



**NYS  
IMPACT**

# **NEW YORK AT WORK 2021**

**ANNUAL REPORT**



**ILR School**

## Welcome

We are pleased to release the first edition of *New York at Work* from Cornell University's New York State School of Industrial and Labor Relations (ILR). The report provides ILR expertise, research-based data and policy analysis on a broad range of key issues impacting New York state's workers, unions and employers. It is intended to serve as an informative, accessible and relevant resource for New York's policy and decision makers. We hope you find it useful. For further assistance, please see the list of ILR Outreach institutes and programs with contact information at the end of the report.

Established by the New York State Legislature in 1945, the ILR School is guided by a commitment to social and economic justice and to improving the lives of New York's working people. Consistent with our mission and to honor New York's workers, the *New York at Work* report will, in coming years, be released annually on Labor Day.

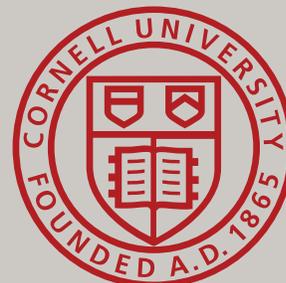
Sincerely,

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# Table of Contents

Executive Summary .....	4
<b>ESSENTIAL BUT UNPROTECTED:</b>	
New York City’s App-based Food Delivery Workers .....	9
<i>By Maria Figueroa, Worker Institute director of labor and policy research and chair of the institute’s Precarious Work Initiative; Ligia Guallpa, co-executive director of Workers’ Justice Project; Hildalyn Colón Hernández, director of policy and strategic partnerships, Los Deliveristas/Workers’ Justice Project; Glendy Tsitouras, organizer, Los Deliveristas/Workers’ Justice Project; and Andrew Wolf, lecturer, CUNY School of Labor and Urban Studies.</i>	
<b>DATA FOR A JUST RECOVERY IN NEW YORK:</b>	
Toward Racial and Worker Justice in the COVID-19 Era and Beyond .....	12
<i>By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations, and KC Wagner, chair of the Worker Institute’s Equity at Work Initiative.</i>	
<b>POWER AND VOICE AT WORK:</b>	
New Yorkers View Employer Retaliation as a Barrier to Addressing Workplace Problems and Express Desire for Union Representation .....	18
<i>By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; Irene Tung, senior researcher and policy analyst, National Employment Law Project; KC Wagner, chair of the Worker Institute’s Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.</i>	
<b>INTERACTIVE MAPPING OF COVID DURING THE PANDEMIC</b> .....	26
<i>By Russell Weaver, director of research at the Cornell ILR Buffalo Co-Lab.</i>	
<b>NEW YORK EXPUNGEMENT OF CRIMINAL RECORDS TO INCREASE ACCESS TO EMPLOYMENT</b> .....	30
<i>By Timothy McNutt, director of Cornell ILR’s Criminal Justice and Employment Initiative, and Elijah Emery ’22.</i>	
<b>THE MARIJUANA REGULATION AND TAXATION ACT (MRTA):</b>	
Policy and Implementation Issues .....	34
<i>By Esta Bigler, director of LR’s Labor and Employment Law Program and ILR’s Government and Community Relations NYC. She is also executive director of the Cornell Project for Records Assistance and the Criminal Records Panel Study.</i>	
<b>HOW NEW YORK STATE CAN TACKLE CLIMATE CHANGE, REVERSE INEQUALITY AND BUILD A ROBUST, EQUITABLE CLEAN ENERGY ECONOMY:</b>	
Key Challenges and Recommendations Identified by the Cornell University Labor Leading on Climate Initiative .....	38
<i>By the Cornell Labor Leading on Climate Initiative: Lara Skinner, director; Zach Cunningham, training and education Extension associate, and Avalon Hoek Spaans and Anita Raman, research and policy Extension associates.</i>	
<b>NEW YORKERS INDICATE THAT RETALIATION PREVENTS THEM FROM EXPOSING WORKPLACE DANGERS:</b>	
More than 1 in 3 Working New Yorkers are Likely Not to Report Sexual Harassment .....	42
<i>By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute’s Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.</i>	
<b>STOPPING SEXUAL HARASSMENT IN THE EMPIRE STATE:</b>	
Past, Present, and a Possible Future .....	45
<i>By Sanjay Pinto, fellow at the Worker Institute and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute’s Equity at Work Initiative, and Zoë West, an anthropologist, educator and oral historian whose work centers on labor and migration.</i>	

# EXECUTIVE SUMMARY

The New York State Labor and Industrial Relations School at Cornell University supports social and economic justice to improve the lives of New York's working people. Through research, teaching and outreach, our experts shine a light on complex problems and develop insights to help build policy for solutions that can be applied on the ground to problems impacting workers, their families and their communities, employers, unions and others.

Please see samples of work produced by our state-focused team, based in New York City, Ithaca and Buffalo, highlighting ILR School findings, analysis and recommendations on critical issues impacting the future of work in our state:

## Essential Delivery: New York City's App-based Food Delivery Workers

*By Maria Figueroa, Worker Institute director of labor and policy research and chair of the institute's Precarious Work Initiative; Ligia Gualpa, co-executive director of Workers' Justice Project; Hildalyn Colón Hernández, director of policy and strategic partnerships, Los Deliveristas/Workers' Justice Project; Glendy Tsitouras, organizer, Los Deliveristas/Workers' Justice Project; and Andrew Wolf, lecturer, CUNY School of Labor and Urban Studies.*

App-based delivery workers engaged by digital platforms such as UberEATS, Doordash and GrubHub to deliver food to consumers in New York City face dangerous working conditions that illustrate challenges workers and advocates face in seeking labor protections in the digital platform economy. Like all workers in the gig economy, platform workers fall in gray areas or outright gaps of existing legal frameworks, such that their employment status and relationship with the platforms remain unregulated.

The goal of the research was to raise awareness among stakeholders about the pressing issues that app-based delivery workers face in the largely unregulated platform economy and to help inform policy and organizational solutions to such issues. Findings from a 500-person survey include: around 42% of workers survey reported experiencing non-payment or underpayment; 49% reported having been in an accident or crash while doing a delivery and of these workers; 75% said that they had paid for the medical care with personal funds; and 54% reported having experienced bike theft, and about 30 percent of these said that they were physically assaulted during the robbery.

On Sept. 23, the New York City Council passed landmark legislation, the first of its type in the nation, requiring basic rights for food delivery workers that included some of the policy recommendations made in the report.

[Full report](#) | [Learn about the Worker Institute](#)

## Executive Summary *Continued*

### **Data for a Just Recovery in New York: Toward Racial and Worker Justice in the COVID-19 Era and Beyond**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations, and KC Wagner, chair of the Worker Institute's Equity at Work Initiative.*

COVID-19 has claimed the lives of more than 50,000 New Yorkers and affected the well-being and economic security of millions across the state, with acute impacts on communities of color and other marginalized groups. *The Worker Institute at Cornell* partnered with *Color of Change*, the *National Employment Law Project*, and *TIME'S UP Impact Lab* to conduct the 63-item national Just Recovery Survey.

The survey captured the varying experiences of working adults during the crisis based on race, gender and income, and addresses economic security, health and well-being, and agency and voice. It focuses on some key outcomes, sharing national results on racial disparities and comparing New York state to the rest of the country, drawing implications for advancing a just, equity-focused, worker-centered recovery in New York.

[Full report](#) | [Learn about the Worker Institute](#)

### **Power and Voice at Work: New Yorkers View Employer Retaliation as a Barrier to Addressing Workplace Problems and Express Desire for Union Representation**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; Irene Tung, senior researcher and policy analyst, National Employment Law Project; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.*

Data from the national Just Recovery Survey provides insight into how New Yorkers compare to the rest of the country with regard to perceptions of possible employer retaliation for raising concerns about workplace safety and sexual harassment. It also shows how working New Yorkers compare to their counterparts elsewhere with respect to interest in a specific kind of vehicle for workplace collective action: forming a union.

[Full report](#) | [Learn about the Worker Institute](#)

## Executive Summary *Continued*

### Interactive Mapping of COVID during the Pandemic

*By Russell Weaver, director of research at the Cornell ILR Buffalo Co-Lab.*

Reacting in real time to the COVID-19 Pandemic, the *Cornell ILR Buffalo Co-Lab* created user-friendly, interactive mapping systems so that New Yorkers could understand COVID rates, patterns and trends, and track who was impacted across the state, and within their counties and school districts.

These tools include: the [Daily COVID-19 Tracker for New York State](#), a real-time resource for monitoring trends in new cases statewide; [NYS School District COVID-19 tracker](#), which displays estimates of active and cumulative COVID-19 cases per 1,000 residents living within a school district, along with socioeconomic and demographic variables, and [COVID-19 Mapper for Erie County, New York](#), reporting the disparate ways in which the virus is affecting communities in greater Buffalo and impacting inequality.

Learn about the [Buffalo Co-Lab](#)

### New York Expungement of Criminal Records to Increase Access to Employment

*By Timothy McNutt, director of ILR's Criminal Justice and Employment Initiative, and Elijah Emery '22.*

Hundreds of thousands of New Yorkers have a criminal record on file that may be reported on a routine background check. Having even a minor criminal record, such as a misdemeanor or an arrest without a conviction, can present obstacles to employment. Communities of color are disproportionately affected. This report examines expungement of criminal records as a pathway to reduce barriers to employment for the justice-impacted.

The *Criminal Justice and Employment Initiative (CJEI)* provides criminal records and employment law training to job seekers who have been involved in the criminal legal system, assists employers in rethinking their approach to hiring, engages in research to study reentry practices and influences policy makers and legislators on criminal justice reform. We are committed to opening pathways to employment for the justice-impacted.

Access [CJEI's Criminal Record Online Toolkit](#) | Learn about [CJEI](#)

## Executive Summary *Continued*

### **The Marijuana Regulation and Taxation Act (MRTA): Policy and Implementation Issues**

*By Esta R. Bigler, director of ILR's Labor and Employment Law Program and ILR's Government and Community Relations NYC. She is also executive director of the Cornell Project for Records Assistance and the Criminal Records Panel Study.*

The Marijuana Regulation and Taxation Act is both social equity and employment legislation, with a goal of repairing the damage caused by mass incarceration. To date, the growth of the cannabis industry in other states has not benefited impacted communities. Learning from the failures of other states to make social equity a reality, New York state's legislation prioritizes diversity, equity and quality jobs in this industry.

A policy statement (Page 34) from the *Cornell ILR Labor and Employment Law Program* provides issues and approaches to be considered in the regulatory scheme necessary to fulfill the purposes of MRTA – a diverse and equitable industry. These include *accountability systems, education and training, credit reporting agencies, community-based nonprofits and future legal and policy areas.*

Learn about [CJEI](#)

### **How New York State Can Tackle Climate Change, Reverse Inequality and Build a Robust, Equitable Clean Energy Economy: Key Challenges and Recommendations**

*By the Cornell Labor Leading on Climate Initiative: Lara Skinner, director; Zach Cunningham, training and education Extension associate, and Avalon Hoek Spaans and Anita Raman, research and policy Extension associates.*

New York state has a generational opportunity to “build back better” from the COVID-19 pandemic, reduce inequality through high-quality job creation and tackle the accelerating climate crisis. Meeting this moment will require large, strategic investments in clean energy, with strong labor standards and community benefits.

This policy brief from *The Cornell University Labor Leading on Climate Initiative* includes specific policy recommendations to meet New York's ambitious climate goals, help New York state recover from the COVID-19 pandemic and drive job creation throughout the state.

Learn about the [Labor Leading on Climate Initiative](#)

## Executive Summary *Continued*

### **New Yorkers Indicate That Retaliation Prevents Them From Exposing Workplace Dangers: More Than 1 in 3 Working New Yorkers are Likely Not to Report Sexual Harassment**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.*

In New York, as elsewhere, the COVID-19 pandemic has underscored the importance of workers' ability to raise workplace concerns without employer reprisal. Being able to speak up carries critical implications for worker health and safety, freedom from discrimination, and other matters of basic wellbeing. Even in the midst of a health and economic crisis, workers around the country mobilized individually and collectively around a range of issues, including premium pay and stronger workplace protections. Too often, however, employers continue to punish workers for raising workplace concerns.

[Full report](#) | [Learn about the Worker Institute](#)

### **Stopping Sexual Harassment in the Empire State: Past, Present and a Possible Future**

*By Sanjay Pinto, fellow at the Worker Institute and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Zoë West, an anthropologist, educator and oral historian whose work centers on labor and migration.*

This report from *The Worker Institute at Cornell* adds to an ongoing conversation that has gained momentum since the recent rise in activism around sexual and gender-based harassment and violence starting in late 2017.

Using new data from the Cornell Survey Research Institute, ILR documents, in its full report, patterns of workplace sexual harassment and the impact across New York state.

It also draws on past writings and documents, recent testimony by survivors, and discussions with advocates and practitioners to capture how the conversation around workplace sexual harassment has evolved. It highlights deep challenges and insights from the vantage point of those targeted, and suggests some possible future directions for advancing our collective response in New York and elsewhere.

[Full report](#) | [Learn about the Worker Institute](#)



## **ESSENTIAL BUT UNPROTECTED: New York City's App-based Food Delivery Workers**

*By Maria Figueroa, Worker Institute director of labor and policy research and chair of the institute's Precarious Work Initiative; Ligia Gualpa, co-executive director of Workers' Justice Project; Hildalyn Colón Hernández, director of policy and strategic partnerships, Los Deliveristas/Workers' Justice Project; Glendy Tsitoras, organizer, Los Deliveristas/Workers' Justice Project; and Andrew Wolf, lecturer, CUNY School of Labor and Urban Studies.*

This [report](#) contains the findings from a participatory action research project that examined the working and living conditions of delivery workers engaged by digital platforms (also known as “apps”) to deliver restaurant food orders and other goods to consumers in New York City. The research was conducted under a partnership between the worker center, Workers' Justice Project/Los Deliveristas, and The Worker Institute at Cornell University's ILR School, and involved both primary and secondary research, including a survey of 500 app-based couriers doing deliveries in NYC, focus groups with workers and individual interviews.<sup>1</sup>

This report examines the working conditions of app-based delivery workers engaged by digital platforms such as UberEATS, Doordash and GrubHub to deliver food from restaurants and fast-food outlets to consumers in New York City. The goals of this research are to raise awareness among

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<sup>1</sup> This report was funded by the Workers' Justice Project, with additional support from Cornell University's ILR School and the state of New York. The views, opinions, findings, and conclusions and recommendations expressed in this report are those of the authors, solely, and do not represent those of either Cornell University or the state of New York. We especially thank the workers and leaders who participated in this project through surveys, focus groups, and interviews.

stakeholders about the pressing issues that app-based delivery workers face in the largely unregulated platform economy and to help inform policy and organizational solutions to such issues.

The experience of app-based food couriers in New York City illustrates the challenges that workers and advocates confront for achieving labor protections in the digital platform economy. Like all workers in the gig-economy, platform workers fall in gray areas or outright gaps of existing legal frameworks, such that their employment status and relationship with the platforms remain unregulated.

App companies have anchored their business model on the premise that the workers they engage are independent contractors, thereby shifting the costs of operations and safety net protections to the workers, customers and, ultimately, to the broader society. Failure to regulate these applications is leaving workers across the platform economy without basic protections, including occupational safety and health protections that have become critical in the face of the pandemic, particularly for location-based platform workers such as the NYC couriers.

Unlike fully online platform workers, who share a common national jurisdiction, locally based platform workers such as rideshare and delivery workers are subject to a more local regulatory framework. In the case of location-based platforms, the state or local level jurisdiction can determine the appropriate authority for regulation. In New York and Seattle, municipal regulations provided for basic standards and protections for rideshare workers. With the support of the Workers' Justice Project (WJP), Los Deliveristas Unidos in New York City have taken this same approach and are pursuing local level policies that would address their most pressing issues.

The couriers formed Los Deliveristas Unidos/WJP (*Delivery Workers United*), and after two successful marches to City Hall (October 2020 and April 2021), they achieved the introduction of a set of bills by progressive City Council members this past May. The NYC bills aim to provide access to bathrooms in restaurants, delivery trip distance limits, protection from unfair banking fees, reimbursement for insulated bags, and, most importantly, minimum pay.

## Impacts of COVID-19

The COVID-19 pandemic had devastating impacts for delivery workers and their immigrant communities. Research confirms that poor and minority populations were the most affected by the virus.<sup>2</sup> A study of the U.S. and other OECD countries found that immigrants and their children were infected with COVID at higher rates, faced higher mortality rates, had worse labor market outcomes, and worked disproportionately in frontline sectors.<sup>3</sup> A PEW report found that immigrants, and Latinos in particular, faced the greatest incidence of unemployment in the U.S.<sup>4</sup> In New York, the problem was three-fold, as immigrants were the most likely to lose their jobs, to work in essential industries, and to

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2 Purkayastha, B. 2020. "Divided we stand- The pandemic in the US. Open Movements" ISA 47 Open Democracy. <https://www.opendemocracy.net/en/openmovements/divided-we-stand-the-pandemic-in-the-us>

3 Scarpetta, S., Dumont, J., Liebig, T. 2020. "What is the impact of the COVID-19 pandemic on immigrants and their children?" OECD. <http://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/>.

4 Pew Research Center, July 2021, "For U.S. Latinos, COVID-19 Has Taken a Personal and Financial Toll." <https://www.pewresearch.org/race-ethnicity/2021/07/15/latinos-have-experienced-widespread-financial-challenges-during-the-pandemic/>

live in crowded housing. As The New York Times reported, this made immigrant communities, such as Central Queens, the “epicenter of the epicenter.”<sup>5</sup>

While many participants in our study turned to app-based delivery work because they lost their jobs due to COVID-19, we also found that many needed to do so because they lacked access to government assistance. As immigrants, many participants were either not eligible for, or believed they were not eligible for, state or federal assistance. Most respondents in our study reported not getting either a stimulus check, unemployment insurance, or Pandemic Unemployment Assistance (PUA). Only 44 workers reported getting the extra \$600 per week under PUA, and only 11 reported having received the unemployment insurance benefit for independent contractors.

When the pandemic hit, **app-based food delivery workers were recast as essential workers.** Deliveristas took on the risks of exposure to the virus, keeping everyone quarantined, safe at home and well fed. Many employers, such as Best Buy, Target, and Home Depot, gave their employees hazard pay to compensate them for the risk they were taking. Immigrant delivery workers did not receive hazard pay. In fact, food delivery workers reported barely receiving PPE. While most companies offered PPE, it was often difficult to obtain or there was no good communication with the app-based delivery workers. In fact, the main platforms provide to their delivery workers some form of support or resources such as PPE and other resource.

However, better lines of communication are needed to encourage workers to make use of these resources. Most workers who participated in this study reported not being aware of the resources offered by the platforms, or indicated that the process for gaining access was too onerous and not worthwhile. Workers noted that some apps made you go to an office to get a PPE kit, while others would mail the kits, but the workers would have to assume the shipping costs, which were deducted from their paychecks. As a result, nearly all app-based delivery workers reported having to buy their own safety equipment during the pandemic.

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5 Correal, A. and Jacobs, A. 2020. “A Tragedy Is Unfolding: Inside New York’s Virus Epicenter.” The New York Times, Apr 9.



## **DATA FOR A JUST RECOVERY IN NEW YORK: Toward Racial and Worker Justice in the COVID-19 Era and Beyond**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations, and KC Wagner, chair of the Worker Institute's Equity at Work Initiative.*

COVID-19 illness has claimed the lives of more than 50,000 New Yorkers and affected the wellbeing and economic security of millions across the state, with acute impacts on communities of color and other marginalized groups. In late 2020, the Worker Institute at Cornell partnered with *Color Of Change*, the *National Employment Law Project*, and *TIME'S UP Impact Lab* to conduct the 63-item national Just Recovery Survey (n=3,100).<sup>1</sup> With an oversample of Black respondents (n=595), Latinx respondents (n=722), and New Yorkers (n=324), the survey captured the varying experiences of working adults during the crisis based on race, gender, and income, and addressed three areas: economic security, health and wellbeing, and agency and voice. This memo focuses on some key outcomes, sharing national results on racial disparities and comparing New York state to the rest of the country.<sup>2</sup> It then builds on these results to draw implications for advancing a just, equity-focused, and worker-centered recovery in New York.

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1 See the national survey report: <https://www.nelp.org/publication/foundations-for-a-just-and-inclusive-recovery/>

2 \*Denotes differences between Black and White workers and Latinx and White workers that are statistically significant at a 95% confidence level, and differences between New York and the rest of the country that are statistically significant at a 90% confidence level.

## Economic Security

The COVID-19 pandemic and associated recession have affected the employment and financial security of millions of families in New York and around the country, and long-standing structural racism is evident in the disproportionate impacts on communities of color.<sup>3</sup>

The Just Recovery Survey showed that, in New York and other parts of the country, around one-third of working people lost income from paid work during the pandemic, with substantially larger numbers of Black and Latinx workers experiencing these losses. There were also pronounced racial disparities within the bottom pay quartile: 64% of Latinx workers and 52% of Black workers in this bracket lost income, compared to 36% of white workers.

Apart from changes in employment status and working hours, worker incomes can also be affected by different forms of “wage theft”—i.e., having pay stolen by employers.<sup>4</sup> In New York and elsewhere, 8% of workers reported having experienced one of two forms of wage theft during the pandemic (not being paid for all hours worked, employers keeping a portion of tips or deducting the cost of personal protective equipment from pay). Black workers were significantly more likely to have experienced wage theft than white workers.

Among workers who became unemployed during the pandemic and reported applying for Unemployment Insurance (UI), Pandemic Unemployment Assistance (PUA), or Pandemic Emergency Unemployment Compensation (PEUC), a substantial proportion reported being denied these benefits, with Black and Latinx workers more likely to report their claims were denied than white workers.

Employment and pay disruptions and difficulties accessing needed benefits have contributed, in turn, to financial insecurity for many working families, with more than 2 in 5 workers in New York and

Lost income from paid work during pandemic				
Black Workers 42%	Latinx Workers 45%	White Workers 28%	New Yorkers 33%	Rest of Country 36%

Experienced wage theft during pandemic				
Black Workers 14%	Latinx Workers 11%	White Workers 6%	New Yorkers 8%	Rest of Country 8%

Denied unemployment support after applying				
Black Workers 34%*	Latinx Workers 26%*	White Workers 14%	New Yorkers 20%	Rest of Country 16%

Pandemic made it harder to pay bills				
Black Workers 51%*	Latinx Workers 59%*	White Workers 35%	New Yorkers 42%	Rest of Country 43%

Fear of eviction or foreclosure				
Black Workers 42%*	Latinx Workers 39%*	White Workers 21%	New Yorkers 30%	Rest of Country 26%

3 See <https://www.cbpp.org/research/full-employment/the-impact-of-the-covid19-recession-on-the-jobs-and-incomes-of-persons-of>

4 For more on wage theft, see Bernhardt, Annette, Ruth Milkman, Nik Theodore, Douglas D. Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, and Jason Perelshteyn. “Broken laws, unprotected workers: Violations of employment and labor laws in America’s cities.” (2009).

elsewhere reporting that the pandemic made it harder to pay bills. Nationally, more than half of Black and Latinx workers and just over one-third of white workers reported such difficulties.

The challenges of being able to afford basic needs have led to documented increases in food and housing insecurity, with disproportionate impacts on communities of color.<sup>5</sup> The Just Recovery Survey showed widespread fears of eviction or foreclosure within the next year, with Black and Latinx workers around twice as likely as their white counterparts to express such concerns.

## Health & Safety

Many frontline workers serve in high-risk environments with inadequate protections against COVID-19, forcing them into impossible dilemmas around protecting the health and economic security of their families. Many workers have also faced steep healthcare access barriers when seriously ill.

Being able to freely identify workplace safety hazards is crucial to maintaining safe working conditions, particularly in a pandemic context. However, whistleblower complaints filed by those targeted for doing so have escalated dramatically since the pandemic began.<sup>6</sup> The Just Recovery Survey showed that New Yorkers were significantly more likely than others to fear employer retaliation for raising workplace safety issues. Differences based on race were within the survey margin of error.

Fears about retaliation for refusing to work under unsafe conditions were even more widespread. Again, New Yorkers were more likely to experience these fears than workers elsewhere. Black workers were also more likely than white workers to express fears of retaliation for refusing to work under unsafe conditions.

Finally, workplace sexual harassment and violence is both a discrimination and health and safety issue, and barriers to reporting hinder efforts to confront the problem. Nationally, racial differences in fears of retaliation for reporting sexual harassment were not statistically significant, but women (31%) were significantly more likely express these fears than men (20%). As in the case

Fear retaliation for raising workplace safety issues				
Black Workers 30%	Latinx Workers 27%	White Workers 23%	New Yorkers 34%*	Rest of Country 25%

Fear retaliation for refusing unsafe work conditions				
Black Workers 47%*	Latinx Workers 39%	White Workers 35%	New Yorkers 48%*	Rest of Country 37%

Fear retaliation for reporting sexual harassment				
Black Workers 22%*	Latinx Workers 22%*	White Workers 26%	New Yorkers 34%*	Rest of Country 25%

No access to paid sick leave				
Black Workers 31%	Latinx Workers 25%	White Workers 32%	New Yorkers 30%	Rest of Country 27%

Can afford healthcare if seriously ill				
Black Workers 43%*	Latinx Workers 32%*	White Workers 61%	New Yorkers 60%	Rest of Country 53%

5 See <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>

6 [https://www.coshnetwork.org/2020-08\\_Whistleblower\\_Complaints\\_Skyrocket\\_During\\_COVID-19](https://www.coshnetwork.org/2020-08_Whistleblower_Complaints_Skyrocket_During_COVID-19)

of the other retaliation outcomes, New Yorkers were also more likely than those in the rest of the country to report these fears.

Lack of access to paid sick leave has also undermined workplace health and safety, as the resulting “presenteeism” increases risks of viral transmission. Around 3 in 10 workers reported that they did not have access to paid sick leave through their employer, with all differences within the survey margin of error.

Building on other work,<sup>7</sup> the Just Recovery Survey also showed healthcare access issues that were significantly inflected by race. Black and Latinx workers were less likely than their white counterparts to say they could afford the healthcare they needed if seriously ill, and a more in-depth analysis of the data has revealed that differences in average income explain a large portion of these disparities.

Fear of substandard healthcare due to race				
Black Workers	Latinx Workers	White Workers	New Yorkers	Rest of Country
48%*	29%*	4%	20%	15%

Took time off from work for unpaid caregiving				
Black Workers	Latinx Workers	White Workers	New Yorkers	Rest of Country
22%*	24%*	11%	16%*	14%

Non-union workers interested in unionization				
Black Workers	Latinx Workers	White Workers	New Yorkers	Rest of Country
61%*	44%	42%	57%*	45%

Finally, there were large differences in concerns about substandard healthcare due to race. In line with tragic stories from the pandemic such as that of Zoe Mungin and Dr. Susan Moore,<sup>8</sup> in-depth analysis of the data showed that these fears remained consistent across the income and education spectrum.

## Agency & Voice

During the pandemic, unpaid caregiving has affected economic agency.<sup>9</sup> The Just Recovery Survey showed that Black and Latinx workers were far likelier than white workers to have taken time off from paid work due to unpaid caregiving. The racial disparities were even larger among women, and statistically significant: 28% of Latinas and 27% of Black women took time off to provide unpaid care, versus 12% of white women.

Among the employed, decades of declining union density mean that a relatively small share of U.S. workers have channels for bargaining collectively over workplace safety and other issues. However, there is evidence that the pandemic conditions may be contributing to an uptick in workplace collective action and contributing to heightened interest in unionization.<sup>10</sup> The Just Recovery Survey showed that non-union Black workers were significantly more likely to express interest in joining a

7 See <http://files.kff.org/attachment/Report-Race-Health-and-COVID-19-The-Views-and-Experiences-of-Black-Americans.pdf>

8 See <https://www.cnn.com/2020/05/31/opinions/higher-education-coronavirus-opportunity-for-a-more-just-world-johnson/index.html> and <https://www.nytimes.com/2020/12/23/us/susan-moore-black-doctor-indiana.html>

9 See <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward/>

10 See <https://rooseveltinstitute.org/publications/understanding-the-covid-19-workplace-evidence-from-a-survey-of-essential-workers/>

union than their white counterparts, as were workers in New York relative to their counterparts in other parts of the country.

## Implications

Results from the Just Recovery Survey speak to a broad array of challenges confronting working people in New York and around the country—in the workplace, within households, and in the healthcare arena. These findings also reflect patterns of institutionalized racism that are contributing to unequal outcomes in the pandemic environment. Below are some general takeaway points for elected officials and other leaders in New York to consider in areas directly related to the Worker Institute’s mission of advancing worker rights and collective representation. **Confronting structural racism/promoting racial and gender equity** is a principle that should be actively pursued in all these areas.

- Enforce wage and hour protections. The survey results indicate that wage theft by employers has continued during the pandemic, with disproportionate impacts on Black and Latinx workers. Stronger enforcement of wage and hour protections—including co-enforcement strategies in which government administrators partner with worker and community organizations<sup>11</sup>—would help to ensure that all working New Yorkers are paid what they are owed.
- Ensure the functioning of whistleblower protections. Although the survey questions do not directly capture experiences of retaliation, they address fears that could have a very real chilling effect on worker responses to health and safety hazards and workplace sexual harassment. It is notable that workers in New York are more likely to express fears of retaliation for responding to workplace abuses despite being in a state with relatively well-developed anti-retaliation legal protections.<sup>12</sup> Indeed, the survey results indicate the importance of ensuring that these protections function in practice, particularly for people of color and other marginalized groups.
- Provide support for overcoming administrative barriers to accessing key benefits. The U.S. has long had a system of unemployment insurance that is weak relative to other advanced democracies, though programs aimed at increasing income assistance to the unemployed have been expanded during the pandemic. While the survey does not directly measure benefits eligibility or receipt, the data point to the importance of addressing administrative barriers and providing targeted support aimed at closing racial and other disparities in access to key benefits.
- Extend childcare and long-term care supports. The survey results indicate that a substantial share of the working population has had to take time off from paid work during the pandemic to provide unpaid family care. Black and Latinx women, despite comprising a highly disproportionate share of the direct care workforce, have experienced the biggest impacts in this regard. Bolstering widespread access to childcare and long-term care will help to boost

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11 See <https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/>

12 See <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>

overall employment while advancing greater equity in the world of work and systems for social care.

- Defend the right to organize at work. Unions in New York, which make up one of the most powerful statewide labor movements in the country, have experienced widespread member attrition during the pandemic due to employment disruptions.<sup>13</sup> However, the survey data show broad interest in joining a union, particularly among workers in New York and Black workers nationally. The coming period could be one in which workers come to wield greater control over their conditions through collective action. To realize that potential, the right to organize collectively needs to be vigorously defended by allies of the labor movement across the state.

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<sup>13</sup> See [https://slu.cuny.edu/wp-content/uploads/2020/09/CUNY-SLU-Union\\_Density-Report-2020pdf.pdf](https://slu.cuny.edu/wp-content/uploads/2020/09/CUNY-SLU-Union_Density-Report-2020pdf.pdf)



## **POWER AND VOICE AT WORK: New Yorkers View Employer Retaliation as a Barrier to Addressing Workplace Problems and Express Desire for Union Representation**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; Irene Tung, senior researcher and policy analyst, National Employment Law Project; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.*

In New York, as elsewhere, the COVID-19 pandemic has underscored the importance of workers' ability to raise workplace concerns without employer reprisal.<sup>1</sup> Being able to speak up carries critical implications for worker health and safety, freedom from discrimination, and other matters of basic wellbeing.<sup>2</sup> Even in the midst of a health and economic crisis, workers around the country mobilized individually and collectively around a range of issues, including premium pay and stronger workplace protections.<sup>3</sup>

- 1 This survey study was conducted with the support of funds from New York state. The opinions, results, findings and interpretations of data contained herein are those of the authors and do not necessarily represent the opinions, interpretations, or policy of the state.
- 2 Berkowitz, Debbie and Shayla Thompson. "OSHA Must Protect COVID Whistleblowers Who File Retaliation Complaints." National Employment Law Project. October 2020. Accessed August 2, 2021, <https://www.nelp.org/publication/osha-failed-protect-whistleblowers-filed-covid-retaliation-complaints/>
- 3 Abrams, Abigail. "The Challenges Posed by COVID-19 Pushed Many Workers to Strike. Will the Labor Movement See Sustained Interest?" Time Magazine. January 17, 2021. Accessed July 31, 2021. <https://time.com/5928528/frontline-workers-strikes-labor/>

Too often, however, employers continue to punish workers for raising workplace concerns.<sup>4</sup>

Data from the national Just Recovery Survey (n=3,100), which oversampled working New Yorkers (n=324), provides insight into how New Yorkers compare to the rest of the country with regard to perceptions of possible employer retaliation for raising concerns about workplace safety and sexual harassment.<sup>5</sup> It also shows how working New Yorkers compare to their counterparts elsewhere with respect to interest in a specific kind of vehicle for workplace collective action: forming a union.

## Key Findings

- Workers in New York are more likely than those in the rest of the country to report that they perceive employer retaliation to be a significant barrier preventing them from freely expressing concerns related to workplace health and safety. Forty-seven percent of working New Yorkers reported that potential employer retaliation could prevent them from refusing to work in unsafe conditions, as compared to 37% of workers in the rest of the country. Thirty-four percent reported that potential employer retaliation could prevent them from raising concerns about unsafe working conditions, as compared to 25% in the rest of the country.
- Workers in New York are more likely than those in the rest of the country to feel pressure to refrain from reporting workplace sexual harassment to avoid employer retaliation. Thirty-four percent of working New Yorkers reported that potential employer retaliation could prevent them from reporting workplace sexual harassment, as compared to 25% in the rest of the country.
- Workers in New York express a higher level of interest in joining a labor union than those in the rest of the country. Of workers who don't currently belong to a labor union, 57% of working New Yorkers stated that they would like to join a union, as compared to 45% in the rest of the country.
- Nationally, Black workers are more likely than other workers to report potential employer retaliation as a barrier to taking action against unsafe working conditions.<sup>6</sup>
- U.S. workers who perceived retaliation to be a barrier are more likely to want to organize with co-workers in a union, suggesting that workers view unionization as a means to bolster their voice and power to speak up about workplace issues that arise.

**Forty-seven percent of working New Yorkers reported that potential employer retaliation could prevent them from refusing to work in unsafe conditions, as compared to 37% of workers in the rest of the country.**

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4 Tung, Irene and Laura Padin. "Silenced About COVID-19 in the Workplace." National Employment Law Project. June 2020. Accessed August 2, 2021, <https://www.nelp.org/publication/silenced-covid-19-workplace/>.

5 The survey question included the following examples of retaliation: "being fired or experiencing unfavorable changes in assignments, promotions, hours, or pay."

6 For the purposes of this survey, the descriptor "Black" respondents refer to respondents that self-identified as Black and non-Hispanic. "Latinx" includes respondents who self-identified as Hispanic and White or Hispanic with an unspecified race.

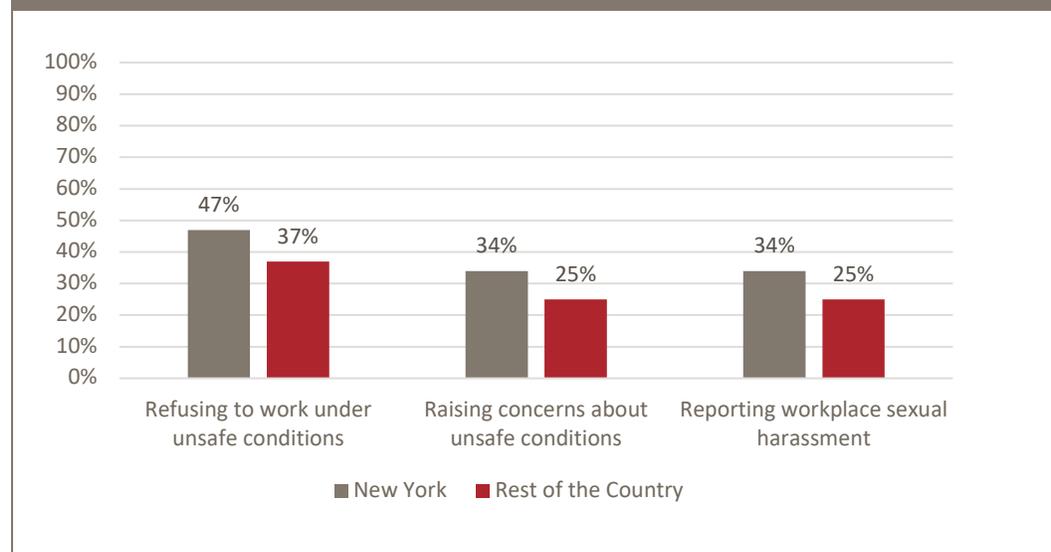
## New Yorkers are more likely to perceive retaliation as a barrier than workers in other parts of the country

During the pandemic, many employers have called on frontline workers to work in high-risk environments without providing adequate protections against COVID-19, placing the physical and economic health of workers and their families at risk. Being able to freely identify workplace safety hazards is crucial to maintaining safe workplaces. COVID-19 has laid bare the problem of employer retaliation against workers who raise these concerns and underscored the impact of suppressing workers' concerns on their wellbeing and that of the broader public.

Results from the Just Recovery Survey show that a large share of New Yorkers say potential retaliation from their employer would prevent them from taking action on issues related to workplace safety and discrimination. Indeed, workers in New York are more likely to report that potential employer retaliation is a barrier than their counterparts in the rest of the country (see Figure 1).<sup>7</sup>

The Just Recovery Survey data show 47% of New Yorkers reporting that potential employer retaliation could prevent them from refusing to work under unsafe conditions, and 34% reporting that potential employer retaliation could prevent them from raising concerns about unsafe working conditions. By comparison, 37% of respondents in the rest of the country reported that potential employer retaliation could prevent them from refusing to work under unsafe conditions, and 25%

**Figure 1. Share of Workers Viewing Potential Employer Retaliation as a Barrier to Addressing Workplace Problems**



<sup>7</sup> In March, Chris Smalls, working at an Amazon warehouse in Staten Island, reported being fired for organizing with workers to draw attention to unsafe conditions. See Hutchinson, Bill. "It's Retaliation: Amazon Warehouse Worker Fired Following Coronavirus Employee Walkout." ABC News. March 21, 2020. Accessed July 31, 2021. <https://abcnews.go.com/Business/retaliation-amazon-warehouse-worker-fired-staging-walkout/story?id=69893683>. Following the firing of Smalls and other Amazon whistleblowers, an Amazon Vice President resigned in protest. See Lyons, Kim. "Amazon VP Quits Over Whistleblower Firings in Scathing Blog Post." The Verge. May 4, 2020. Accessed July 31, 2021. <https://www.theverge.com/2020/5/4/21246284/amazon-vp-resign-whistleblower-firings-warehouse-workers>.

reported that potential employer retaliation would prevent them from raising concerns about unsafe workplace conditions.

Alongside reporting the stifling effect of potential retaliation related to health and safety concerns, working people in New York expressed that potential employer retaliation could prevent them from reporting sexual harassment. Workplace sexual harassment and violence is both a discrimination and a health and safety issue, and barriers to reporting hinder efforts to confront the problem. As in the case of the other retaliation outcomes, New Yorkers were also more likely than those in the rest of the country to report that this was the case: 34% of working New Yorkers expressed potential retaliation as a barrier to reporting sexual harassment, as compared to 25% of working people in the rest of the country **(see Figure 1)**.

While demographic breakdowns are not available for New York specifically due to the limited sample size, the national survey results suggest that there are troubling racial and gender disparities in how empowered workers feel to take certain forms of action: Black workers are more likely to report that potential employer retaliation could prevent them from refusing to work under unsafe working conditions, and women are more likely than men to report that potential employer retaliation could prevent them from reporting workplace sexual harassment.

## **Stronger interest in unions in New York than in other parts of the country**

As workers have navigated unsafe and unfair conditions during the pandemic, many have engaged in workplace collective action, including strikes, petitions, and different forms of protest. In a number of cases, workers have won important concessions from employers. And, as shown in previous work, the “collective action potential” of the moment far exceeds what has actually surfaced—e.g., a large share of non-union workers would be interested in forming a union if given the chance.<sup>8</sup>

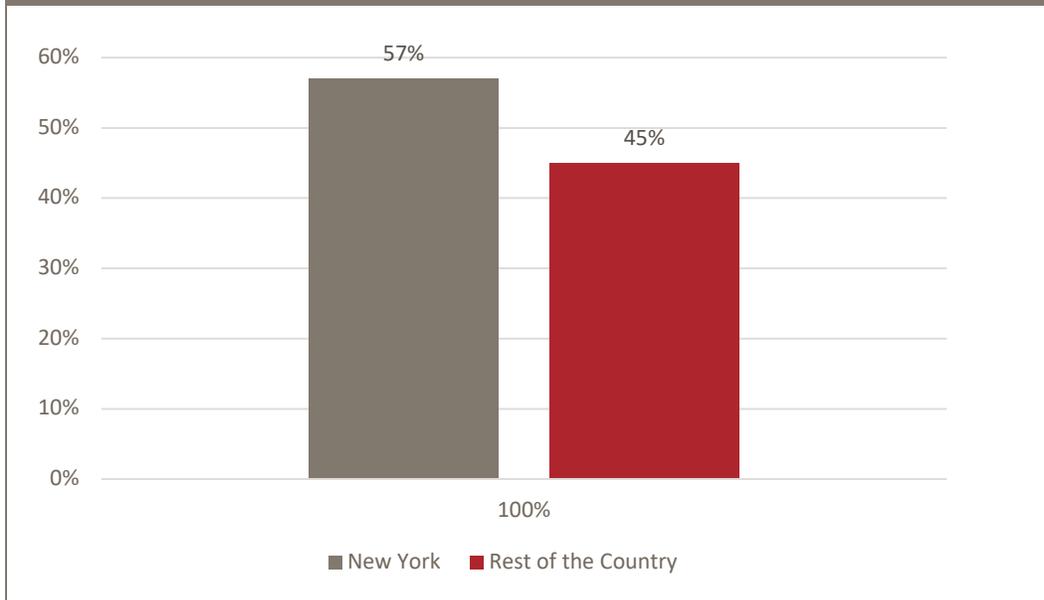
The Just Recovery Survey shows that interest in unionization among non-union New Yorkers is high. A solid majority of non-union workers in New York—57%—expressed interest in unionization, which was 12 percentage points higher than in the rest of the country **(see Figure 2)**.

Importantly, the national data also show that interest in unionization was higher among those indicating that potential employer retaliation was a barrier to addressing any of the workplace problems noted above (55%) than those who did not indicate that potential employer retaliation was a barrier at all (38%). The size of the survey sample in New York did not allow for this analysis within New York specifically, but the data do not indicate that the correlation between views of employer retaliation and interest in unionization are any different in New York than in the rest of the country.

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8 Hertel-Fernandez, Alexander, Suresh Naidu, Adam Reich, and Patrick Youngblood. “Understanding the COVID-19 Workplace: Evidence from a Survey of Essential Workers.” June 2020. Accessed July 31, 2021. [https://rooseveltinstitute.org/wpcontent/uploads/2020/07/RI\\_SurveyofEssentialWorkers\\_IssueBrief\\_202006-1.pdf](https://rooseveltinstitute.org/wpcontent/uploads/2020/07/RI_SurveyofEssentialWorkers_IssueBrief_202006-1.pdf).

**Figure 2. Interest in Unionization Among Non-Union Workers**



This correlation suggests that workers reporting potential employer retaliation for speaking up about key workplace issues may view unionization as a vehicle for overcoming this threat. Prior research confirms that being part of a union can facilitate the ability of workers to freely raise concerns, showing that unionized workers are more likely than their non-union peers to both speak up about their workplace health and safety concerns and successfully have them addressed.<sup>9</sup>

Finally, worker interest in unionization was especially high among Black and Asian workers nationally. Sixty-two percent of non-union Black workers and 61% of non-union Asian workers said they would definitely or probably support a union at their job, compared to 42% of white workers and 44% of Latinx workers.

## Implications

Results from the Just Recovery Survey carry important implications for elected officials and others in New York seeking to expand worker voice during the pandemic recovery and beyond.

- Expand whistleblower and anti-retaliation protections. The survey results indicate that legal protections against employer retaliation in New York state need strengthening. The recently-enacted NY HERO Act bolstered protections against employer retaliation for workers speaking up about airborne infectious diseases like COVID-19. The same level of protection, however, is still not afforded to workers speaking up about other health and safety concerns or workplace issues. A bill passed this spring by New York's legislature would strengthen the state's current

<sup>9</sup> See Sojourner, Aaron. "Unionized workers are more likely to assert their right to a safe and healthy workplace." *The Conversation*. September 2, 2020. Accessed August 2, 2021, <https://theconversation.com/unionized-workers-are-more-likely-to-assert-their-right-to-a-safe-and-healthy-workplace-144718> and Sojourner, Aaron and Jooyoung Yang, "Effects of Union Certification on Workplace-Safety Enforcement: Regression-Discontinuity Evidence." *ILR Review*. September 3, 2020. Accessed August 2, 2021, <https://journals.sagepub.com/doi/10.1177/0019793920953089>.

anti-retaliation laws in several ways, including by extending anti-retaliation protections to all workers who have a “reasonable belief” that they are complaining about a violation of the law or a threat to public health or safety on the part of their employer.<sup>10</sup> Additional action could prohibit retaliation against workers who share information about workplace health and safety risks on social media, which has become a common forum for raising such issues. Currently, retaliation for such disclosure is prohibited only in the case of health care workers in New York state.

For more information about other steps that lawmakers can take to protect workers from retaliation, please see NELP’s previous reports: *Protecting Worker Safety & Health in the COVID Crisis: A State & Local Model Policy Response*; *Silenced About COVID in the Workplace*; *Exposing Wage Theft Without Fear*; and *Retaliation Funds: A New Tool to Tackle Wage Theft*.

- Establish just-cause termination standard for all workers in New York. The limited protections under current law for workers who experience retaliation are undermined because they exist against the backdrop of an “at will” employment system—in which workers can be fired for any reason, or no reason at all, without advance notice or fair process. The core of a just-cause employment system is a requirement that an employer show justifiable reason for discharging a worker. Shifting responsibility to the employer to demonstrate a good reason for discharge is a crucial step towards meaningfully protecting workers against arbitrary and unfair firings—including retaliatory firings of whistleblowers, workers experiencing and reporting discrimination or harassment, and workers exercising other rights under the law.<sup>11</sup>
- Improve enforcement of workplace protections including anti-retaliation provisions. The survey results indicate the importance of ensuring that existing worker protections function in practice. This means supporting enforcement at the state as well as the local level. For example, in New York City, the Office of Labor and Policy Standards (OLPS) plays a key role in enforcing key labor and employment protections and is seen around the country as a successful model for municipal governance related to labor and employment. In the last two years, however, OLPS has experienced significant staffing reductions in all areas, including investigators, attorneys, researchers, intake staff, and outreach and advocacy—with a decrease in staffing of 36% between 2018 and 2020.<sup>12</sup> Prior work has also indicated that additional funding and resources would help the New York State Department of Labor to effectively enforce the law.<sup>13</sup>

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10 An act to amend the labor law, in relation to retaliatory actions by employer, New York State Senate. S4394A. (2021) Accessed August 2, 2021, [https://www.nysenate.gov/legislation/bills/2021/S4394?fbclid=IwAR2p3pbuz5AxpK7\\_3jUtAMw32DRwKwL1YftadMK53j2XMNA9Hn3EgXQBn0Y](https://www.nysenate.gov/legislation/bills/2021/S4394?fbclid=IwAR2p3pbuz5AxpK7_3jUtAMw32DRwKwL1YftadMK53j2XMNA9Hn3EgXQBn0Y), Accessed August 2, 2021

11 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. May 2021. Accessed August 2, 2021, <https://www.nelp.org/publication/just-cause-job-protections-building-racial-equity-and-shifting-the-power-balance-between-workers-and-employers/>

12 New York City Department of Worker and Consumer Protection. “The State of Workers’ Rights in New York City: Fourth Annual Report.” April 2021. Accessed July 31, 2021. <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2021.pdf>.

13 Miller, Rebecca, Estee Ward and Benjamin Wolcott, “Coming Up Short: The State of Wage Theft Enforcement in New York,” April 2019. Accessed August 2, 2021, [https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short\\_The-State-of-Wage-Theft-Enforcement-in-NY-4\\_8\\_19.pdf](https://maketheroadny.org/wp-content/uploads/2019/04/Coming-Up-Short_The-State-of-Wage-Theft-Enforcement-in-NY-4_8_19.pdf).

Enforcement agencies could also consider expanded use of co-enforcement strategies involving worker organizations.<sup>14</sup>

- Defend the right to organize at work. Unions in New York, which make up one of the most powerful statewide labor movements in the country, have experienced widespread member attrition during the pandemic due to employment disruptions.<sup>15</sup> However, the survey data show broad interest in joining a union. The coming period could be one in which workers come to wield greater control over their conditions through collective action, and the right to organize collectively needs to be vigorously defended to ensure that workers have the necessary voice and power on the job to speak up about issues that arise. For example, prior research has shown that unionized workers are more likely than their non-union peers to speak up about health and safety problems in the workplace.<sup>16</sup> And many stakeholders can benefit from the power and voice afforded by unions: In New York during the height of the pandemic, death rates from COVID-19 were lower in unionized nursing homes than in those without union representation.<sup>17</sup>

## About the Survey and Analysis

In late 2020, Color Of Change, the National Employment Law Project, TIME'S UP Impact Lab, and the Worker Institute at Cornell partnered on a 63-item national Just Recovery Survey (n=3,100).<sup>18</sup> With an oversample of Black respondents (n=595), Latinx respondents (n=722), and New Yorkers (n=324), the survey captured the varying experiences of working adults during the COVID-19 crisis based on race, gender, and income, addressing three areas: economic security, health and wellbeing, and agency and voice. In the current analysis, we coded as “Black” those respondents who self-identified as Black non-Hispanic or Black Hispanic, and we coded as “Latinx” those respondents who self-identified as white Hispanic or Hispanic with their race unspecified.

The Just Recovery Survey included 63 questions related to worker economic security, health and wellbeing, and agency and voice, and was administered by the survey research firm SSRS in September and October of 2020 using its online SSRS Opinion Panel.<sup>19</sup> The survey (n=3,100) included respondents from 50 U.S. states and the District of Columbia who indicated that they were

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14 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.” Washington Center for Equitable Growth, January 14, 2021. Accessed August 2, 2021. <https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/>.

15 Milkman, Ruth, and Stephanie Luce. “The State of the Union 2020: A Profile of Organized Labor in New York City, New York State, and the United States.” CUNY School of Labor and Urban Studies. September 2020. Accessed July 31, 2021. [https://slu.cuny.edu/wp-content/uploads/2020/09/CUNY-SLU-Union\\_Density-Report-2020pdf.pdf](https://slu.cuny.edu/wp-content/uploads/2020/09/CUNY-SLU-Union_Density-Report-2020pdf.pdf).

16 See Sojourner and Yang, 2020. Accessed August 2, 2021, <https://journals.sagepub.com/doi/10.1177/0019793920953089>.

17 Dean, Adam, Atheendar Venkataramani, and Simeon Kimmel. “Mortality Rates from COVID-19 are Lower in Unionized Nursing Homes.” *Health Affairs*, Vol. 31, No. 11. September 10, 2020. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01011>.

18 See the national survey report, Mabud, Rakeen, Amity Paye, Maya Pinto, and Sanjay Pinto. “Foundations for a Just and Inclusive Recovery: Economic Security, Health and Safety, and Agency and Voice in the COVID-19 Era.” Color of Change, National Employment Law Project, TIME'S UP Foundation, and The Worker Institute at Cornell ILR. February 2021. Accessed July 31, 2021. <https://www.nelp.org/publication/foundations-for-a-just-and-inclusive-recovery/>.

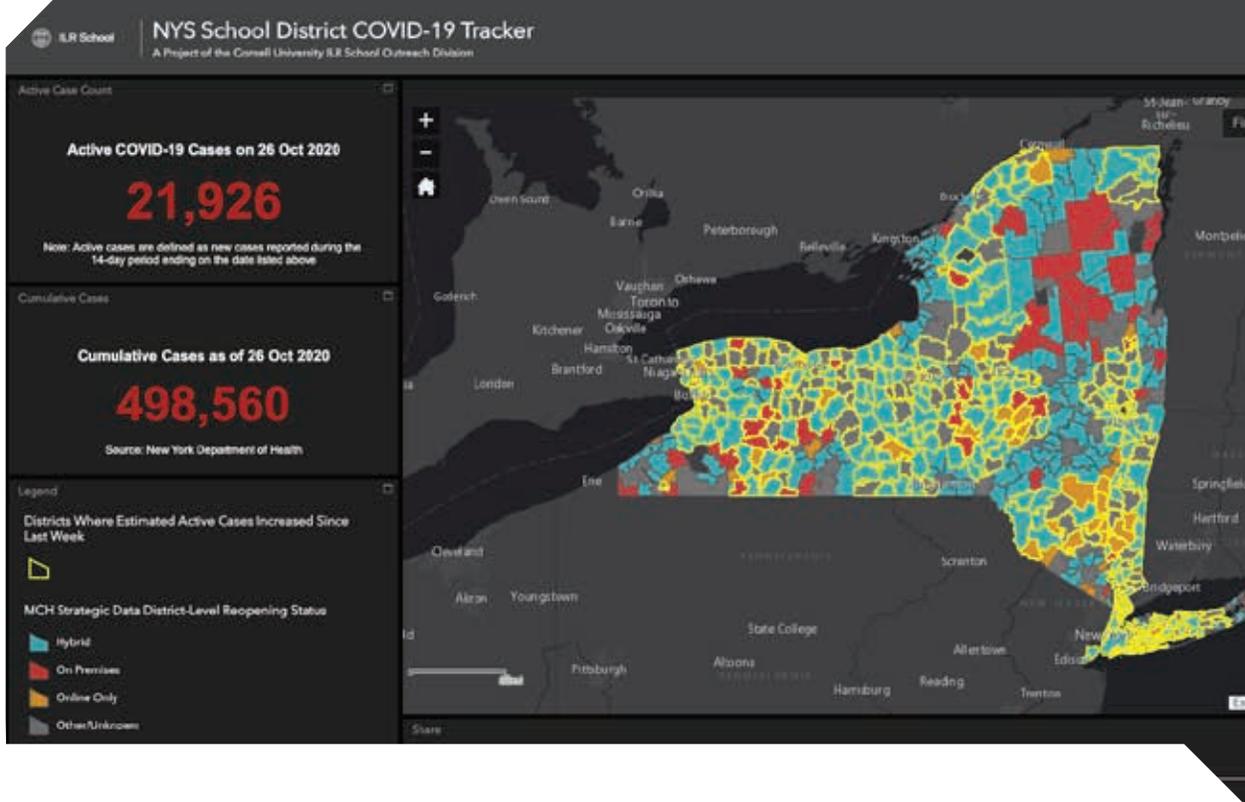
19 In addition to questions asked as part of the Just Recovery Survey, project researchers also have access to background demographic variables that were already collected as part of the SSRS Opinion Panel.

not retired or permanently out of the labor market (for more detail on the methodology, see footnote).<sup>20</sup>

Findings reported above are based on questions related to barriers presented by retaliation for different workplace actions related to health and safety and sexual harassment, and interest in unionization (which was asked only to non-union workers). All reported differences between New York and the rest of the county are statistically significant at a 90% confidence level, and all reported differences based on demographics are statistically significant at a 95% confidence level.

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20 The survey was conducted both in English (n=3,020) and Spanish (n=80). Survey weights were developed and applied to provide estimates representative of the U.S. adult population 18 years of age and older in the labor market and with internet access. The mean survey completion time was 13.6 minutes. SSRS Opinion Panel participants are recruited randomly based on nationally representative address-based sampling combined with targeted recruiting for hard-to-reach demographic groups in the Omnibus survey platform, a nationally representative bilingual random digit dialing telephone survey. In all, 5,382 panelists were invited to participate in the survey. Participants received modest incentives in the form of an electronic gift card. A base weight was developed to account for the probability of selection into the survey panel and then further weighted to match population targets, including sex by age, sex by education, race and Hispanic ethnicity, Census region, civic engagement, and population density. The design effect for this survey was 1.95 overall, and the survey margin of error is 2.5.



## INTERACTIVE MAPPING OF COVID DURING THE PANDEMIC

*By Russell Weaver, director of research at the Cornell ILR Buffalo Co-Lab.*

Reacting in real time to the COVID-19 pandemic, the ILR Buffalo Co-Lab created a number of easily understood, interactive mapping systems so New Yorkers could understand COVID rates, patterns and track who was impacted across the state, their county and within school districts. The mapping tools have been covered by numerous media outlets and accessed tens of thousands of times during the last year.

### Daily COVID Tracker for NYS

First, the Cornell University ILR Buffalo Co-Lab, created an open data tool: the [Daily COVID-19 Tracker for New York State](#) (NYS). The NYS Daily COVID-19 Tracker is a real-time resource for monitoring trends in new COVID cases throughout the state. It is a mapping portal that allows users to quickly visualize and monitor trends for a single county, multiple county areas, or the entire state. It offers a simple, interactive interface for filtering the state's COVID cases by custom date ranges. Once a user specifies the county or counties in which they are interested and sets the slider to a desired date range, the tracker displays the trend in cases for those custom settings. For example, on July 5, 2021, there were a mere 255 new cases of COVID in NYS. One month later, August 6, 2021, 4,395 new cases. This information remains open to the public, and is critically important in understanding COVID rates.

## NYS School District COVID Tracking

The ILR Buffalo Co-Lab developed a second open data tool: the [NYS School District COVID Tracker](#). The map allows users to display current estimates of active and cumulative COVID-19 cases per 1,000 residents living within a school district, along with socioeconomic and demographic variables. The tool is designed for use by families, community groups, researchers, school districts, government officials and others to help assess COVID-19 patterns within a broad context of variables such as poverty.

Additionally, the School District COVID map also tracks socioeconomic and demographic variables available for each district including: population, school population (students and staff); children with disabilities; children living in households without computer or internet access; children in households receiving social assistance; children living in poverty; children living in households with limited English-language skills; children enrolled in K-12 education who are persons of color; and children living in single-parent households.

The tracker helps parents, employees and public officials who must make incredibly difficult decisions about how best to fulfill the educational needs of children while protecting the health and safety of the community. By centralizing relevant information from a variety of sources into one location, decision making becomes easier.

## Erie County COVID Tracking Map

A core component of the ILR Buffalo Co-Lab is our commitment to high road principles and democratizing local and regional data to empower residents and community institutions, inform public policy discussions, and provide data-driven insights to advance an equitable and democratic economy. Keeping with that mission in the midst of COVID-19 means shedding light on the disparate ways in which the virus is affecting our communities, and how its uneven geographic distribution is flowing from and reinforcing the broader patterns of inequality which exist in society. Toward that end, the Buffalo Co-Lab launched a [COVID-19 Mapper for Erie County, New York](#). The COVID-19 case data come directly from [Erie County's official online coronavirus tracker](#). The mapping tool is not intended to replace Erie County's existing resources. Rather, the Co-Lab's platform is meant to supplement the county's tracking efforts by joining selected demographic and socioeconomic indicators to its regularly-updated ZIP code-level COVID-19 case data. The purpose is to dig deeper into the pattern of cases by exploring and understanding its associations with various social and demographic phenomena throughout Erie County. The web map highlights ZIP codes where persons of color make up a majority of the population. Clicking on a ZIP code calls up a window with selected demographic and socioeconomic information for that ZIP code, as well as the number of confirmed COVID cases and the rate of COVID cases per 1,000 persons. The variables include: total ZIP code population, ZIP code population of selected racial and ethnic groups, median household income, poverty rate (as a percent of population for whom poverty status is determined), total number of households, number of households that are housing cost-burdened (i.e., households pay more than 30% of their gross monthly income on housing), housing cost burden rate (as percent of households), count of COVID-19 cases, and COVID-19 case rate (per 1,000 persons).

## Other Projects Impacting NY State

### Buffalo's Low Wage Workforce

Low Wage Buffalo is a project of the ILR Buffalo Co-Lab. The objective of Low Wage Buffalo is to bring new attention to a particular dimension of inequality in Buffalo, by shedding light on the magnitude and diversity of the city's low-wage workforce. The launch of the project coincides with the 12th anniversary of the most recent increase to the federal minimum wage. Click [here](#) to enter the portal and explore Buffalo's low-wage workforce. Our research shows that more than **two out of every five** civilian wage earners 16 years or older who live in Buffalo, (excluding self-employed workers) – almost 50,700 workers in all – make an effective hourly wage that is less than \$15. Workers living in Buffalo who earn below \$15 per hour are diverse. They work in a wide variety of jobs and represent different industries, age cohorts, and racial-ethnic groups. The research breaks down into 20 different industries, and looks at race, ethnicity and age as percentages of low wage workers.

### Economic Development in Western New York:

The Co-Lab's expertise is often relied upon by New York Legislators in determining whether an economic development proposal is good for the community. One such example in 2021 involved Amazon's request to the Hamburg, New York, Industrial Development Agency for a tax break worth approximately \$6.8 million dollars to subsidize the building of a delivery hub in the town. State Sen. Sean Ryan, whose constituents reside in Hamburg, asked the Co-Lab to provide research and data as to whether the proposed subsidy was a wise use of the local community's prime public dollars. Researchers at the Cornell University ILR Buffalo Co-Lab prepared a fact sheet to offer some initial answers to that question by examining the jobs that Amazon proposed to create, relative to the costs of the proposed tax incentives. Amazon said that it would create 50 full time jobs. However, only 10% of the full-time jobs promised by the project would pay workers at or above median wages for the transportation and warehousing industry in Hamburg, and that two-thirds of the jobs available in Hamburg paid *more* than the Amazon wage; showing that unsubsidized employers were largely paying their workers *more* than the subsidized wages Amazon proposed to pay. The Co-Lab's research also found that the total effective cost of the incentives per full-time job was more than \$85,500 – roughly 14.25 times the subsidy cap recommended by a legislative proposal introduced in 2020 by the New York State Assembly. The research found that if the project was to proceed, nearly all (90%) of the full-time Amazon workers would experience a housing cost burden if they wished to live in Hamburg – at a \$15 hourly wage, even a “fair price” for a one-bedroom rental unit in Hamburg would be unaffordable for an Amazon production worker based on established thresholds of housing cost burden. Finally, compared to the full freight price of taxes on the project, the subsidy package will enable Amazon to underpay the Frontier School District by more than \$1.3 million over the life of the incentive deal. As such, the proposed subsidized development violated the norms and expectations of High Road economic development.

Conventional economic strategies are geared exclusively toward growth, or quantitative increases in some variable (population, jobs, aggregate income, etc.). These growth-oriented strategies are generally termed “Low Road” economics, in that they put profit ahead of people and planet. By

contrast, “High Road” economic strategies are about development – making qualitative increases in social, environmental, and economic conditions that enhance people’s well-being and build local economic and ecological resilience. Within the framework of High Road economics and High Road policy, public dollars are used for the public good. They are invested in projects that contribute to creating an economy characterized by shared prosperity for all, as opposed to prosperity for rich corporations while workers struggle to pay for their basic needs (let alone participate in activities that enable them to live flourishing lives). High Road economic development is concerned with ensuring that all people and households have access to family-sustaining sources of income, and that all people enjoy equal opportunities to participate in and benefit from the projects that affect their lives and/or communities. Common “High Road” economic development demands along these lines include, as articulated in the Erie Canal Harbor Development Corporation’s 2013 Public Statement of Principles for High Road Development:

- Quality jobs that provide family-sustaining wages and benefits
- Local worker opportunities
- Local business opportunities
- Innovation in environmental sustainability and conservation
- Community-building civic infrastructure
- Affordable housing
- Collaborative decision-making, implementation, and monitoring processes.

Based on the foregoing, cursory analyses of wages and subsidies related to the proposed Amazon delivery hub in Hamburg, the ILR Buffalo Co-Lab concluded that the project did not live up to the standards and demands of High Road economic development

On February 10, 2021, the Co-Lab faculty presented its research and findings at a public hearing held in Hamburg to debate whether the Amazon subsidy should be provided. The full report is found here: <https://blogs.cornell.edu/highroadpolicy/other-publications/>



## **NEW YORK EXPUNGEMENT OF CRIMINAL RECORDS TO INCREASE ACCESS TO EMPLOYMENT**

*By Timothy McNutt, director of Cornell ILR's Criminal Justice and Employment Initiative, and Elijah Emery '22.*

On any given day, 91,000 New Yorkers are incarcerated in facilities statewide.<sup>1</sup> Total arrests for adults in the past decade have climbed to as high as 533,038 arrests per year; juvenile arrests during the same period peaked at 42,834 per year.<sup>2</sup> Although the number of people incarcerated has decreased in recent years because of the implementation of criminal justice reform measures, New York state still grapples with challenges facing hundreds of thousands of people with a criminal record. Consequences for employment outcomes are well established, with reductions in callbacks or job offers of nearly 50 percent for individuals with records; consequences for racial equity in employment outcomes are even greater, with double the reduction for black individuals.<sup>3</sup> People who have paid their debt to society still face nearly 40,000 collateral consequences of a criminal conviction, many of which are employment-related.<sup>4</sup> This policy brief will examine prior criminal record relief efforts with an aim toward building on New York state's recent criminal justice reform measures to increase access to employment for people with a criminal record and create a more just economy for all workers.

1 <https://www.prisonpolicy.org/profiles/NY.html>

2 <https://www.criminaljustice.ny.gov/>

3 [https://scholar.harvard.edu/files/pager/files/annals\\_sequencingdisadvantage.pdf](https://scholar.harvard.edu/files/pager/files/annals_sequencingdisadvantage.pdf)

4 <https://niccc.nationalreentryresourcecenter.org/node/127>

## Criminal Record Relief

New York state has passed various sealing and expungement laws to reduce barriers to employment, education, housing, and other aspects of life in a society where background checks have become ubiquitous. Sealing laws, for example, hide a criminal conviction from the public, and expungement creates a legal nullity in an attempt to restore the person back to their status before their involvement with the criminal legal system. Beginning with the 2009 Rockefeller Drug Law reform, Judges were granted the ability to conditionally seal certain drug-related crimes, including felony drug, marijuana, or non-drug crimes committed because of substance abuse.<sup>5</sup> Further reforms such as the 2017 Criminal Procedure Law Section 160.59 expanded these laws, allowing people with no more than two convictions – including only one felony – to apply to seal their convictions.<sup>6</sup> More recently, two laws dealing with marijuana reform, the first a 2019 law which expunged low-level cannabis possession charges, and the second the sweeping Marijuana Regulation and Taxation Act (MRTA), have granted automatic expungement to the hundreds of thousands of individuals in New York state convicted of marijuana related offenses that are no longer crimes.<sup>7</sup>

## Limitations

While these reforms are extremely important, they have fallen short. Of the nearly 600,000 New Yorkers eligible to have their records sealed pursuant to Criminal Procedure Law Section 160.59, fewer than 1,800 have successfully done so.<sup>8</sup> Hundreds of thousands of individuals eligible to have their records expunged due to marijuana reform may be waiting years for relief due to technical hurdles that lay ahead. As these individuals' records remain unsealed, they continue to suffer detrimental employment outcomes, harming not just present income, but future wages, human and social capital, future chances of employment, as well as their own physical and mental health, in addition to that of their children, their families, and the communities which they inhabit.<sup>9</sup> It is important to understand challenges posed by criminal record clearance in order to harness the potential of this tool and expand employment opportunity for individuals with past involvement in the criminal legal system.

**Technical hurdles:** Multiple entities including the Division of Criminal Justice Services, Office of Court Administration, and law enforcement agencies collect and store criminal history information. As such, expungement or sealing of records requires costly inter-agency collaboration and coordination. Further, more than 340,000 convictions for controlled substance possession pose additional challenges because the electronic records do not indicate which substance was involved. As a result, it is necessary to manually review court files to determine eligibility for criminal record relief. While there is a proposed amendment to deal with this issue by having individuals file a one-page form, history shows that any impediment to expungement can significantly reduce the intended impact of the legislation. Only 0.5 percent of individuals eligible for record sealing or expungement under the 2017 Criminal Justice Reform act ultimately filed to get expungement.<sup>10</sup> While manual review is time

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5 [https://www.nysenate.gov/sites/default/files/Rockefeller%20Drug%20Laws%20Committee%20Final\\_0.pdf](https://www.nysenate.gov/sites/default/files/Rockefeller%20Drug%20Laws%20Committee%20Final_0.pdf)

6 <https://www.lac.org/assets/files/Frequently-Asked-Questions-about-Criminal-Procedure-Law-160.59.pdf>

7 <https://www.law360.com/articles/1384082/ny-cannabis-law-is-national-blueprint-for-pot-expungement>

8 <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>

9 <https://www.urban.org/sites/default/files/publication/23921/412887-Consequences-of-Long-Term-Unemployment.PDF>

10 <https://www.criminaljustice.ny.gov/crimnet/ojsa/Raise-the-Age-Provision-Sealing-Report.pdf>

consuming and cumbersome, ensuring that marijuana offenses are expunged is necessary to reduce the collateral consequences of a conviction and improve employment opportunities.

**Limited eligibility:** While deservedly lauded as a tremendous step for criminal justice reform, MRTA has little ability to reduce the prison population. Only 19 individuals in the state prison system will be released as a result of MRTA – a number which, when compared to the hundreds of thousands of marijuana related convictions, shows how many individuals have records that are not limited to marijuana offenses.<sup>11</sup> Further, Criminal Procedure Law section 160.59 limits sealing to just two eligible offenses but not more than one felony offense.<sup>12</sup> These restrictions exclude countless individuals from criminal record clearance, especially in light of the 10-year waiting period required for eligibility. Technical violations, such as violation of parole through drug possession, punishment for which constitutes 40 percent of annual new prison admissions in New York state, are not currently eligible for expungement or sealing.<sup>13</sup> As a result, some mixture of resentencing for those still in prison for offenses that originally included marijuana related crimes and reasonable increases to the number of offenses that can be sealed or expunged, including low-level technical violations, is worthy of consideration to improve outcomes for the justice-impacted.

## Opportunities

Building on New York state's recent reform efforts has the potential to rectify many of these problems, granting our state the opportunity to build back better from the pandemic and achieve social equity.

**Economic growth and racial equity:** Prior to the pandemic, the nationwide economic cost of employment losses among workers with criminal records was 87 billion annually, on top of the 80-82 billion cost of mass incarceration, and the cost of increased crime and recidivism amongst the unemployed.<sup>14</sup> In addition, people with criminal convictions face lost wages of more than \$372 billion annually.<sup>15</sup> Added to the fact that occupational licensing requirements block people with records from accessing many of the fastest growing occupations, building on expungement and clean slate reform can increase economic growth, reduce the cost of incarceration, reduce recidivism, and increase employment opportunities for a majority-minority population in some of the economy's fastest growing industries.<sup>16</sup> And, since the population affected by mass incarceration is disproportionately BIPOC, increasing criminal record relief is a viable strategy for addressing harms caused by structural racism and providing economic opportunity for underserved communities.

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11 [https://www.timesunion.com/news/article/Some-are-waiting-in-state-prisons-for-marijuana-16077917.php?utm\\_source=newsletter&utm\\_medium=email&utm\\_content=headlines&utm\\_campaign=tu\\_capitolconfidential&sid=5931824b3f92a45314a75403](https://www.timesunion.com/news/article/Some-are-waiting-in-state-prisons-for-marijuana-16077917.php?utm_source=newsletter&utm_medium=email&utm_content=headlines&utm_campaign=tu_capitolconfidential&sid=5931824b3f92a45314a75403)

12 <https://www.lac.org/assets/files/Frequently-Asked-Questions-about-Criminal-Procedure-Law-160.59.pdf>

13 <https://nyuj.org/resources/parole-in-new-york-broken-costly-and-unjust/>

14 Bureau of Justice Statistics, <https://www.prisonpolicy.org/reports/outofwork.html>

15 Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, "Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality" (Washington: Brennan Center, 2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

16 Michelle Natividad Rodriguez and Beth Avery, "Unlicensed and Untapped: Removing Barriers to State Occupational Licenses for People With Records" (Washington: National Employment Law Project, 2016), available at <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>

**Clean Slate:** Senate Bill 1553-A presents an opportunity for New York to lead the way on criminal justice reform. The bill expands past reforms and automatically expunges certain traffic infractions, violations, eligible misdemeanors and felonies after a waiting period. Although questions remain regarding the impact of out-of-state convictions, the role of judges and District Attorneys, and technical hurdles related to implementation, the proposal is a promising step forward to expand record clearance and increase economic opportunity for people with criminal records.

**Information campaign:** Legislation that provides criminal record relief with an aim toward improving employment opportunities only realizes its full potential when considered in conjunction with an information campaign that promotes awareness to the communities most impacted by the criminal legal system. Through training, online resources, and interactive guides, Cornell ILR's Criminal Justice and Employment Initiative provides criminal record and employment law education to job seekers who have been involved in the criminal legal system, assists employers in rethinking their approach to hiring, engages in research to study reentry practices, and informs policymakers and legislators on criminal justice reform. Formalizing vocational training and employment service provision during and after the passage of legislation will increase the impact of this vital legislation and promote positive employment outcomes for the justice-impacted.



## **THE MARIJUANA REGULATION AND TAXATION ACT (MRTA): Policy and Implementation Issues**

*By Esta Bigler, director of ILR's Labor and Employment Law Program and ILR's Government and Community Relations NYC. She is also executive director of the Cornell Project for Records Assistance and the Criminal Records Panel Study.*

The ILR Labor and Employment Law Program studies and analyzes current and emerging legal issues impacting employment with the goal of influencing legislation and public policy decisions. It has an extensive history of reviewing and understanding the successes and failures of employment discrimination lawsuits and the hiring and promotion remedies imposed by the courts and government agencies in race and sex discrimination cases. Major focus areas of its work are the use of criminal records as a screening device for employment, the impact of employment on reducing recidivism, employer attitudes toward hiring people with criminal records, and the collateral consequences of incarceration. We have provided training on criminal history and employment law for employers, workers, people involved in the criminal legal system, parole/probation officers, and community groups, with the goal of increasing equal access to employment and workplace equity.

The Marijuana Regulation and Taxation Act (MRTA) is both social equity and employment legislation with a goal of repairing the damage caused by mass incarceration. The legislation will produce jobs in NYS, and, using our expertise on labor and employment law and knowledge about work and the workplace, there are policy/implementation issues we suggest be considered.

## Policy and Implementation Recommendations

There are two critical strategies that will enhance the social equity focus of the implementation of the MRTA – accountability systems and the education and training (labor and employment law and criminal history) of all stakeholders.

**Accountability Systems:** The legislation sets forth a well-constructed framework for building a socially equitable cannabis industry. Equal employment law teaches that accountability systems for measuring and monitoring the activities of all stakeholders is one key to success. Accountability systems need to be embedded and monitored in all MRTA programs and processes.

**Education and Training of Stakeholders:** Another key is the education and training of job seekers, workers, and employers of their legal rights and obligations under federal, NYS, and local laws. These include EEO, labor, background screening, wage and hour, Fair Credit Reporting Act and criminal history laws. Each group needs to know and understand the rights and obligations of the other to foster an equitable system and minimize exploitation.

## Criminal Records Expungement

The law provides a two-year window for the Office of Court Administrator (OCA) to expunge criminal records based on cannabis convictions. Some of the records will be easily accessible, others will be complicated by other entries, and some will be years old and hard to find. Each person whose record has been expunged should be notified in writing via email and regular mail of the expungement with an explanation about what it means; this should include mention of notification to the FBI of the expungement for their database.

**Education/Training:** People will need education to help understand what the expungement means in their lives, including how to answer questions on a job application about their criminal record, and talking to employers after a background check has been ordered and the report still incorrectly lists the cannabis conviction.

**Accountability Measure:** The OCA/DCJS should report quarterly on the number of expungements by race, sex, zip code, and reported to the FBI, as well as including the number of remaining records to be expunged to ensure that OCA/DCJS meet the two-year deadline for expungements.

## Background Checks: Credit Reporting Agencies (CRAs)

As previously mentioned, employers sometimes used CRAs to do background checks on prospective employees. Many CRAs maintain their own databases and fail to make updates on a regular basis. An education campaign by NYS for these organizations is necessary to make clear that they need to regularly check and update their databases with information from the OCA about the current status of a person's record. An incorrect report jeopardizes a person's employment prospects and means that the candidate must explain the expungement to the employer at some stage of the hiring process, even in ban the box jurisdictions. The OCA can work with the Professional Background Screeners Association, a national group that sets standards for the industry, to publicize the information on how to maintain accurate information in their databases.

## Cannabis Employers: Social Equity Hiring

While the MRTA strongly encourages the granting of licenses to those whose lives have been damaged by the war on drugs—people of color, minority business enterprises, women business enterprises, distressed farmers, and service-disabled veterans—there will be licenses granted to cannabis employers who do not meet these criteria. For those companies, granting of licenses should require a robust hiring and retention plan to meet the goal that 25% of their work force be social equity hires. The plan should be specific about how they intend to hire and retain people previously involved in the criminal legal system and their family members, people who live in specific ZIP codes and people who live in federally subsidized housing. The plan should detail outreach efforts in these areas, including job fairs and working with local religious groups, community and re-entry organizations, tenant associations in federally subsidized housing, community colleges, neighborhood/ethnic newspapers, bus shelters, subways lines and stations, etc.

Retention and promotion need to be included as part of the plan. People with criminal records who have been out of the job market need help acquiring the workplace skills that other workers gain through employment. Therefore, companies should be required to provide services to people and their families who have been involved in the criminal legal system and/or are from affected communities, including but not limited to:

- Thorough workplace orientation and onboarding
- Soft skills training such as workplace communication, conflict resolution, attire, attendance practices, etc.
- Tuition reimbursement for GED and college education
- Social services support, including childcare, transportation assistance, flexible time for parole/probation reporting and court appointments, etc.
- On-the-job training programs tied to clearly delineated promotional ladders that provide growth opportunities upon completion.

**Accountability Measures:** These cannabis employers should be required to report every six months until fully staffed and then on an annual basis information on each job category by race, sex, ZIP code, pay by race and sex, and employee departures (voluntary and discharges). Data on education, including GEDs, college, in-house job training, and number of people promoted for each job category by race, sex, ZIP code, pay by race and sex should also be reported. Analysis of data provided should be used to determine whether a license should be revoked/renewed.

## Racial and Gender Disparities in the Cannabis Industry

While the cannabis industry is exploding around the country, the numbers of minority-owned business in cannabis is under 2% nationwide. The MRTA aims to rectify that situation by providing money for the New York State Urban Development Corporation to create incubators for social equity small business. The incubators will provide basics for new businesses, including startup capital, knowledge about business practices, assistance with licensing and government forms, accounting, legal requirements for businesses that local governments impose.

Just as important, incubators and other organizations, working with new business owners should provide training on federal, NYS and local employment laws (EEO, harassment, wage and hour, social security, workers' compensation, unemployment insurance, health care and leave policies, etc.) for the businesses to avoid placing themselves in legal jeopardy. Additionally, training is needed in labor relations law, given the labor peace agreement requirement in the MRTA, as well as management skills, hiring and retention policies, and human resource management.

## **Community Education**

Similarly, grants to community-based non-profits utilizing Community Grant Re-invest Funds will provide training to communities impacted by mass incarceration. Education ranging from reentry and job placement to financial literacy and nutrition services are anticipated. A missing component is worker rights training, which is necessary for all employees to know their rights concerning federal, state, and local wage and hour, ban the box, discrimination (criminal records, race, sex, LGBTQ, religious, age, disability, etc.), sexual harassment, leave policy, Fair Credit Reporting Act and labor laws. This is especially important for people who have been out of the labor market and are often exploited by unscrupulous employers and labor brokers.

## **Areas not discussed above but need further discussion**

### **NYS occupational safety and health legislation for private sector employers and employees:**

As we saw clearly with COVID-19, the federal health and safety law is limited, the agency is underfunded, and enforcement is dependent on who is president. New York needs its own occupational and safety health law that includes standards for the nursery, cultivation, processing, distribution and micro-business of cannabis.

**Apprenticeship programs:** Another area to explore is a cannabis industry joint labor-management apprenticeship program, regulated by the NYS Labor Department. Apprenticeships are a nationally recognized way for workers to earn while they learn and provide the industry with a well-trained labor force. The combination of classroom and on-the-job training has helped thousands move into the middle class in NYS and sometimes become owners of their own companies. While in the program, apprentices will need to be provided with car fare, books and any equipment required for the program.

**Drug testing and impairment at work:** Employer drug testing and impairment standards policies are important areas for legislative or regulatory consideration. Current NYS labor law prohibits discrimination based on the use of cannabis. By legislation and collective bargaining agreements, drug testing is required for certain jobs. Testing is not a reliable indicator of impairment, in part due to the length of time that cannabis stays in the system. Because cannabis use was illegal, this often led to discipline/discharge without consideration of workplace behavior, a practice that needs revision based, not on a positive test, but on behavior that indicates impairment. Defining what behaviors on the job constitute impairment from cannabis use is an issue that will be addressed by employers and unions, in the absence of the establishment of real standards. This is especially important, given the concern that behavioral "racial profiling" could take place.



## **HOW NEW YORK STATE CAN TACKLE CLIMATE CHANGE, REVERSE INEQUALITY AND BUILD A ROBUST, EQUITABLE CLEAN ENERGY ECONOMY:**

### **Key Challenges and Recommendations Identified by the Cornell University Labor Leading on Climate Initiative**

*By the Cornell Labor Leading on Climate Initiative: Lara Skinner, director; Zach Cunningham, training and education Extension associate, and Avalon Hoek Spaans and Anita Raman, research and policy Extension associates.*

New York state has a generational opportunity to “build back better” from the COVID-19 pandemic, reduce inequality through high-quality job creation, and tackle the accelerating climate crisis. Meeting this moment will require large, strategic investments in clean energy, with strong labor standards and community benefits – especially for frontline communities hurt most by these crises.

Cornell ILR’s Labor Leading on Climate 2021 Empire State Poll results found that the vast majority of New Yorkers across the state are concerned about climate change and would like government, industry, and labor leaders to address the climate crisis through high-quality job creation. Some key results of the poll include:

- 75% of New York state residents said they are concerned about climate change.

- 70% of New Yorkers reported that extreme weather events had an economic impact on their local community in the last five years.
- 74% of New York residents said that labor, industry, and government leaders in New York State should do more to respond to climate change.
- 75% of New Yorkers supported public investments in renewable energy projects as a way to create high-quality jobs in New York State.

There has already been substantial progress on this front. In 2019, New York passed the nationally-acclaimed Climate Leadership and Community Protection Act, mandating science-based greenhouse gas emission reductions and significant investments in frontline communities and communities of color.<sup>1</sup> New York was also the first state in the nation to commit to producing half of its power from offshore wind.<sup>2</sup>

New York State recently included groundbreaking labor standards and economic development provisions in its 2021-2022 budget. The budget included prevailing wage and project labor agreement requirements for construction on renewable energy projects five megawatts or larger, labor peace agreements for operations and maintenance work, and Buy American/Build NY provisions to incentivize the procurement of equipment and supplies made in New York. Lawmakers have made strides towards creating a pipeline to high-quality jobs for people in underserved communities.<sup>3</sup> Several states have followed New York's lead by legislating wage and job-quality standards on clean energy work.

With the climate crisis accelerating rapidly and New York facing significant climate impacts such as flash flooding and increased natural disaster there are significant challenges and major opportunities to meet these ambitious goals. Cornell's Labor Leading on Climate is currently conducting research on key questions for New York State to meet this moment, such as:

- Will New York's clean energy investments effectively scale renewable energy and other low-carbon activities in order to avoid the worst impacts of climate change?
- Will the state's clean energy investments spur significant job creation and economic development, address inequality, and build stronger, more resilient communities throughout New York State?
- Will frontline and fossil-fuel impacted communities have expanded access to high-quality clean energy jobs, ensuring that the new clean energy economy is fair and inclusive?

Answering these questions is critical to move forward, as New York has a long way to go to accomplish its climate and job-creation goals. New York State's current clean energy goals include

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1 <https://www.nysenate.gov/legislation/bills/2019/s6599>

2 <https://www.nyserda.ny.gov/all-programs/programs/offshore-wind>

3 <https://www.windpowerengineering.com/a-positive-trend-u-s-offshore-wind-solicitations-address-equity/>

installing 6,000MW of solar by 2025 and 9,000MW of offshore wind by 2035.<sup>4</sup> To date, New York has installed only 11% of its 2025 utility-scale solar goal.<sup>5</sup> New York has made more progress on offshore wind, having approved five projects totaling 4,300MW.<sup>6</sup> This is the largest offshore wind pipeline in the nation, and will move New York halfway to its 9,000MW goal.

New York can scale clean energy activities while also driving economic development throughout the state. New York currently employs 12,735 workers in the solar industry and 3,751 in wind energy; by comparison, New Jersey employs 9,340 workers in solar electric generation and 875 in wind.<sup>7</sup>



Sources: EIA, NYSERDA, Company Websites

As more clean energy jobs come online, we must be mindful of job quality. There is limited data on the quality of these jobs. To fill this gap, Cornell’s Labor Leading on Climate will produce an annual “State of the Clean Energy Workforce Report” in 2022. Through surveys and in-depth focus group interviews, this study will explore the size of the workforce, work arrangements, job quality, and working conditions. In its inaugural year, this study will focus specifically on New York state’s growing solar workforce.

It will not be easy to meet our goals, but New Yorkers don’t shy away from a fight. In order to spur progress towards clean-energy development and high-quality job creation, we recommend the following policy interventions:

- Take necessary steps to meet our ambitious climate goals, help New York state recover from the COVID-19 pandemic, and drive job creation throughout the state.

4 <https://climate.ny.gov/>

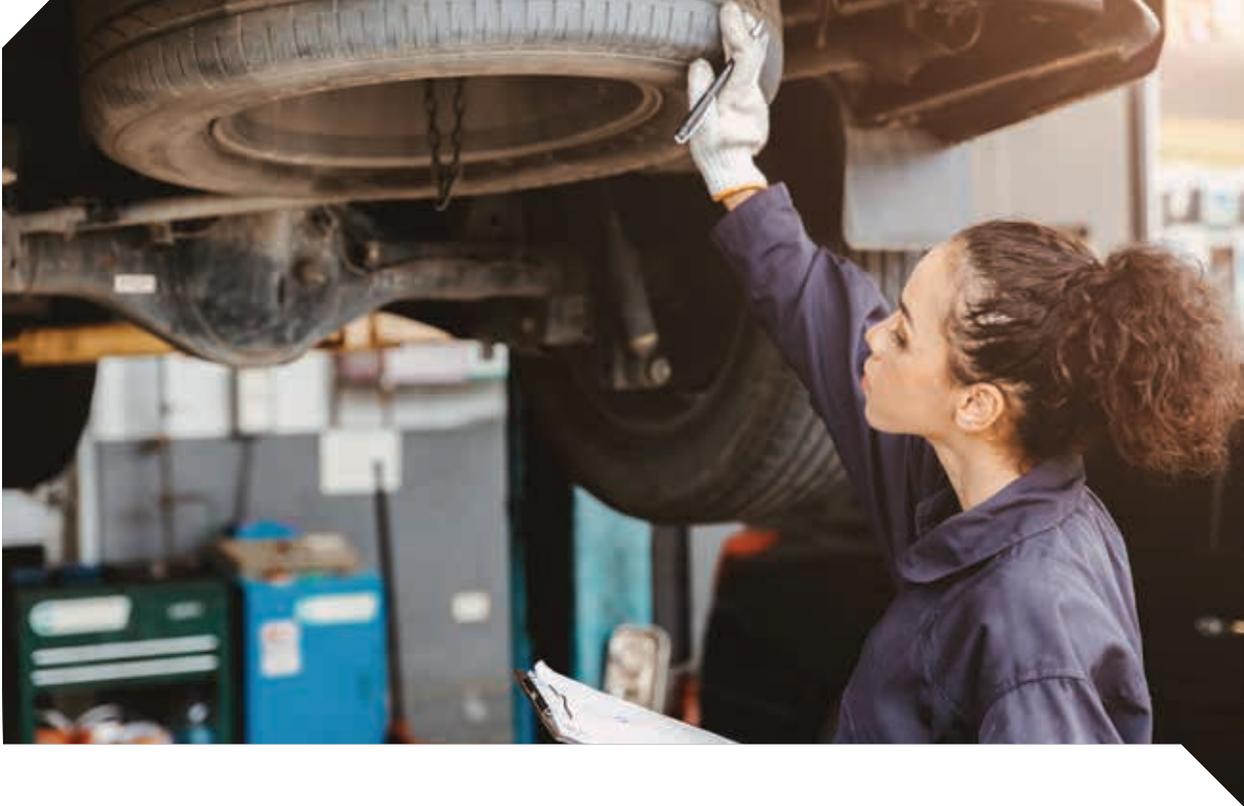
5 <https://www.eia.gov/electricity/data/eia860/>

6 <https://www.nyserra.ny.gov/All-Programs/Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects>

7 <https://www.usenergyjobs.org/>

As one of the largest economies in the world, New York state can play a leading role in building the large, equitable clean energy economy the state needs to address climate change and reverse inequality.

- Set local manufacturing requirements, and make investments to encourage in-state manufacturing and assembly of clean-energy products. Several countries – including Denmark, the United Kingdom, Germany and Taiwan – have developed offshore wind manufacturing through similar measures. We can do the same.
- Make clean-energy jobs good jobs. Investment in the clean energy economy should reverse inequality, not exacerbate it. States should ensure that taxpayer dollars deliver good jobs and quality services through prevailing wage requirements, project labor agreements, community workforce agreements, and labor peace and neutrality agreements, and other measures.
- Increase funding for and expand access to government-registered apprenticeship programs. To ensure that historically disadvantaged communities have expanded access to high-quality training programs, states can require a certain percentage of work-hours on clean energy projects be performed by government-registered apprentices. Targeted hire initiatives can also ensure that women, people of color, formerly-incarcerated individuals, people with disabilities, veterans and local communities have access to skill-development and career-building opportunities.



## **NEW YORKERS INDICATE THAT RETALIATION PREVENTS THEM FROM EXPOSING WORKPLACE DANGERS: More Than 1 in 3 Working New Yorkers are Likely Not to Report Sexual Harassment**

*By Sanjay Pinto, fellow at the Worker Institute at Cornell and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Patricia Campos-Medina, executive director of the Worker Institute.*

Workers in New York are more likely than those in the rest of the country to feel pressure to refrain from reporting workplace problems, such as sexual harassment and health and safety violations in order to avoid employer retaliation, according to analysis released by the National Employment Law Project and the Worker Institute at Cornell's School of Industrial and Labor Relations. Findings from a representative survey reveal that more than one in three working New Yorkers, or 34%, reported that potential employer retaliation could prevent them from reporting workplace sexual harassment, as compared to 25% in the rest of the country.

As the economy and public health system continue to recover from the COVID-19 pandemic, the freedom of workers to raise safety issues remains a significant concern. With COVID cases rising once again and unemployment benefits lapsing for many in early September, workers' ability to sound the alarm about workplace problems is critical not only to their own wellbeing but to the health of the broader public. This new research provides insight into how New Yorkers compare to the rest of

the country with regard to perceptions of possible of employer retaliation for raising concerns about workplace sexual harassment as well as workplace health and safety.

Additional key findings from the analysis include:

- Workers in New York are more likely than those in the rest of the country to report that they perceive employer retaliation to be a significant barrier preventing them from freely expressing concerns related to workplace health and safety (47% of New Yorkers versus 37% nationwide).
- Nationally, Black workers are more likely than other workers to report potential employer retaliation as a barrier to taking action against unsafe working conditions.
- Workers in New York express a higher level of interest in joining a labor union than those in the rest of the country. Of workers who don't currently belong to a labor union, 57% of working New Yorkers stated that they would like to join a union, as compared to 45% in the rest of the country.
- U.S. workers who perceived retaliation to be a barrier to reporting sexual harassment and/or health and safety problems are more likely to want to organize with co-workers in a union, suggesting that workers view unionization as a means of bolstering their power to speak up about workplace issues that arise.

Apropos Governor Andrew Cuomo's resignation following revelations within New York Attorney General Letitia James investigation of his alleged sexual misconduct, the New York results indicate stark and widespread power inequities that breed unsafe workplace conditions and enable discriminatory treatment at the hands of employers.

"The current example of abuse of power at the highest levels of New York state government is a wake-up call to address a longstanding and widespread problem facing all workers, especially women and workers of color in low-wage jobs," said Irene Tung, senior researcher and policy analyst at the National Employment Law Project. "The problem of retaliation stems from the outsized power that employers have over workers. New York lawmakers must take steps to rectify this power imbalance by supporting worker organizing, strengthening enforcement of existing rights and adopting reforms like just-cause job protections – all of which are crucial to achieving greater workplace democracy and blunting the force of retaliatory actions."

In addition to survey results, the report also outlines steps the legislature can take to move the needle forward. Currently, a whistleblower bill has been passed by both the New York State Assembly and Senate and awaits the signature of the governor.

"The findings of the current study are consistent with previous research," said KC Wagner, chair of the Equity at Worker Initiative at the Worker Institute at Cornell ILR. "As elsewhere, workers in New York State face great barriers in exercising and demanding their rights at work because doing so means they can lose their jobs and their ability to support their families. Public policies that enable workers, including women workers and workers of color, to report abuses are important in balancing the scales of power so we can move the needle forward in advancing culture change and creating workplaces marked by safety and dignity for all."

“We must learn from this moment and strengthen our labor laws so every worker feels safe and secure in reporting dangers or misconduct in their workplace. But for far too many New York workers, the threat of retaliation for reporting workplace safety or harassment issues still looms. We must continue to pass protections for workers everywhere, especially women, workers of color, and those in low-paying jobs, as well as those who blow the whistle on unsafe conditions, against unlawful retaliation. I urge the Governor to sign my bill, S4394A, into law and take a stand to protect the bravery of whistleblowers across our state,” said New York State Senator Jessica Ramos.

“NELA/NY, a statewide bar association whose members represent employees, urges the governor of New York to sign the Whistleblower Protection Legislation passed by the NYS Legislature in June. The bill would bring NY into the 21st century, and provide substantive protection to workers who complain of conduct that they reasonably believe is unsafe or illegal,” said NELA/NY President Marjorie Mesidor.

Solutions outlined by researchers include:

- Establish just-cause termination standard for all workers in New York
- Expand anti-retaliation protections
- Improve enforcement of workplace protections, including anti-retaliation provisions
- Defend the right to organize at work

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting underpaid and unemployed workers. For more about NELP, visit [www.nelp.org](http://www.nelp.org). Follow NELP on Twitter at @NelpNews.



## **STOPPING SEXUAL HARASSMENT IN THE EMPIRE STATE: Past, Present, and a Possible Future**

*By Sanjay Pinto, fellow at the Worker Institute and the Rutgers School of Management and Labor Relations; KC Wagner, chair of the Worker Institute's Equity at Work Initiative, and Zoë West, an anthropologist, educator and oral historian whose work centers on labor and migration.*

This [report](#) maps current patterns of workplace sexual harassment and their impact in New York State. It also provides a broader frame for understanding how efforts to confront sexual and gender-based harassment and assault have evolved over time, and charts possible directions for future organizing, policy, and research in New York and beyond.

The findings presented here are drawn from the 2018 Empire State Poll, an annual statewide survey of 800 New Yorkers conducted by the Cornell Survey Research Institute. Questions added to the survey reflecting existing legal definitions of workplace sexual harassment reveal the following:

- 10.9 percent of New York residents have experienced quid pro quo workplace sexual harassment, and 21.9 percent have experienced workplace sexual harassment that created a hostile work environment; 31.1 percent of women and 18.9 percent of men have experienced at least one of these forms of harassment.
- 13.9 percent of people of color and people of Hispanic origin have experienced quid pro quo workplace sexual harassment, as opposed to 8.5 percent of non-Hispanic whites.

- 38.9 percent of those experiencing at least one form of workplace sexual harassment say it impacted their work or careers; 48.9 percent who experienced quid pro quo harassment reported such an impact.
- 83.4 percent of New York residents think their leaders should do more to address workplace sexual harassment. There is notable variation by politics and ideology, but regardless of worldview, strong majorities think leaders should do more.

In addition to sharing the survey findings, the report discusses experiences and responses of survivors and how they are shaped by different identities and relations of power. It highlights black women's leadership in propelling wide-reaching shifts in law and culture; efforts initiated by diverse survivors to effect change in specific industries; and culture change work engaging men and women as allies.

Looking ahead, the report sketches some elements of the holistic approach needed to address a problem of such magnitude:

- Treat workplace sexual harassment as a deeply embedded institutional problem rather than a matter of "a few bad apples" solvable by punishing individual culprits.
- Expand organizing and policy approaches that not only provide redress for survivors but also help to promote prevention through multiple points of intervention.
- Form survivor-led working groups to spearhead culture change, inform effective enforcement, and foster high-road practices that go beyond mere compliance.
- Consolidate a statewide research network to advance knowledge about workplace harassment and discrimination and assess the efficacy of workplace interventions.

# About the New York State ILR School

Established by the New York State Legislature in 1945, the New York State School of Industrial and Labor Relations at Cornell University is the world's leading college of the applied social sciences focusing on work, labor and employment. It is guided by a commitment to social and economic justice and to improving the lives of New York's working people.

With offices in New York City, Buffalo, and Ithaca, Cornell ILR Outreach provides research, reports, education and training for New York's workers, unions, employers and government. It serves as a valuable resource for New York's policymakers to advance equitable workplaces and well-informed public policy.

## Key ILR Institutes and Programs Impacting New York State:

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### **ILR Buffalo Co-Lab**

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The *Cornell ILR Buffalo Co-Lab* for Economic Development continues to play a leading role in Buffalo's resurgence with a more equitable economy. By partnering with western New York businesses, unions, government, education and community organizations, the Buffalo Co-Lab impacts New Yorkers statewide through workplace health and safety programs, economic development and labor research, immersion experiences for students and many other initiatives.

### **ILR CJEI**

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The *Criminal Justice and Employment Initiative (CJEI)* improves employment opportunities for people with criminal records by designing and delivering legal employment training to close information gaps, implement best practices, and integrate job seekers with criminal records into the workforce.

### **ILR Ithaca Co-Lab**

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The *ILR Ithaca Co-Lab* officially began its work in early 2020. Researchers and students who serve community partners use resources to tackle the challenges of fighting unemployment, winning a living wage and organizing for worker voice in Ithaca and the surrounding region.



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The *Labor and Employment Law Program (LEL)* merges law and social science research to provide attorneys, legislators, social scientists, and policymakers with multifaceted perspectives at forums and conferences. Current and emerging legal issues affecting the workplace are analyzed with the goal of influencing research, legislation, policy, and litigation.



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The *Scheinman Institute* combines the academic depth of faculty in conflict/dispute resolution, employee relations, diversity and inclusion, and labor relations with the practical knowledge of leading practitioners in the field to provide intensive skill development for individuals, and best practices for organizations.

The Institute trains more students in mediation and arbitration than any other school in the United States.



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*The Worker Institute at Cornell ILR* focuses on reversing inequality to build a more just and democratic society. It engages in research and education on contemporary labor issues that generate innovative thinking and solutions to problems related to work, the economy and society.

These programs and activities are part of *The Worker Institute*:

- New York State AFL-CIO/Cornell Union Leadership Institute
- The Workplace Sexual Harassment/Gender-based Violence Awareness Program
- Labor Leading on Climate Initiative: Climate Jobs in New York State
- Gig workers: Tackling policy issues and exploring solutions

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The *Yang-Tan Institute* advances equal opportunities for people with disabilities in partnership with federal and state government and philanthropic organizations. It impacts thousands of people each year through research and services to employers, labor unions, government agencies, educational institutions, community service providers, disability advocacy organizations, policymakers, the media, students and adults with disabilities and their families.



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