder's record of compliance with tax, wage and hour, and unemployment laws.⁹⁰
- Additional cities that disqualify contractors from winning city contracts if they have a history of wage theft and other labor standards violations include Cincinnati, Ohio; Columbus, Ohio; Coralville, Iowa; El Paso, Texas; and Houston, Texas, among others.⁹¹

B. Project Labor Agreements and Community Benefits Agreements

Project labor agreements (PLAs) are a type of contract used in the construction industry to set the terms and conditions of employment for all workers on a project, typically on large, long-term, complex projects. "Generally, PLAs specify workers' wages and fringe benefits and may include provisions requiring contractors to hire workers through union hiring halls, otherwise establish a unionized workforce, or develop procedures for resolving employment disputes. PLAs often include language that prevents workers from striking during the project while also preventing employers from locking workers out."⁹²

PLAs are expressly authorized pursuant to the National Labor Relations Act.⁹³ Although local governments may be preempted by state law from *requiring* contractors to abide by PLAs,⁹⁴ they may still be able to *incentivize* voluntary agreement to use PLAs. Indeed, the federal government has encouraged the use of PLAs among applicants for discretionary IIJA, CHIPS, and IRA funds; such applicants may include local governments.⁹⁵ Despite state preemption of PLA requirements in Florida, Montana, and Louisiana, the Jacksonville Port Authority, Missoula Urban Transport District, and New Orleans Regional Transit Authority have recently announced federally-funded projects that include PLAs.⁹⁶

Community benefits agreements are a different kind of contract related to development; they are typically entered into by developers of a construction project and representatives of community groups where the project is being developed.⁹⁷ Communities can stipulate certain requirements for the projects, such as hiring from the local community, or guaranteed financial or social benefit from the project; in return, the developer receives the community and local government's support for the project.⁹⁸ Because community benefits agreements are voluntary contractual agreements between the various parties, and because local governments are leveraging their land use or funding powers, local governments can often encourage community benefits agreements, even in states where local governments are heavily preempted.

Community benefits agreements have been used effectively to raise labor standards in jurisdictions where local governments are preempted from doing so through lawmaking.

- In 2018, **Nashville** supported a community coalition in winning a community benefits agreement that included requirements for local hire, a \$15.50/hour minimum wage, mandatory worker safety training for construction workers and supervisors, and workforce development.⁹⁹
- In 2016, a community coalition won a community benefits agreement with the **Milwaukee** Bucks in connection with the development of a new arena. The agreement raised minimum wages for permanent jobs in the arena like housekeeping, landscaping, and food service, requires hiring at least 50% of employees from neighborhoods with high unemployment; and affirms workers' right to unionize.¹⁰⁰

Preventing Violations and Ensuring Compliance by Local Permit and License Holders

When businesses are applying for or renewing a locally-issued license or permit, the interaction presents an opportunity to promote compliance with labor standards laws. Some localities have created specific, explicit labor compliance requirements for businesses wishing to obtain or renew permits or licenses:

- **Somerville, Massachusetts** has a wage theft ordinance that allows the city to deny an application for a license or permit if the applicant was found guilty, liable, or responsible for wage violations under various state or federal laws within the three or five years (depending on the situation) prior to the application.¹⁰¹

- **Westchester County, New York** requires home improvement contractors to be licensed with the county. The license application includes a question regarding past wage theft, and the county website contains a wage theft form for workers to report wage theft by home improvement contractors, which the County's Department of Consumer Protection follows up on.¹⁰²
- **Boston** passed an ordinance incorporating workplace safety requirements at the front end of the construction permitting process.¹⁰³ In this way, the permitting process is used to prevent safety hazards, violations, and workplace injuries. Before permits for construction, alteration, or destruction can be issued, the ordinance requires, among other things, submission of a Site Safety Plan Affidavit identifying potential hazards on the job and articulating how the contractor plans to keep workers safe. Each permit holder must provide safety orientations to workers, offer refreshers, and hold pre-shift meetings to explain potential risks. An OSHA-trained site safety coordinator must be designated and present on the site. Importantly, city building inspectors have the power to issue violations, impose stop work orders, and revoke permits based on violations.¹⁰⁴

Some localities have taken action based on general "catch-all" provisions requiring licensees or permit holders to comply with all applicable laws or to be financially responsible.

- Under the **Santa Clara County** Office of Labor Standards Enforcement Food Permit Program, if a retail food vendor, such as a restaurant, has an unpaid judgment from the state labor commissioner, the County may temporarily suspend the vendor's food health permit, after a series of escalating warnings.¹⁰⁵
- The Good Faith Restaurant Owners Program is a similar program, administered by **San Diego County's** Office of Labor Standards. The Office notified restaurants in the county with outstanding unpaid wage orders issued by the state labor commissioner, alerting them to potential indefinite suspension of food permits if they fail to pay the back wages owed or enter into a payment plan. The program is in its first year.¹⁰⁶

Local governments should think expansively about leveraging licensing and permitting authority.

- U.S. Department of Labor data shows that the restaurant and construction industries have high rates of wage-related violations.¹⁰⁷ Both industries also typically require locally-issued licenses or permits to operate. These industries may be strong targets for an enforcement pilot program linked to licenses and permits.
- Before implementing a broad city or county-wide program implementing licensing/permitting consequences for wage theft violations, local governments could consider pilot programs focused on a particular industry or zip code. Santa Clara County began its Food Permit program with a pilot involving restaurants in one zip code. With proof of concept, it has since expanded to more zip codes.
- Completed buildings also typically require certificates of occupancy, which may represent another opportunity for addressing unsatisfied wage theft orders: Localities could consider conditioning the issuance of a certificate of occupancy on paying all wages owed to workers who

performed labor on that project. The City Council in San Jose, California recently approved a policy along these lines.¹⁰⁸

- License or permit applications could require applicants to attend live or online trainings about wage and hour laws, to disclose the wage rates they intend to pay, or to provide copies of workers' compensation policies rather than simply attesting to coverage.

In all of the above examples, localities should prepare for implementation challenges and should plan to spend time addressing hurdles that may arise. The relevant licensing or permitting agency may need additional resources, persuasion, or adjustment of procedures in order to incorporate wage compliance issues into its operations.

Using Tax or Other Incentives to Galvanize Private Employers

Local governments can use a range of incentives to promote improved working conditions or higher-road employment practices among private employers. If such incentives are used, it is essential for a locality to do follow-up monitoring and enforcement to ensure that such employers comply with the terms of the arrangement.

Expedited permitting for higher-road employers: In 2017, Austin, Texas enacted the Better Builder Program, which expedites the review and permitting process for commercial construction projects for contractors that choose to participate.¹⁰⁹ This program is operated in partnership with the non-profit Workers Defense Project and requires compliance with wage and hour and workplace safety laws, payment of a living wage, safety and health training, provision of workers' compensation insurance, on-site monitoring, and more.¹¹⁰

Tax credits or voluntary programs: Localities could provide financial benefits, such as grants or tax credits, to employers who implement certain workplace standards. Several state programs and proposals provide models for this approach:

- Tennessee created a two-year program in which employers offering paid family leave may be eligible for a tax credit based on the amount of wages reimbursed to workers.¹¹¹
- Nevada requires employers at or above a 50-employee threshold to meet certain paid family requirements in order to be eligible for any state tax abatements.¹¹²
- In 2023, bills were introduced in Maryland and Massachusetts¹¹³ to provide tax credits for companies that pilot a four-day-workweek, and a bill was introduced in California to create a grant program for the same purpose.¹¹⁴

Transparency in connection with grants and tax incentives. The Metropolitan Government of Nashville and Davidson County (Metro Nashville) passed the "Do Better" law in 2018 which requires entities seeking local government incentives to disclose the number of jobs that will be created and

how many will be filled by local residents; previous worker safety and wage theft violations; a workforce plan that includes information on wages and benefits; and more.¹¹⁵

Use of grants to assist employers in raising conditions. Scranton, Pennsylvania’s Small Business Wage Boost Grant Program uses funds from the American Rescue Plan Act of 2021 (ARPA) to help small business owners “retain employees or increase their workforce by offering wages and benefits competitive with state averages.”¹¹⁶ The program allots up to \$50,000 per applicant for up to two years to fund enhanced wages, with 100% of the enhanced wages funded in the first year and 50% in the second.

Using carrots like tax incentives and grant programs requires careful implementation and sufficiently-resourced enforcement to ensure that workers are, in fact, benefiting from these programs as intended. To the extent possible, they should be used to encourage novel or pilot efforts to increase job quality instead of as a stand-in for needed minimal standards.

Enlisting District Attorneys or Other Prosecutors in Pursuing Egregious Violations

State preemption laws have not generally restrained District Attorneys and County Attorneys (collectively referred to herein as DAs) from enforcing theft, larceny, or other criminal statutes. States that preempt local legislation on workers’ rights are often also states with lackluster state-level wage enforcement. In such jurisdictions, enforcement by DAs may represent one of the only opportunities for effective state or local government enforcement of workers’ rights.

A growing number of DAs have begun to bring prosecutions related to wage theft and other worker exploitation cases. These developments are discussed in detail in a 2021 report, [How district attorneys and state attorneys general are fighting workplace abuses](#).¹¹⁷

DAs have brought prosecutions in egregious cases of workplace law violations, including wage theft, workplace fatalities, labor trafficking, misclassification of employees as independent contractors, workers’ compensation insurance fraud, and more. A growing number of district attorney offices, from Manhattan¹¹⁸ to San Diego County,¹¹⁹ have created dedicated worker protection units.

Criminal prosecution may have a strong deterrent effect on employers, because worker exploitation prosecutions by DAs increase both the likelihood of detection and the severity of the consequences of violating workplace laws.¹²⁰

Exercising Public Leadership

Localities as institutions, as well as individual local elected officials, can use their public visibility and leadership positions to highlight worker issues, educate workers, and support organizing efforts. Exercising public leadership typically avoids preemption concerns, in part due to First Amendment protections. This kind of “soft power” can have a significant impact: imparting essential information, as well as communicating values and community norms.

1 Communications

Strategic communications, including use of media, is particularly important in educating workers about their rights and deterring violations.¹²¹ Many workers, especially low-wage workers, have limited knowledge about the laws that affect them.¹²² Additionally, media coverage increases employers' knowledge about their legal obligations; it also increases their perceptions about the likelihood that violations will be detected as well as the consequences if that occurs.

Localities have used a range of approaches to reach out to the public, educate workers about their rights, and inform employers about their obligations. Localities have, for example, set up hotlines,¹²³ held in-person workshops for immigrant-owned small businesses,¹²⁴ listed information on webpages,¹²⁵ used social media advertisements, mounted ad campaigns on public transit, posted videos online,¹²⁶ and more.

Some examples include:

- The **Chicago Office of Labor Standards** has taken considerable action to educate the public. For example, the Office launched “Your Home is Someone’s Workplace”—a campaign focused on domestic workers’ rights that includes a dedicated webpage and information about a new law giving domestic workers a right to a written contract.¹²⁷ The office also partnered in its outreach with the nonprofit worker organization Arise Chicago, which provided trilingual (English, Spanish, and Polish) sample contracts for employers’ use.¹²⁸
- **Denver Labor** has an extensive outreach and public education function. The office hosts “Wages Wednesday” live events on the Denver Labor Facebook page, including programs in English and Spanish.¹²⁹ Additionally, the Denver Labor webpage contains resources for small businesses about compliance with workplace laws.¹³⁰ It also contains other tools for workers and employers, including a regional address finder to assess whether work performed was in the relevant local boundaries as well as a minimum wage and tip calculator.¹³¹ The office launched an “Earned It, Deserved It” campaign to raise awareness of the city’s minimum wage ordinance, with bilingual ads at regional bus stops, and on radio, television, and social media platforms.¹³²
- Recognizing the power of public art to raise awareness, the **Seattle Office of Labor Standards** in 2023 solicited proposals from artists to create large-format art panels highlighting gig worker protections for the general public.¹³³

2 Linguistic Needs

Some local agencies have translated materials into multiple languages to reach the broad range of workers within their jurisdictions. For example:

- The **New York City Department of Consumer and Worker Protection** offers workers’ bill of rights booklets in 15 languages and audio files in five indigenous languages, as well as an animated video.¹³⁴ The animated video and audio files also enhance access for people with varying literacy levels.¹³⁵

- **Emeryville, California**, with a population of less than 13,000, offers minimum wage and paid sick leave notices and posters in six languages.¹³⁶

3 Solidarity Actions

Local elected officials have used their public platforms to demonstrate their support for working people in many ways.

- Officials have shown up at rallies, events, and actions, including joining workers on strike and walking workers back to work after days of action.¹³⁷
- They have written op-eds and commentary to support workers and bring attention to labor policy issues.
- The NLRA does not prevent local officials from speaking in favor of unions; indeed, in 2022, the Seattle and Philadelphia city councils both passed resolutions supporting Starbucks workers seeking to unionize.¹³⁸

Local (and state) officials should take care, however, to ensure that such statements do not jeopardize legislative or enforcement actions, such as by making enforcers vulnerable to selective prosecution allegations, for example, or by making policies more susceptible to NLRA preemption challenges.¹³⁹

4 Shareholder Power via Local Pension Funds

New York City Comptroller Brad Lander has played a catalyzing role in using stockholder leverage to influence private employers' treatment of their workers. For example, he led a shareholder effort to address high injury rates and turnover at Amazon warehouses¹⁴⁰ and led a coalition of investors calling on Apple to conduct an independent assessment on workers' rights.¹⁴¹ He also called on Starbucks to perform an independent audit regarding whether they have violated any labor laws and regulations.¹⁴² This pressure later resulted in Starbucks shareholders approving a proposal to conduct an independent assessment of management's response to worker organizing.¹⁴³

Local Strategies to Oppose Abusive State Preemption

The above discussion proposes how localities can advance workers' rights within the confines and constraints of federal and state preemption. Yet along with maneuvering within the spaces that remain, it is essential to push back against the new abusive state preemption. After all, its impacts are significant—from depriving residents of material improvements through local policymaking, to suppressing and undermining democratic accountability and engagement.¹⁴⁴ Confronting this new wave of state preemption, local governments and community organizations have developed creative strategies, including litigation and organizing, to fight back.

- **Litigation.** Local governments and advocacy/community organizations are increasingly using litigation to challenge state preemption.
 - ▶ In 2017, several local governments brought suit alongside advocacy and community organizations to challenge Texas' SB 4, which sought to engage local law enforcement bodies in immigration enforcement.¹⁴⁵
 - ▶ In 2021, eight cities sued the state of Florida to challenge HB 1, which sought to override municipal budgeting power as it related to policing.¹⁴⁶ This challenge resulted in a settlement after the Florida state legislature resolved the original law's primary flaws.¹⁴⁷
 - ▶ The city of Houston brought suit in 2023 to challenge Texas' HB 2127, termed a "death star" preemption bill that would have used field preemption to remove local initiative authority when it came to labor, agriculture, insurance, and more.¹⁴⁸ After an initial win declaring the law unconstitutional in Travis County court,¹⁴⁹ the case is currently being litigated on appeal.
 - ▶ Metro Nashville brought four lawsuits against Tennessee in 2023 for violations of the state constitution, and they have all been successful at the preliminary injunction stage.¹⁵⁰
- **Ballot initiatives.** Community and labor organizations have also used statewide ballot initiatives to achieve policy goals that have been foreclosed due to the new preemption. In Missouri, a coalition of labor, faith leaders, workers in low-wage industries, and local elected officials came together to pass a higher minimum wage in St. Louis.¹⁵¹ When that minimum wage was swiftly preempted by the state, the same coalition was able to pass a ballot measure that raised the minimum wage statewide.¹⁵²
- **Repealing preemption laws.** When state legislative makeups have changed, advocates have prioritized repealing preemption. This occurred in Colorado in 2019, when the state repealed preemption of local minimum wage laws, along with repealing two other preemption laws unrelated to labor.¹⁵³
- **Trigger ordinances and other creative strategies.**
 - ▶ The city of St. Louis, in collaboration with the Missouri Workers' Center and other community groups, recently introduced a set of trigger ordinances that go into effect if and when state preemption law is rescinded.¹⁵⁴ Two of these trigger ordinances concern work-related subjects: they require fair scheduling of workers' hours (with advance notice of shifts, among other things), and rest breaks during the workday. The trigger ordinance approach aims to help ordinary people understand the real-world impact of state-level preemption. Political debates about which level of government should have control over which issues may seem abstract and difficult to use as a basis for an organizing campaign. In contrast, if local ordinances have been passed on a specific topic, such as breaks during the workday, it creates an opening to talk more concretely about workers' needs and what positive results will immediately occur if state preemption is rescinded.
 - ▶ Johnson County, Iowa passed a county-wide minimum wage increase. When that law was preempted by the state, local advocates who pressed for the county measure organized over 160 businesses to voluntarily maintain the wage as a way to circumvent and resist preemption.¹⁵⁵

Conclusion

As localities across the country have emerged as leaders in protecting and advancing workers' rights, conservative state legislatures have retaliated via a new and abusive preemption. Coupled with longstanding expansive federal preemption, many local governments face real constraints in efforts to regulate labor and employment in their jurisdictions.

Nevertheless, local governments have continued to take action on behalf of working people, often by carefully avoiding preemption and relying on core local powers. As this report outlines, there are many opportunities, and considerable untapped potential, for local government to meaningfully advance and protect workers' rights.

Endnotes

- ¹ Portions of this report have been adopted from Terri Gerstein and LiJia Gong, [How local government can protect workers' rights even when states do not want them to: opportunities for local creativity and persistence despite double preemption](#), 51 Fordham Urban Law Journal 977, 2024.
- ² For more information about procurement policy, see the website of the nonprofit organization Jobs to Move America, available at <https://jobstomoveamerica.org/>. For details about how state and local governments can raise working standards through prevailing wages, project labor agreements, and other measures, see Karla Walter, [Government on Workers' Side](#), Center for American Progress, Jan. 31, 2024, <https://www.americanprogress.org/article/government-on-workers-side/>.
- ³ David Cooper and Sebastian Martinez Hickey, [Raising pay in public K–12 schools is critical to solving staffing shortages](#), Economic Policy Institute, Feb. 3, 2022, <https://www.epi.org/publication/solving-k-12-staffing-shortages/>.
- ⁴ Coral del Mar Murphy-Marcos, [Hot Labor School Year: California Leads the Way to Educate High School Students on Workplace Rights](#), UC Berkeley Labor Center (Oct. 11, 2023) <https://laborcenter.berkeley.edu/hot-labor-school-year-california-leads-the-way-to-educate-high-school-students-on-workplace-rights/>.
- ⁵ Terri Gerstein, [Policies for states and localities to fight oppressive child labor](#), Economic Policy Institute, NYU Labor Initiative (Feb. 27, 2024) <https://www.epi.org/publication/fight-oppressive-child-labor/#epi-toc-17>.
- ⁶ Terri Gerstein and LiJia Gong, [The Role of Local Government in Protecting Workers' Rights](#), Economic Policy Institute, Harvard Labor and Worklife Program, Local Progress, (June 13, 2022) <https://www.epi.org/publication/the-role-of-local-government-in-protecting-workers-rights-a-comprehensive-overview-of-the-ways-that-cities-counties-and-other-localities-are-taking-action-on-behalf-of-working-people/>.
- ⁷ Comments of the American Federation of Labor and Congress of Industrial Organizations in Response to the Department of the Treasury and Internal Revenue Service's Proposed Rule Concerning Prevailing Wage and Registered Apprenticeship Requirements in the Inflation Reduction Act (RIN 1545-BQ54) (Oct. 31, 2023), <https://www.regulations.gov/comment/IRS-2023-0042-0155>.
- ⁸ [Using Federal Funds for Racial & Economic Justice](#), Local Progress, August 2023, https://localprogress.org/wp-content/uploads/2023/09/Local-Progress_Federal-Implementation-Memo_2023.pdf
- ⁹ Ella Nilsen and Renee Rigdon, [The biggest winners of Biden's green climate policies? Republicans](#), CNN (June 16, 2024) <https://www.cnn.com/2024/06/16/climate/clean-energy-investment-republicans/index.html>.
- ¹⁰ ChangeLab Solutions and Local Solutions Support Center, [At-A-Glance: Research on Preemption, Health, and Equity](#) (April 2023), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/6452c51d68550f5c2047a261/1683146013854/PreemptionResearch+Summary%E2%80%932023.pdf>.
- ¹¹ Richard Briffault, [The Challenge of the New Preemption](#), 70 Stanford Law Review 1995 (2018). For more background on state preemption on workplace matters, see collected resources on Economic Policy Institute "Preemption" page: available at <https://www.epi.org/research/preemption/>. "Preempting progress" and "Preempting progress in the heartland" provide helpful background.
- ¹² See Economic Policy Institute, [Workers' Rights Preemption in the U.S.](#), for a comprehensive map of state preemption on workplace matters. Available at <https://www.epi.org/preemption-map/>. See, e.g., [Texas' Regulatory Consistency Act](#), H.B. 2127 (Tex. 2023–24), <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB021271.pdf>
- ¹³ This discussion of federal preemption is general, aimed at providing a very broad overview. Preemption of federal workplace laws is a complex topic; the information contained in this report does not constitute legal advice.
- ¹⁴ The concept is that this intentional regulatory void is an integral part of federal labor policy, centered on the fact that labor and management have often antagonistic positions and must be free to use economic weapons at their disposal to advance their interests.
- ¹⁵ [Golden State Transit Corp. v. Los Angeles](#), 475 U.S. 608 (1986).
- ¹⁶ [Building & Constr. Trades Council v. Associated Builders & Contractors of Mass./R. I., Inc.](#), 507 U.S. 218 (1993)

¹⁷ *Glacier Northwest v. Int'l Bhd. of Teamsters*, 598 U.S. 771 (2023).

¹⁸ Isabela Salas-Betsch and Karla Walter, "Workers Want Unions: How States Have Strengthened Worker Power in 2023," Center for American Progress (Nov. 1, 2023), <https://www.americanprogress.org/article/workers-want-unions-how-states-have-strengthened-worker-power-in-2023/>

¹⁹ Under the OSH Act, states have the option to become OSHA-approved "state plans" and take over workplace safety and health regulation entirely so long as they are as protective as OSHA; nearly half of all states have done this. See [OSHA State Plans](https://www.osha.gov/stateplans/), available at <https://www.osha.gov/stateplans/>. In such states, federal OSHA preemption does not apply and would not affect possibilities for local action; however, states may themselves preempt local action on workplace safety and health matters, as some have.

²⁰ Flanagan et al., *How States and Localities Can Protect Workplace Safety and Health*, Harvard Labor and Worklife Program and National Employment Law Project (May 15, 2020), https://lwp.law.harvard.edu/files/lwp/files/state_local_workplace_protection_lwp_nelp.pdf

²¹ U.S. Department of Labor, "[Biden-Harris administration announces proposed rule to protect indoor, outdoor workers from extreme heat](#)," news release, July 2, 2024.

²² *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*, 598 U.S. 771 (2023)

²³ Nambi Ndugga, Drishti Pillai, and Samantha Artiga, *Florida's Recent Heat Protection Preemption Law Could Disproportionately Affect Hispanic and Noncitizen Immigrant Workers*, KFF (April 26, 2024), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/floridas-recent-heat-protection-preemption-law-could-disproportionately-affect-hispanic-and-noncitizen-immigrant-workers/#:~:text=The%20law%20also%20bans%20local,outdoor%20workers%20in%20the%20county.>

²⁴ Laura Huizar, [Wage Theft Impacts Millions of Floridians & Workers Need Local Programs to Help Them Recover Their Stolen Wages](#), National Employment Law Project, Oct. 2019.

²⁵ McKenna Schueler, [Florida's lack of a labor department leaves workers with limited options](#), Orlando Weekly, May 22, 2023.

²⁶ Newark, N.J. Ordinances, ch. 9:1-3; N.Y.C. Admin. Code §§ 20-851

²⁷ The District of Columbia Attorney General's Office settled cases with [DoorDash](#) and [Instacart](#), recovering \$2.5 million from each, based on this theory. See <https://oag.dc.gov/release/ag-racine-reaches-25-million-agreement-doordash> and <https://oag.dc.gov/release/ag-racine-announces-instacart-must-pay-254-million>.

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³¹ N.J. Stat. § 34:1A-1.16 (2023)

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³³ [New City Legislation Aims to Track Workplace Fatalities for the First Time](#), AFL-CIO New York City Central Labor Council (May 17, 2024) <https://www.nyclc.org/news/2024-05/new-city-legislation-aims-track-workplace-fatalities-first-time>.

³⁴ Although the NYC proposal requires employer disclosure and imposes fines for failure to do so, which could be preempted in heavily preempted states, localities could consider requiring medical examiners to report this information.

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- ⁴⁴ See Jobs to Move America, available at <https://jobstomoveamerica.org/>
- ⁴⁵ Seattle's Office of Labor Standards has a grants and outreach program to help immigrant-owned, minority-owned, and small businesses understand the laws and their obligations. Also, a longstanding grants program by OSHA works with employer associations. Deutsch and Gerstein, *supra*, note 42.
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- ⁴⁷ See <https://www.sandiegocounty.gov/content/sdc/OLSE/wage-claim-judgments.html>.
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- ⁵⁷ See Harris County, Essential Workers Board, <https://ewb.harriscountytexas.gov/> (last visited Mar. 7, 2024); Harris County, Essential Workers Board, BYLAWS 4 (2021), https://ewb.harriscountytexas.gov/Portals/ewb/LiveForms/2021.11.30_HCEWB_Bylaws.pdf?ver=HfkgfJYkWgQAIZG7nL3GxQ%3d%3d, (All members must be "low-income essential workers," with at least one worker representative from each of the following essential industries: airport or transportation; construction; domestic work or home care; education or child care; grocery, convenience, or drug store; health care or public health; janitorial; food services, hospitality, or leisure services.); Elizabeth Troval, *Harris County Commissioners Court Votes to Create Essential Workers' Board*, Houston Chronicle (Dec. 1, 2021), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-Commissioners-Court-votes-to-create-16664261.php>.
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