

AMERICAN WORKERS' EXPERIENCES WITH POWER, INFORMATION, AND RIGHTS ON THE JOB:

A Roadmap for Reform



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ABOUT THE AUTHOR

Alexander Hertel-Fernandez is an associate professor of international and public affairs at Columbia University and a fellow at the Roosevelt Institute. His research focuses on American political economy, especially the politics of business, labor, and inequality. He is the author most recently of *State Capture: How Conservative Activists, Big Businesses, and Wealthy Donors Reshaped the American States—and the Nation* (Oxford University Press 2019).

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Executive Summary

American labor and employment law is broken, affording workers little voice and few—often poorly enforced—protections and rights.

The COVID-19 pandemic has cast these failings in sharp relief: the lack of paid sick leave, inadequate wages, unsafe and unhealthy working conditions, and the inability to speak up at work without facing discipline or dismissal. But even before the coronavirus crisis, a growing number of labor activists, policymakers, and academics have been calling for a fundamental overhaul of workplace law.

Labor law reformers have many objectives, including expanding collective bargaining rights, reducing economic inequality, boosting the political voice held by working Americans, and checking the power of private-sector businesses. In this report, I contribute to the evolving discussion around employment and labor policy by developing a framework for assessing the impact of workplace law reform on a specific subset of outcomes: those related to workers' rights, information, and power on the job. These criteria speak to worker power under normal social and economic conditions, but they take on renewed importance as the country grapples with an unprecedented public health crisis and its economic aftermath. I focus on four outcomes, asking the following questions:

Does labor and employment law . . .

- Limit the scope for employers to arbitrarily or unfairly change the working conditions of their employees?
- Ensure that workers have access to, and can act on, important information about their workplace, such as compensation practices and organizational performance?
- Enable workers to recognize and enforce their legal rights?
- Facilitate discussions of workplace issues and problems and collective action among coworkers?

Together, these four criteria provide a straightforward way to gauge workers' opportunities to build power at work, including how these opportunities may vary across worker race, education, income, occupation, and other relevant subgroups. This paper details why each of these components ought to serve as benchmarks for comprehensive labor law reform. I then draw on new national surveys to show the ways that current workplace law falls short on each of these fronts for many workers—but especially those with lower incomes and less formal education, racial and ethnic minorities, and those outside the traditional labor



movement. For instance, my survey research reveals that:

- **Many workers report being treated unfairly or in arbitrary ways on the job.** Slightly over half of all workers reported that their managers had changed working conditions for arbitrary or unfair reasons. Importantly, these reports extended up and down occupational, educational, and income categories.
- **Most workers are in the dark about important workplace information that could help them negotiate better working standards.** Just 15 percent of workers report that their employer regularly shares information about the wages and salaries of rank-and-file workers like them, which would allow workers to know how their pay compares to other employees doing similar work. And less than half (40 percent) of workers report regularly receiving information about how well their organization is doing, like performance or productivity records, which would be necessary to ensure that workers are reaping the gains of organizational productivity. Higher-income and more educated workers tended to be more likely to receive both kinds of information, putting less well-off workers and those with less formal education at a substantial disadvantage.
- **Many workers do not recognize their legal rights—or the limits of those rights.** When asked whether they thought a variety of employer actions were legal or illegal, most workers did not seem to know the contours of existing labor and employment law. It tended to be higher-income and more highly educated workers who were most knowledgeable about their workplace rights. The worrisome implication of this finding: The most economically vulnerable workers are the least likely to recognize and be able to exercise their existing legal rights under federal law.
- **Many workers, especially low-income and less formally educated workers, report that they do not have regular conversations with their coworkers about workplace issues and problems.** These discussions matter because workers who have the opportunity to regularly talk about workplace issues and problems with their coworkers have a better understanding of their rights. Workplace discussions are also a necessary step to collective action that could further boost worker voice and working conditions. One important reason that workers, and especially low-income and less-educated workers, do not feel comfortable discussing workplace issues and problems is that they lack physical space and time to do so at work.

Existing labor unions do much to address each of these issues. As my survey research indicates, compared to their nonunion counterparts, members of the American labor movement are less likely to report unfair treatment in the workplace (though, importantly, not all forms of arbitrary treatment), more likely to receive workplace information about pay and organizational performance, more likely to recognize their workplace rights, and



more comfortable discussing problems with their coworkers on a regular basis (in part because union members are more likely to say they have the time and space to do so). In many of these cases, the union difference is especially large for more socioeconomically disadvantaged workers, like those with lower incomes or less formal education. Yet because unions reach fewer than 1 in 10 workers in private-sector businesses, current American labor and employment rules fall short along all four dimensions.

I conclude the report by summarizing a range of reforms that could:

- Check the often-arbitrary control that managers have over worker treatment;
- Grant workers access to vital workplace information;
- Ensure that workers can recognize and act on their legal rights; and
- Foster workplace conversations and organization between coworkers.

Some of these reforms focus on rebuilding labor organizations, while others speak more directly to each of the four dimensions of workplace relations I described above. All, however, would go far in rebuilding workplace power for millions of American workers. As the COVID-19 crisis continues to exacerbate the structural inequities of our labor market, that power has never mattered more.



Introduction

Worker power in the United States has long been in decline—in large part due to broken labor and employment law (see especially Andrias 2016; Estlund 2002a; Rosenfeld 2014; Summers 1988; Weiler 1983). Over the past five decades, union membership has declined precipitously, curbing workers’ ability to improve their wages, benefits, and working conditions in the workplace and through government policy (Bivens et al. 2017; Feigenbaum et al. 2019; Freeman and Medoff 1984; Rosenfeld 2014). Outside of the labor movement, federal and state law has all too frequently failed to raise working standards (but see Galvin 2019). To avoid labor and employment regulations, many companies have pursued “fissuring” strategies that shed legal and financial responsibilities for their workers; meanwhile, the enforcement capacity of federal and state labor agencies has declined, and court decisions have circumscribed the reach of existing laws (Weil 2014).

The effects of union decline and the erosion of labor and employment law reach far across the economy and workers’ lives. These consequences include the spread of wage theft, unsafe working conditions, and unpredictable or disruptive scheduling practices, with a growing share of the workforce subject to mandatory arbitration agreements curtailing protections against harassment and discrimination (Bobo 2008; Colvin 2018; Galvin 2016; Lambert et al. 2014; Schneider and Harknett 2019; Zoorob 2018).

Spurred by these failings of existing workplace law, consensus is growing among workers, political leaders, academics, and policy analysts on the need for fundamental reform (e.g., Andrias 2016; Andrias and Rogers 2018; Greenhouse 2019; Madland 2016, 2019; Olen 2019; Rolf 2018). New social movements like Fight for \$15 and the Red4Ed teacher strikes are pushing for changes to local and state-level working conditions and labor rights. A vibrant field of legal and public policy scholarship has emerged, identifying the limits of current labor law and new possibilities for reform. And reflecting this energy, many of the candidates for the 2020 Democratic presidential nomination put forward ambitious proposals of their own for overhauling US employment and labor law.

These efforts at changing labor and employment law stress multiple and often complementary goals. Some hope to expand the coverage and scope of collective bargaining, others to build new forms of worker organization, and still others to boost the political voice workers have in elections and policy debate. All are worthy and much-needed objectives. In this paper, I focus on one specific aspect of labor and employment law—workers’ daily experiences on the job—and propose four criteria for evaluating current law and proposed reforms; in developing these benchmarks, I hope to sharpen the emerging discussion around changes to workplace law. Using those four indicators, I report here the results



of new nationally representative surveys that probe workplace relations and document the specific ways that current law falls short for most US workers. I conclude the paper by summarizing labor and employment law changes that could address each of these four benchmarks.

Four Indicators of Workplace Relations and Power

There is no standard definition of what should count as a good job (e.g., Kalleberg 2011, chapter 1). But typical efforts by policymakers, pundits, and think tanks focus on wages, hours worked, and benefits provided—likely because these are the job characteristics most frequently measured by large-scale government labor force surveys like the Current Population Survey. For instance, a group of researchers at the Federal Reserve Bank offers the following simple benchmark for a good job: one that pays more than the national median wage, adjusted for the local cost of living (see Porter 2019). Another definition from researchers at Georgetown University’s Center on Education and the Workforce counts good jobs as ones paying at least \$35,000 for workers under 45 and \$45,000 for workers 45 or older, based on the idea that these jobs ought to be “self-sustaining” for workers and their families (Carnevale et al. 2017). The Rockefeller Foundation, for its part, has stressed not just the wages but the benefits available to workers—such as health insurance, dental and vision care, and paid vacation and leave—as well as the predictability of workers’ schedules.¹ The Fight for \$15 movement has argued that \$15 an hour, plus reliable schedules and benefits, ought to be the floor for jobs. And looking beyond the US, the Organisation for Economic Co-operation and Development (OECD) has defined “good quality jobs” as those with high pay and low risks of physical or mental injury or disability (OECD 2018).

These definitions all capture crucial material aspects of jobs. But work is more than just the pay or benefits that workers receive. Gallup’s recent “Great Jobs” project goes the furthest in recognizing vital nonmaterial aspects of employment, polling workers to gauge their satisfaction across 10 different indicators, including pay and benefits, scheduling, job security, advancement opportunities, enjoyment and sense of purpose, and voice (Rothwell and Crabtree 2019). The project found that only 40 percent of American workers report being in good jobs. Satisfaction with pay, perhaps unsurprisingly, was the

¹ See <https://www.rockefellerfoundation.org/blog/what-exactly-is-a-good-job/>.



strongest job-related predictor of workers' overall evaluation of their jobs.² Ranking in second place, however, was workers' assessment of the power they had to change their working conditions. Workers who reported having a greater sense of power on the job were substantially more likely to report being happier with their jobs. In fact, having a greater sense of power at work was also strongly related to how happy workers felt with their lives overall. The Gallup data thus underscore the need to take seriously not just pay, but the overall level of voice and power that workers possess at work when thinking about job quality (see also Kalleberg 2011, chapter 7).

It is not just the Gallup poll that suggests a need to focus on workers' experiences with power. Labor campaigns have long centered worker voice and respect alongside more material demands, from the radical organizers working for the Committee for Industrial Organization during the New Deal to public-sector workers standing shoulder to shoulder with civil rights activists mid-century to the Red4Ed teacher strikes sweeping a number of conservative states in recent years. In addition, a long line of research in economics, labor relations, and political theory further underscores the importance of workers' power compared to their managers'. This is especially relevant in the context of the US, where employers have broad authority over their workers' behavior, on and off the job (Anderson 2017; Bowles and Gintis 1990, 1992). In the absence of a union or formal contract, the default rule is that private-sector employers have the right to set and change the terms of how workers do their jobs, unless the law says otherwise. Unlike in other countries with stronger labor unions and/or labor and employment protections, how many American private-sector workers are treated on the job—and in particular, whether or not employers make full use of their potential control over their employees—is a question of employer forbearance (e.g., Blades 1967). Private-sector businesses can, and do, regularly change how their employees do their jobs and monitor and discipline workers for behavior on the clock—for good reasons, bad reasons, or simply arbitrary ones.

Motivated by broad employer control over workers' experiences on the job—and workers' own assessments of the importance of power and voice—I argue that any effort to evaluate the effects of employment and labor law on labor relations ought to address the following four indicators of worker power. These are by no means the only criteria that matter in thinking about job quality or even worker power (e.g., Hertel-Fernandez et al. 2019; Kalleberg 2011; Kochan et al. 2019; Maestas et al. 2018). But they do provide a concrete starting point for thinking about what current workplace laws, or reforms to those laws, mean for workers' ability to build and exercise power in their jobs. I focus on criteria that could be quantitatively measured on large-scale surveys and therefore could be tracked

² Author's analysis of Gallup Great Jobs polling data.

over time as part of efforts to understand the ongoing effects of labor and employment law. Experience with current labor market policy suggests that policymakers pay closest attention to workplace factors that can be easily measured in repeated large-scale labor force surveys.

The four criteria include the following:

- **The scope for employers to arbitrarily or unfairly change how they treat workers.** Do workers have a say over their working conditions (or changes to their working conditions), or do managers decide workplace policy unilaterally? This question cuts to the core of workers' relationships with their managers, asking about workers' sense of control and respect beyond material conditions themselves. This is an important *outcome* measure of worker voice. It is also a critical characteristic of the peculiarly American system of at-will employment, in which the standing presumption is that private-sector employers have the legal right to fire or change the working conditions of workers for nearly any reason, save those spelled out in federal and state law (like civil rights or whistleblower protections).
- **Workers' access to, and ability to act on, important information about their workplace, such as compensation practices and organizational performance.** To negotiate the best set of wages, benefits, and working conditions with their employers, workers must know, at a minimum, information about their employer (for instance, sales, productivity, revenue, or performance) and the pay and compensation of other workers (indeed, this is a central part of the defense of at-will employment, see e.g., Epstein 1984). For instance, if a worker does not know how much coworkers doing similar work get paid, their employer might use this information imbalance to underpay new hires (for empirical evidence, see Kim 2015; Rosenfeld and Denice 2015). Similarly, if a worker does not know how much profit a company makes, they might not know to ask for raises when the company is doing particularly well. And workers might feel differently about their compensation if they knew about pay received by their organization's top managers and executives. Providing this kind of information to workers does not guarantee that they will be able to negotiate better (or more equal) pay within their organization, but it is a necessary first step. Workplace information is therefore an important *input* to worker power.
- **Workers' ability to recognize and enforce their workplace legal rights.** Just as workers must have information about their organization's performance to adequately negotiate for wages and benefits, so too must they *know* their legal rights in order to exercise them. Widespread employer noncompliance suggests that workers may not be fully aware of the employment and labor rights they hold. This puts them at a substantial



disadvantage in negotiating with their employers, addressing issues and problems that might come up in the workplace, and engaging in collective action. As with information, holding knowledge about workplace rights does not guarantee that workers can exercise those rights. There are many cases in which workers attempt to exercise their workplace rights but face employer retaliation or slow and nonresponsive government agencies or courts. But again, possessing that knowledge is a necessary first step.

- **Workers’ ability to engage in regular workplace discussions with their coworkers.** These conversations help workers to share relevant information about working conditions and problems with one another, recognize common grievances and connect them to their managers’ and employers’ actions, build solidarity with one another, and ultimately plan actions for collectively addressing shared grievances. Coworker social networks can, of course, be directed toward exclusionary or discriminatory ends. But a long line of research on social movements and labor action stresses the importance of discussions like these for building collective power (e.g., Fantasia 1988; Polletta 1999), including moving toward formal labor organization like unions. Indeed, realizing many of the bold new labor and employment reforms in today’s debates will require substantially more workplace-based collective action—and that starts with regular coworker discussions (cf. Block and Sachs 2020).

All of these dimensions are important for thinking about worker voice in its own right, and this is my focus for the rest of the paper. But there are also good economic reasons for pursuing each of these dimensions as well. Perhaps most importantly, a large literature in labor relations suggests that firms that encourage greater sharing of information between workers and managers can be more productive—and that kind of information-sharing is harder to do in workplaces characterized by large imbalances of power, mistrust, and insecurity (e.g., Freeman and Medoff 1984; Kelly and Moen 2020; Kochan 2005).

Having laid out the four benchmarks, I now turn to assessing how the current state of workplace law and labor relations stacks up along these dimensions using several original surveys of American workers. The primary results I report come from a nationally representative survey of non-self-employed American workers conducted in November 2019 by YouGov Blue.³ The survey consisted of 1,212 interviews from YouGov’s internet panel selected to be representative of the adult general population and weighted according to gender, age, race, education, region, and past presidential vote (or non-vote) based on the American Community Study and the Current Population Survey Registration and Voting Supplement. The sample was then subsetted to only look at respondents who reported they

³ The survey instrument was approved by Columbia University’s Institutional Review Board.



were employed by someone else.⁴ The margin of error for the full sample is plus or minus 3.1 percent.

I also complement the original YouGov survey with questions fielded by Data for Progress on several of their ongoing polls, including a survey of 3,598 workers conducted in November 2019 on the Lucid online survey platform and a sample of 1,226 employed workers polled by Civis Analytics in February 2020. I note these sources and more details on survey item wording as I go along.

Experiences with Arbitrary or Unfair Managerial Power

To tap into the first dimension of workplace power, the YouGov survey explored the extent to which workers felt they had control over important workplace decisions and the extent to which they felt they had been treated fairly (or not) by their managers. I used the following item: “Thinking about your current job, have any of the following things happened to you? Please check all that apply.” The options included a variety of managerial acts, ranging from those with very material and immediate consequences (“Employer failed to pay you for hours or jobs worked”) to those that were more subjective and related to workers’ sense of dignity on the job (“Manager or supervisor ignored your suggestions for improving workplace”). All, however, were intended to capture the sense of control and respect workers felt on the job.⁵

In all, slightly more than half of workers reported at least one of these things happening to them at their current job (see Table 1). The most commonly cited employer action was a manager or supervisor ignoring workers’ suggestions for improving the workplace (26 percent), followed by paying workers less than they felt they deserved (23 percent), asking workers to do something that they were not paid to do (21 percent), and changing working

⁴ The survey used two screeners to subset the sample, including only respondents who indicated full-time or part-time in response to “Which of the following best describes your current employment status?” and who indicated “As a paid employee” in response to “In your main job, do you work as a paid employee for someone else, or do you work for yourself?” Unfortunately, as with nearly all labor force surveys, I have no way of verifying whether workers correctly identified their legal status as employee or not.

⁵ The concept of workplace power that informs this analysis is the ability of managers to get workers to do things that workers would not have done otherwise (Dahl 1957). This more direct definition of power does not speak to the deeper psychological or ideational effects of inequalities of power, which are much more challenging to study empirically but certainly equally important (see also Bachrach and Baratz 1962; Gaventa 1982).

conditions without input (20 percent). The least-mentioned actions included a failure to pay workers for hours or jobs worked (11 percent) or to pay workers on time (10 percent).

TABLE 1. MEASURES OF WORKERS' EXPERIENCES WITH MANAGERIAL POWER	
Employer Action	% All Workers
Manager or supervisor ignored your suggestions for improving workplace	26%
Employer paid you less than you felt you deserved	23%
Manager or supervisor asked you to do something you are not paid to do	21%
Manager or supervisor changed your working conditions without your input	20%
Manager or supervisor disciplined you for no reason or a bad reason	14%
Employer changed your benefits without your input	12%
Employer failed to pay you for hours or jobs worked	11%
Employer failed to pay you on time	10%
Any of the above	53%

Notes: Sample size=1,212.

Some of these employer actions were concentrated among workers whom we might think of as being more economically vulnerable, such as those with less formal education or racial and ethnic minorities. Workers with a high school degree or less, for instance, were 1.5 times as likely as those with a postgraduate degree to report that their employers failed to pay them for jobs or hours worked or that employers failed to pay them on time. Black workers



were also substantially more likely than white workers to report these kinds of wage theft violations.⁶

But other acts of employer power were *more* likely to be reported by workers we might think of as being economically advantaged, such as workers with higher levels of education. Workers with a postgraduate education, for instance, were nearly twice as likely as those with a high school degree or less to report that they were paid less than they felt they deserved and that they were asked to do something that they were not paid to do. This may reflect the transformed, “always-on” demands of many white-collar, professional service jobs (e.g., Kelly and Moen 2020). It may also reflect different expectations that workers have about their working conditions: More economically advantaged workers, for instance, might hold their managers to higher standards than disadvantaged workers do. This is a pattern we will see below with union members, too.

Still other employer actions were just as common among workers regardless of their levels of formal education, such as reporting that their benefits had been changed without their input or that they had been disciplined for no reason or a bad reason. This finding is an important reminder that while education may secure better job conditions on some fronts—such as higher wages or better benefits—workers with higher levels of education are not necessarily shielded from other negative aspects of their jobs, including abuses or exercises of managerial authority, given the American system of at-will employment (Kelly and Moen 2020).⁷

While education was only an inconsistent predictor of whether or not workers reported arbitrary acts of managerial or employer power, two stronger predictors were union membership and whether workers felt as though they could easily leave their jobs for another comparable position at another company or organization—what we might think of as workers’ exit options. To measure workers’ exit power, the YouGov survey asked workers “about how easy or difficult would it be for you to find a job with another employer with approximately the same income and benefits you have now?” with five options ranging from “very easy” to “very difficult.”⁸ Respondents who indicated that they would have an easier time moving to an alternative job were less likely to report all of the employer actions described above, but especially to report that they were asked to do work that they were not paid to do, that employers changed their working conditions without asking for input,

⁶ There were not consistent differences by gender.

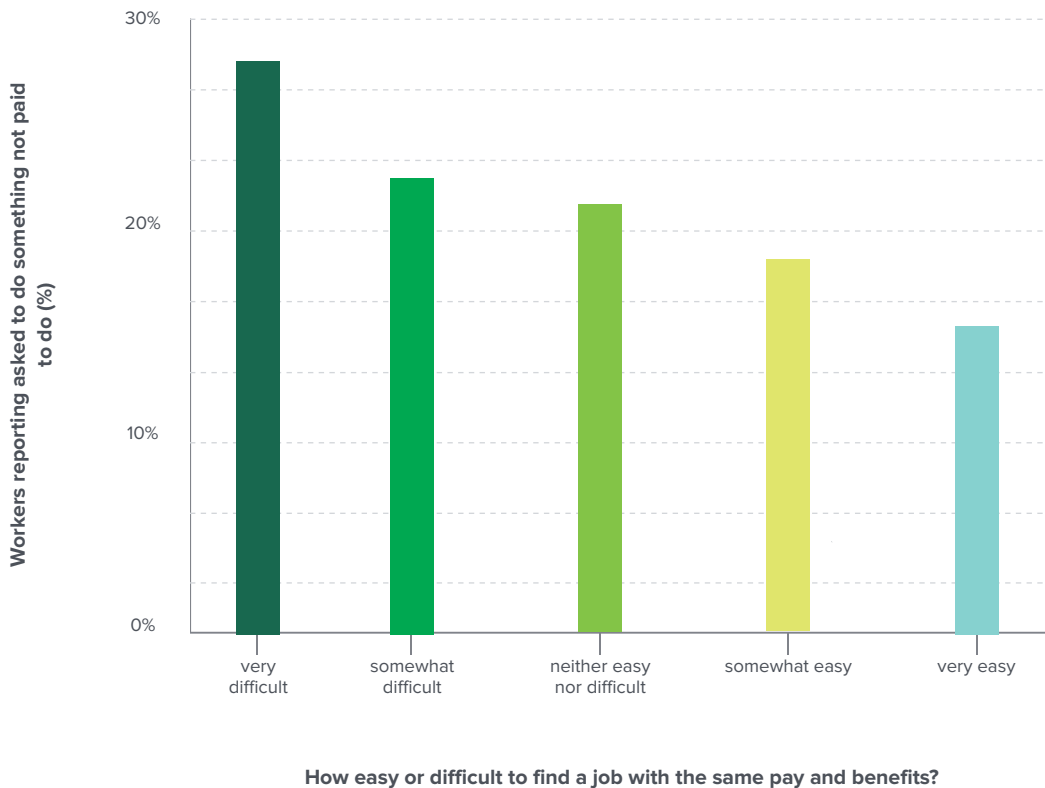
⁷ In a similar vein, there were (perhaps surprisingly) only modest differences between supervisory or non-supervisory workers.

⁸ The responses to this question were as follows: 10 percent very difficult, 29 percent somewhat difficult, 22 percent neither easy nor difficult, 25 percent somewhat easy, and 14 percent very easy.



and that they were paid less than they felt they deserved.⁹ I graph the relationship between respondents reporting they were asked to do something they were not paid to do and their exit options in Figure 1. The fact that workers' exit options are predictive of reports of arbitrary employer actions is consistent with employers having labor market power over their workers, taking advantage of workers' inability to easily switch jobs by underpaying them or demanding more of them than their job description would suggest (e.g., Naidu 2020). It also has worrisome implications for thinking about the ongoing COVID-19 crisis, in which many workers do not have the option of finding new work—both because of the economic collapse and due to health risks.

FIGURE 1. WORKERS' EXIT OPTIONS AND EMPLOYERS ASKING WORKERS TO DO WORK THEY ARE NOT PAID TO DO



⁹ The relationship between workers' exit options and reports of employer acts of power holds up in regression models controlling for a variety of other worker characteristics, including union membership, gender, race and ethnicity, age, education, and family income.



In contrast to workers' exit options, union membership, perhaps counterintuitively, was related to *greater* reporting of some unfair or arbitrary employment actions by workers. This was especially true for worker reports that employers had changed benefits without consulting with workers first. On its face, this might not make sense: Shouldn't unions protect workers against arbitrary treatment by managers by collectively setting and enforcing working standards? That may well be true, but as decades of research in labor relations have indicated, there are several other mechanisms at play (Bryson et al. 2004; Gordon and Denisi 1995). For one, unions tend to form when workers feel aggrieved enough to take costly collective action. For another, unions also help workers to recognize and report grievances they might not have seen as noteworthy or addressable, changing workers' expectations about appropriate workplace relations. For both of these reasons, the union finding thus makes sense—and suggests that union members are especially attuned to employer missteps, particularly around health insurance and retirement benefits.

The survey item described above asked about exercises of employer power at workers' *current* jobs. What about workers' experiences in the labor force more generally? A separate survey of 7,234 American adults (including 3,598 workers) conducted by Data for Progress in November 2019 included a battery of similar questions. These questions used the following prompt: "Thinking about all the jobs you have ever held, how often have the following things happened to you?" with responses including "frequently," "sometimes," "rarely," "never," and "not sure."

About 40 percent of workers in that Data for Progress survey said that they had frequently been paid less than they thought they deserved (another 34 percent said sometimes); 9 percent said that they had frequently been fired for a bad reason or no reason at all (another 18 percent said sometimes); 11 percent said that they had frequently been disciplined for a bad reason or no reason at all (another 25 percent said sometimes); 22 percent said that their employers frequently ignored their suggestions for improving the workplace (another 35 percent said sometimes); 20 percent said that their employers had frequently changed their working conditions without their input (another 35 percent said sometimes); and 23 percent said their employers frequently asked them to do something they were not paid to do (another 32 percent said sometimes).

In short, the Data for Progress poll indicates that worker experiences with arbitrary managerial power are not confined to individual jobs—and most workers (nearly 9 out of 10) report past experience with at least some of these employer actions. While the universality of these experiences may be discouraging, it might be key in building cross-occupation or cross-class political coalitions in favor of expanding labor rights and organization.



Access to Workplace Information

Next, I turn to the question of whether workers receive and can act on information about working conditions at their job. To measure this concept, the YouGov survey asked workers “does your employer regularly share any of the following information with you?” and the options included “compensation of senior executives, managers, or supervisors” (to capture information about top compensation and pay inequalities within firms), “wages and salaries of workers like you” (to capture the degree to which workers could learn if they were receiving more or less pay than workers doing similar jobs), and “information on how well your organization is doing, like organization-wide revenue, profit, sales, or productivity numbers” (to capture the degree to which workers could learn about how well their employer was doing).

Table 2 summarizes worker responses. In all, 48 percent of workers reported receiving at least one of these types of information, but only 4 percent reported receiving all three. The most commonly reported information related to how well employers were doing (at 40 percent of workers). Far less common was information about the compensation of comparable coworkers (at 15 percent) and of top managers and other senior executives (at 9 percent). The differences are even more striking if we look only at rank-and-file workers who reported that they did not have any supervisory duties. (Sixty-three percent of employees said that they did not have such duties.) As Table 2 indicates, only 2 percent of non-supervisory workers reported that they received all three pieces of information, and only 41 percent received any of the three pieces of information.

These findings are consistent with pay secrecy research, which has found that large portions of the workforce (perhaps about half of workers) report that the discussion of wage and salary information is “either discouraged or prohibited” by their managers (Hegewisch et al. 2011; see also Rosenfeld 2017). It is generally illegal for employers to bar employees from discussing compensation with one another, but even so, knowledge about these laws is not widespread, and penalties for breaking this law are not significant enough to deter employer violations (Gely and Bierman 2003). As a result, surveys of private-sector employers reveal that significant proportions of businesses openly admit to barring workers from discussing compensation with one another (Gely and Bierman 2003).



TABLE 2. AVAILABILITY OF WORKPLACE INFORMATION		
	% All Workers	% Non-Supervisory Workers
Compensation of senior executives, managers, or supervisors	9%	5%
Wages and salaries of workers like you	15%	11%
Information on how well your organization is doing, like organization-wide revenue, profit, sales, or productivity numbers	40%	35%
All of the above	4%	2%
Any of the above	48%	41%

Notes: Sample size for all workers=1,212 and non-supervisory workers=770.

Not all workers were equally likely to report having regular access to information about their employers, managers, and coworkers. In particular, more highly educated workers were substantially more likely to report having access to all or any of this information, as Table 3 indicates.¹⁰ Workers with postgraduate degrees were over 1.5 times more likely to report receiving any of the three pieces of information and 4 times as likely to receive all three pieces of information. Still, it is worth noting that fewer than 1 in 10 workers with postgraduate degrees received all three pieces of information from their employers, indicating that many of the most advantaged workers are still in the dark in their efforts to negotiate with employers.

TABLE 3. AVAILABILITY OF WORKPLACE INFORMATION BY EDUCATION		
Education	Any information (%)	All information (%)
HS or less (344)	38%	2%
Some college (354)	45%	3%
College (312)	57%	5%
Post-grad (202)	59%	8%

Notes: N=1,212 respondents. Sample size by education in parentheses.

¹⁰ The relationship between education and access to workplace information, controlling for workers' other demographic characteristics and union membership, remains the same.



Table 4 shows even sharper differences across workers' incomes.¹¹ Less than a third of respondents with incomes under \$30,000 a year reported receiving any of the three pieces of information, compared to nearly three-quarters of respondents with annual incomes of at least \$150,000. These disparities indicate that workers who are already disadvantaged in the labor market—those with lower levels of formal education and lower incomes—tend also to receive less information from their managers and supervisors.

TABLE 4. AVAILABILITY OF WORKPLACE INFORMATION BY INCOME		
Family Income	Any information (%)	All information (%)
Less than \$30,000 (191)	31%	1%
\$30,000 - \$59,999 (277)	45%	2%
\$60,000 - \$99,999 (328)	51%	3%
\$100,000 - \$149,999 (186)	65%	6%
\$150,000+ (112)	72%	10%

Notes: N=1,094 respondents with valid response to family income item. Sample size by family income in parentheses.

Access to workplace information also varied along racial lines, with Black workers substantially less likely than white workers to receive it.¹² The difference was especially large for information about organizational performance and top compensation: 44 percent of white workers reported receiving information about organizational performance, compared to 29 percent of Black workers; 9 percent of white workers received information about top compensation, compared to 3 percent of Black workers. In all, 52 percent of white workers received any information, compared to 36 percent of Black workers, and 5 percent of white workers reported receiving all three kinds of information, compared to 2 percent of Black workers.¹³

¹¹ The relationship between income and access to workplace information, controlling for workers' other demographic characteristics and union membership, remains the same.

¹² There were not consistent differences by gender.

¹³ These racial differences may reflect differences in family income and education, as they disappear in regression models that control for workers' other demographic characteristics and union membership.



There were also significant differences across industry, especially when it came to information about coworkers' wage and salary records. While only 15 percent of workers in general reported having regular access to the pay of their coworkers, over 31 percent of workers employed by local, state, or federal government said that they did. That makes sense to the extent that government salaries are often set according to well-publicized scales, even if positions are not unionized (which many public-sector jobs are).¹⁴ In fact, compensation for many state and local employees is made publicly available online.

A final important difference across workers involved labor unions, whose members were substantially more likely to report access to all three kinds of information:¹⁵ 46 percent of nonunion members reported receipt of any kind of information, compared to 64 percent of union members, while 3 percent of nonunion members reported receiving all information, compared to 8 percent of union members. The union difference was especially sharp for information about wages and salaries for peer workers (12 percent of nonunion members versus 36 percent of union members) and for top compensation of managers and executives (7 percent of nonunion members versus 16 percent of union members). Interestingly, there was barely any difference between union members and nonmembers in reporting information about organizational performance.

Looking at variation across workers, I found that unions made an especially important difference in the availability of information for workers with lower levels of formal education. Put differently, the union versus nonunion gap was largest for workers with less education—and smallest for workers who already had higher levels of education. Some of this may reflect the bigger role that unions can play in boosting the workplace voice of less-educated workers, and some of it may reflect the fact that more highly-educated union workers tend to work in government jobs, where workplace information is already widely available regardless of union membership.

Together, the union findings underscore the important role that collective bargaining and representation play in the workplace. Yet these results also highlight the limits placed on the existing American labor movement, showing that unions do not appear to help workers gain more information about organizational performance overall. That may reflect the fact that labor unions generally have no legal right to bargain over (and therefore to gain access

¹⁴ The sectoral differences between public- and private-sector workers holds up in regression models that control for workers' other demographic characteristics and union membership.

¹⁵ The union membership difference holds up in regression models that control for workers' other demographic characteristics.

to information related to) the so-called “core of entrepreneurial control” within a company (Gorman and Finkin 2013, section 20.5). That core refers to employer decisions about matters related to profitability and the scope and direction of a business, and so it is much more challenging (if not impossible) for unions to request information about corporate financial records (Gorman and Finkin 2013, section 21.5). If unions do gain access to such information, it is typically on a case-by-case and heavily circumscribed basis.

Setting aside information about organizational performance, 92 percent of union members still report that they do not receive all three kinds of information, and 36 percent of union members report receiving none of these pieces of information. This further suggests that even when unions do have employer records on workers’ wages and pay scales, information may not always be distributed in an accessible manner to all workers. Unions clearly matter for workers’ access to workplace information—but even union members still face important barriers.

Knowledge About Workplace Rights

The third indicator relates to workers’ knowledge of the rights they hold on the job, and whether they would be able to exercise those rights. Just as workers need to have information about their organization’s performance to adequately negotiate for wages and benefits, so too do workers need to perceive their rights to exercise those rights. This is especially true for the current American system of at-will employment, which places the burden on (nonunion) workers to identify for themselves whether an action taken by their employer is illegal.

The YouGov survey probed this knowledge about workplace rights by asking respondents the following: “Please indicate whether you think the following actions by a private business are legal or illegal under current federal law.” (Importantly, the survey restricted the items to the private sector under federal law to take into account varying state-level laws and the fact that public-sector employees are governed by very different regulations.) The business actions explored in the survey included the following: firing a worker for being Black, firing a worker for being gay, promoting a worker for supporting a political candidate, disciplining a worker for organizing a union, firing a worker for something they said on social media, paying a worker more for losing weight, and promoting workers based on their religious views. Respondents could indicate that each item was legal or illegal, or that they were not sure.



Of course, it is tricky to fully characterize many of these employer actions as entirely illegal or legal without much more context. One example: Current federal law regarding LGBTQ+ protections depends on which federal circuit workers are in, since several federal appellate courts have ruled that LGBTQ+ discrimination is covered by the Civil Rights Act (the Supreme Court is currently deliberating over that question at the time of this report's writing). Similarly, firing a worker for something they said on social media depends on the full details of what the employee said—if it was something related to their federal civil or labor rights, it might be illegal. As a result, I encourage readers to consider the full picture of these items, rather than any one individual scenario.

Table 5 summarizes the percentage of respondents providing the correct response to each employer action, separating out private-sector workers from all workers.¹⁶ On average, respondents got about half (47 percent) of the employer actions correct, though this varied from nearly 9 of 10 respondents for firing a worker for being Black (86 percent correctly identified this action as illegal) to around 1 in 10 respondents for promoting a worker for supporting a political candidate or firing a worker for being gay (with only 13 percent of respondents correctly saying that this was legal in both cases). There were no meaningful differences between private- and public-sector workers in their perceptions of private-sector workplace rights.¹⁷

Table 5 reveals that workers tended to *overestimate* federal rights available for private-sector workers, correctly guessing that generally illegal acts (the first three rows in the table) were illegal but mistakenly assuming that generally legal acts were illegal (the bottom four rows in the table). Workers thus tended to overstate the protections they have in practice in the workplace (consistent with past research: e.g., Freeman and Rogers 2006).

As legal scholar Cynthia Estlund (2002b) has argued, workers' overestimation of their workplace rights tends to advantage employers: Employers enjoy the benefit of the doubt from workers, who do not bargain for increased protections when starting a job—but employers can still use their legal ability to discharge or discipline workers for any non-statutorily protected reason, and workers find that they have no real recourse. In short, this ignorance allows “employers to have it both ways” when it comes to at-will employment.

¹⁶ Examining a similar question on the November 2019 Data for Progress poll described above, I find similar results: 90 percent of American adults thought that firing a worker for being Black was illegal, 85 percent thought that firing a worker for being gay was illegal, 69 percent thought that promoting a worker for supporting a political candidate was illegal, 77 percent thought that firing a union organizer was illegal, 35 percent thought that firing a worker for something they said on social media was illegal, 36 percent thought that paying a worker more for losing weight was illegal, and 78 percent thought that promoting a worker for their religion was illegal.

¹⁷ This helps to address the concern that public-sector workers might have a difference sense of what is legal or not in the private sector.

TABLE 5. WORKER KNOWLEDGE OF PRIVATE-SECTOR WORKPLACE RIGHTS

Action	Correct % - All Workers	Correct % - Private-Sector Workers
Firing a worker for being African American (illegal)	86%	85%
Promoting a worker based on their religious view (illegal)	72%	71%
Disciplining a worker for organizing a union (illegal)	70%	70%
Firing a worker for something on social media (legal)	48%	47%
Paying a worker more for losing weight (legal)	29%	28%
Firing a worker for being gay (legal)	13%	13%
Promoting a worker for supporting a candidate (legal)	13%	14%
Average % Correct	47%	47%

Notes: N=1,212 respondents overall; 1,092 private-sector respondents..

Given the extent to which workers’ rights are jointly determined by both federal and state law, it is worth asking whether survey respondents are confusing rights that they might possess under state law versus those under federal law. This is easiest to test with discrimination against gay workers, as 24 states at the time of the YouGov survey had laws in place protecting a private-sector worker from being fired on the basis of their sexual orientation. Examining survey responses across the states, I find that the proportion of respondents thinking it was illegal to fire a gay worker was identical in states with and without laws protecting discrimination on the basis of sexual orientation. This suggests that workers are not simply substituting their understanding of state law for federal rights.¹⁸

Just as with previous items about workplace information, there were striking differences in knowledge about workplace rights on the job across education and family income subsets, raising concerns that more economically vulnerable workers are more disadvantaged

¹⁸ Similarly, I find no difference in survey responses across the Federal Circuits that have ruled that sexual orientation is protected by the Civil Rights Act. I also find no difference in perceptions of the illegality of firing a worker for supporting a political candidate by the relevant state laws on political coercion.



relative to their employers when it comes to bargaining for workplace protections.¹⁹

Tables 6 and 7 indicate that workers with higher levels of formal education and higher family incomes are more likely to correctly recognize the scope of their federal legal workplace rights. Workers with family incomes under \$30,000 only got about 38 percent of the items correct, on average, compared to 55 percent of items for workers with family incomes of \$150,000 or more.

Unlike with income and education, however, race did not offer a clear dividing line on knowledge of workplace rights: White workers were about as accurate as Black, Hispanic, and Asian American workers at identifying the scope of legal workplace action by their employer. Nor did gender seem to matter: Women were slightly less likely to be correct in their assessments of workplace rights, but the difference was much smaller than by education or income.

TABLE 6. WORKER KNOWLEDGE OF PRIVATE-SECTOR WORKPLACE RIGHTS BY INCOME	
Family Income	Correct %
Less than \$30,000 (191)	38%
\$30,000 - \$59,999 (277)	47%
\$60,000 - \$99,999 (328)	50%
\$100,000 - \$149,999 (186)	51%
\$150,000+ (112)	55%

Notes: N=1,094 respondents with valid response to family income item. Sample size by family income in parentheses.

¹⁹ These differences by education and income hold up in regression models that control for workers' other demographic characteristics and union membership.



TABLE 7. WORKER KNOWLEDGE OF PRIVATE-SECTOR WORKPLACE RIGHTS BY EDUCATION

Education	Correct %
HS or less (344)	41%
Some college (354)	47%
College (312)	52%
Post-grad (202)	53%

Notes: N=1,212 respondents. Sample size by education in parentheses.

On average, current union members were only marginally more likely to answer these items correctly than were nonunion members: Union members got 49 percent of the items correct, compared to 47 percent for nonunion members. Though union members were more likely to correctly recognize the legality of firing someone because they are gay, promoting someone for supporting a particular political candidate, or paying someone extra for losing weight, they were not more likely to classify the remaining acts correctly. Of course, individual workers’ awareness of their legal rights matters much more in nonunion worksites than in unionized businesses. A union member can always check with their union representative about a potential grievance. By comparison, it is up to an individual worker outside a union to figure out whether an employer’s action is illegal and to take legal steps themselves.

A second set of items on the survey asked if non-supervisory respondents would be able to exercise their workplace rights if they experienced violations on the job. The survey posed the following prompt to workers: “Suppose your employer did one of the following things. Would you know how to deal with the situation?” It then described five situations: “Your employer repeatedly fails to pay you on time,” “Your employer repeatedly fails to pay you your full wage or salary,” “You discover you are earning lower wages because of your race, gender, or political views,” “A manager or supervisor sexually harasses you,” and “You are exposed to unsafe working conditions.” For each situation, respondents could indicate “Know how” or “Would not know how.” Of course, this item cannot test whether workers actually know how to deal with each of these situations—only whether they *think* they can. But it represents an important start to understanding whether or not workers can exercise their rights.



Table 8 indicates the percentage of respondents reporting that they know how to deal with each situation. In all, nearly 9 in 10 rank-and-file workers reported that they would know how to deal with any violation, and just around half (48 percent) would know how to deal with all violations. Knowledge of the individual scenarios, however, ranged from 59 percent for pay discrimination to 78 percent for sexual harassment. This implies that between 22 percent to 41 percent of workers lack the necessary knowledge to deal with various violations of workplace rights.

TABLE 8. WORKER KNOWLEDGE OF HOW TO DEAL WITH WORKPLACE VIOLATIONS	
	% Non-Supervisory Workers
Manager or supervisor sexually harasses you	78%
Exposed to unsafe working conditions	74%
Employer repeatedly fails to pay you on time	67%
Employer repeatedly fails to pay your full wage or salary	66%
Discover you are earning lower wages because of your race, gender, or political views	59%
Know how to address all violations	48%
Know how to address any violation	87%

Notes: N=770 non-supervisory workers.

Looking at workers’ belief in their ability to remedy workplace violations, I find fewer differences by income or education—except for the poorest workers and those with the least education. While workers with family incomes below \$30,000 had the lowest levels of confidence in their ability to exercise workplace rights (only 38 percent said they could act on all the violations), about a similar share (around 50 percent) of workers in the remaining income categories reported having the knowledge necessary for dealing with all of these acts. Similarly, workers with a high school degree or less had the lowest levels of confidence (with only 43 percent reporting that they could deal with all of the violations), but there was not a clear increase with the remaining levels of formal education.



Instead, the most important predictors of this item were age and union membership.²⁰ Older workers were substantially more likely to report knowing how to deal with all of these workplace violations, as were union members. Table 9 indicates that, compared to younger workers aged 18–29, older workers (55+) were nearly twice as likely to report knowing how to deal with all of the workplace violations. This suggests that older workers, with greater experience in the labor market, have developed more of the know-how necessary to deal with workplace issues.

TABLE 9. WORKER KNOWLEDGE OF HOW TO DEAL WITH WORKPLACE VIOLATIONS BY AGE	
Age	Non-Supervisory Workers Reporting Knowing How to Deal with All Violations %
18-29 (143)	35%
30-44 (253)	39%
45-54 (171)	54%
55+ (203)	66%

Notes: N=770 non-supervisory workers. Sample size by age in parentheses.

The differences between current union members and nonmembers were equally striking: 45 percent of rank-and-file nonunion members said they have the knowledge to report all of those violations, compared to 66 percent for current union members. This is consistent with labor unions helping workers to enforce their workplace rights (Freeman and Medoff 1984; Weil 1991)—even if union members do not always know about the law in each and every scenario, as we saw above.

Still, it is worth noting that about a third of union members reported lacking the knowledge to deal with violations, and there was substantial variation across the different categories of workplace violations. The union difference was smallest for workplace violations related to sexual harassment, suggesting that unions may be less well-equipped to help workers deal with these rights violations as compared to other issues, like wage discrimination or workplace safety.

²⁰ The differences by age and union membership hold up in regression models that control for workers' other demographic characteristics and union membership. There were not consistent differences by gender.



Unlike with workplace information, unions' role in helping workers to enforce their workplace rights did not appear to vary by workers' levels of education. Unions had just as much of an effect on workers' ability to act on their rights for workers with just a high school degree as they did for workers with a college education.

Access to Workplace Discussions

The last benchmark involves workers' abilities to engage in frank and open discussions with their coworkers about workplace issues and problems. As I explained above, these discussions can play an important role in helping to disseminate relevant workplace knowledge, to highlight shared grievances and connect them to concrete employer decisions and actions, and to spur mobilization by workers to address those problems, including by creating formal organizations like unions.

Using the YouGov survey, I tapped into employees' workplace conversations by asking "How comfortable do you feel discussing workplace problems with your coworkers?" Responses ranged from "very comfortable" to "very uncomfortable"; 65 percent of respondents said that they were comfortable, 21 percent said neither uncomfortable nor comfortable, and 14 percent said they were uncomfortable. On their face, these numbers are positive: Nearly two-thirds of workers said they were comfortable starting workplace conversations with coworkers. But more troublingly, I identified large differences across workers in their comfort discussing issues and problems with their coworkers, generally reflecting the same patterns I identified earlier: More economically advantaged workers were more likely to report greater comfort talking with their coworkers. Tables 10 and 11 document sharp divisions by income and education, with higher-income and more highly educated workers reporting greater comfort engaging in workplace discussions. White workers were also much more likely to report comfort engaging in discussions than nonwhite workers.²¹

The one exception in these differences was for union members, who were consistently more likely to report being comfortable discussing problems with coworkers. The union difference was largest for workers with a high school degree or less: 57 percent of nonunion members with a high school degree or less reported being comfortable discussing problems with coworkers, compared to 75 percent of workers with similar education but who were in a union. That is roughly the same level of worker comfort as I find among workers with at

²¹ There were not consistent differences by gender.

least \$100,000 in family income or with a postgraduate degree.

TABLE 10. WORKER COMFORT DISCUSSING PROBLEMS WITH COWORKERS BY INCOME	
Family Income	% Very or Somewhat Comfortable
Less than \$30,000 (191)	45%
\$30,000 - \$59,999 (277)	64%
\$60,000 - \$99,999 (328)	71%
\$100,000 - \$149,999 (186)	77%
\$150,000+ (112)	74%

Notes: N=1,094 respondents with valid response to family income item. Sample size by family income in parentheses.

TABLE 11. WORKER COMFORT DISCUSSING PROBLEMS WITH COWORKERS BY EDUCATION	
Education	% Very or Somewhat Comfortable
HS or less (344)	59%
Some college (354)	63%
College (312)	70%
Post-grad (202)	72%

Notes: N=1,212 respondents. Sample size by education in parentheses.

Beyond income, education, and union membership, workers with stronger exit options—and perhaps higher levels of economic security—were more likely to report greater comfort discussing issues and problems with their coworkers. Workers who said they would have an easy time finding a new job with comparable income and benefits were 18 percent more likely to report being comfortable discussing problem with their coworkers, and this



relationship holds up even controlling for other worker characteristics, like income, union membership, and education. This finding implies that workers who may be more locked into their current jobs are limited in their ability to work with their coworkers to address issues and problems. Such workers are thus at a double disadvantage in the labor market: unable to leave jobs they might dislike but also unable to change their jobs. As the COVID-19 crisis makes it harder for workers to switch jobs, we may well see more workers become fearful of organizing around workplace problems with their coworkers. Indeed, the instances of sustained worker mobilization we have seen so far in the crisis have tended to be centered on jobs in highly in-demand occupations, like retail, delivery, groceries, and health care.

A final important reason that workers may not be able to have conversations with their coworkers about workplace issues and problems is that they lack a physical communal space where they can have such discussions. No straightforward right to such a space exists, and federal labor law has long recognized the rights of employers to police company property in the context of labor organizing or activism (Gorman and Finkin 2013, chapter 8). If anything, workers' rights to engage in workplace discussions (especially over online company platforms like email) are sharply narrowing in recent years (Kanu 2019). Without such a space or right, it becomes much harder for workers to feel comfortable discussing issues, especially potentially controversial ones, with their coworkers (on collective action and social spaces more generally, see Fantasia 1988; Polletta 1999).

Survey data bear out this intuition. In a separate poll I conducted with Data for Progress, using a nationally representative sample of 1,226 employed workers polled by Civis Analytics in February 2020, I asked the following item to measure the prevalence of spaces for workplace discussion: "Is there a communal space at your work where you and your coworkers can discuss issues or problems?"; 55 percent of workers reported that they did have access to such a space (for more details, see Hertel-Fernandez 2020). Workers who reported having access to a communal space for workplace discussions were substantially more likely than workers without such a space to report talking about workplace problems with their coworkers—and doing so more frequently. Twenty-two percent of workers without a communal space at their job said that they never talked to their coworkers about issues and problems, compared to just 7 percent of workers with access to a shared space. Workers with a communal space, moreover, were 10 percent more likely than workers without such a space to say they discussed problems or issues with their coworkers at least once a week.

Just as with other workplace discussion items, I found that access to physical spaces differed starkly by workers' socioeconomic standing: While 45 percent of workers with a high school diploma or less reported access to such a space, two-thirds of workers with advanced degrees did. Similarly, 45 percent of workers with family incomes below \$25,000 a year said



they had access to a communal space, compared to 71 percent of workers with incomes over \$150,000 a year. Union membership made a big difference as well: Current union members were 34 percent more likely than nonunion members to report access to a communal space for workplace discussions, and the union difference was especially large for workers with lower levels of education. For workers with just a high school diploma, union members were 53 percent more likely than nonmembers to have access to a physical space. These differences in *access* to physical spaces help to explain the differences in workplace discussions by education and income I documented above—and suggest a real need for public policy to guarantee such spaces to workers without formal union representation, especially those with lower levels of education and income.

Policy Implications

Together, these findings shed new light on how American workers experience power, information, and rights on the job. They also provide a roadmap for thinking about reforms to labor and employment law, offering four specific ways to assess worker voice and power beyond just wages and benefits. These four questions offer an important conceptual test of how well American employment and labor law operates at present—and what effects reforms might have on workers’ daily experiences on the job in the future.

The four dimensions of workplace power also provide concrete quantitative benchmarks for empirical research. Using surveys of the American labor force like the ones I described above can help policymakers and reformers to evaluate how changes in employment and labor law are affecting workers. That includes zooming in on specific groups of particular interest—such as low-wage workers, those without a college degree, or racial and ethnic minorities. Unfortunately, standard surveys of the labor force, including those fielded by the US federal government, are not sufficient to capture the concepts I have described above. Policymakers, advocacy groups, and funders should therefore consider ways of fielding regular, large-scale surveys of workers that tap into the four measures of worker voice and power I have described—or even adding such questions to existing government surveys, like the American Community Survey or the Current Population Survey.

Apart from its implications for federal or state data collection, this report also provides a guide for potential reforms policymakers should consider. To start, they can expand workers’ rights to form and join labor organizations, including traditional unions. As we saw throughout the survey results, unions generally addressed each of the four aspects of workplace power, helping to reduce arbitrary or unfair treatment of workers by managers,



boosting workers' access to workplace information, ensuring that workers could act on their legal rights, and fostering vibrant workplace discussions. Where unions have fallen short on these benchmarks, it was often due to the constraints of existing labor law. Just as importantly, workers want more union representation: Polling suggests that nearly half of all nonunion workers in 2017 said they would vote for a union at their job if they had the opportunity to do so (Kochan et al. 2019; see also Hertel-Fernandez et al. 2019).

Given the importance of unions—and workers' unmet demand for more representation—how might policymakers help rebuild the labor movement? Other Roosevelt publications spell out many relevant reforms in more detail (especially Andrias and Rogers 2018; Barenberg 2015), as does the Clean Slate for Worker Power report issued by the Harvard Labor and Worklife Program (Block and Sachs 2020; see also Madland 2016; Walter and Madland 2019). Broadly, policymakers ought to focus on the following changes:

- **Grant workers greater access to formal representation and voice:** The federal government should make it easier for workers to form and join traditional unions. This means expediting union elections; giving union organizers greater rights to communicate with workers, access the workplace, and share information about unions; and, above all, ensuring that employers have strong incentives not to violate existing worker protections. It also means strengthening unions' rights to collective action, such as striking, boycotting, and picketing businesses.

More ambitiously, Congress might consider requiring regular union elections across all workplaces. Polling I have conducted indicates that only about 1 in 10 nonunion workers say they would know how to form a union at their job if they wanted to. Automatic, regularly scheduled union elections would thus go far in granting workers the functional right to form a union, regardless of whether there are union organizers at a worksite or if union leaders deem a workplace a strategic target. Such a reform would also be popular: Over 50 percent of Americans in the November 2019 Data for Progress poll described above said they would strongly or somewhat support regularly scheduled workplace elections. In a similar vein, Congress could mandate that all employers permit some minimal level of worker representation and voice—perhaps through joint management-worker committees—that could turn into, or complement, full-blown unions with collective bargaining rights if workers expressed sufficient interest.

- **Broaden access to collective bargaining rights:** Policymakers ought to close the National Labor Relations Act's exclusionary loopholes, specifically those that shut out many workers—disproportionately racial and ethnic minorities—from the benefits of bargaining. All domestic, agricultural, and public-sector employees should have the right to bargain with their employers, as should workers who are low-level supervisors or managers.



The federal government should also ensure that employers cannot simply turn workers into independent contractors or shed their legal employment relationship to avoid unionization drives. Independent contractors, self-employed individuals, and subcontracted employees working for businesses that exercise substantial control over working conditions and pay should be permitted to organize and bargain with employers, just as conventional employees can.

Similarly, labor law should permit bargaining between workers and their immediate employers, as well as with other businesses with substantial practical or financial control over working conditions—as in franchise and contracting relationships or between private equity firms and the businesses they own and over which they exert significant direction. And reformers must ensure that employers bargain in good faith with newly recognized unions, rather than dragging out negotiations to end union drives.

- **Expand the scope of collective bargaining:** On the most sweeping level, the federal government could move the National Labor Relations Act beyond its traditional, establishment-based model for organizing and bargaining by giving unions greater scope for representing workers across entire sectors or regions. While there are a number of different models that Congress might pursue, lawmakers should, at a minimum, establish ground rules for how worker and employer representatives would be defined and the rights and responsibilities of union, employer, and government representatives in bargaining and contract administration and enforcement.

At the same time, moves toward broader levels of collective bargaining ought to be accompanied by greater voice for workers at the shop-floor level. Accordingly, Congress might consider expanding the reach of unions to help address workers' grievances in their day-to-day jobs. That could mean, for instance, combining sectoral or regional bargaining with mandatory worker committees as described above. Those committees could deal with day-to-day grievances and workplace-specific contract negotiations, while sectoral or regional labor representatives negotiate broader wage and benefit floors.

Apart from proposals to build formal worker organizations, policymakers might also consider specific reforms tailored to each of the four dimensions of workplace power. Addressing the first dimension—managers' unfair or arbitrary treatment of workers—might involve the following changes to local, state, and federal workplace laws:

- **Restrict employers' abilities to arbitrarily change worker scheduling:** Fair scheduling laws require employers to provide advance notice or extra compensation to workers for changes in their work schedules, give workers the right to refuse last-minute



changes to their schedules, require rest periods between shifts, and enshrine the right to request reasonable accommodations to work schedules (say, because of childcare needs). These laws would go far in limiting arbitrary employer discretion over work time.

- **Provide a minimum floor for wages and benefits:** To the extent that local, state, or federal governments set standards for worker wages and benefits, employers can no longer arbitrarily change these aspects of workers' jobs. Increasing minimum wages, setting wage scales (for instance, through wage boards; Andrias 2019; Andrias et al. 2019; Dube 2019) and requiring paid family or sick leave and/or portable health insurance and retirement benefits would reduce managers' abilities to change these important aspects of workers' jobs.
- **Just cause for termination or discipline:** The default arrangement in American private-sector businesses is employment at-will, which gives employers the ability to discipline or fire workers for any reason not barred by local, state, or federal law. At-will employment tilts the balance of power in the workplace decidedly toward management, as workers fear being punished or losing their jobs. At-will employment also corrodes existing statutory protections for workers, like prohibitions on employers punishing or firing workers for organizing unions or reporting illegal employer behavior, since employers can claim a variety of other pretextual reasons for punishing or discharging workers. New federal or state legislation could thus require employers to show a good cause to justify discharging or disciplining workers, as exists in many union-bargained workplace agreements and in state law in Montana. Replacing the at-will employment doctrine with just-cause discipline and dismissal provisions would thus remedy the largest imbalance of power between workers and their managers. It is also very popular, with two-thirds of likely voters in an April 2020 Data for Progress poll reporting that they would support such a policy, including over 60 percent of Republicans.

The second criterion—involving workers' access to workplace information—similarly implies several policy steps:

- **Require employers to provide workplace information:** The federal government could require that employers provide information to workers about the typical compensation received by coworkers like them, as well as the pay for top managers and supervisors. Financial reform legislation passed by Congress in 2010 already requires publicly held companies to report the ratio between CEO and median worker compensation. Although organizational performance is already available for publicly traded companies in quarterly filings, the information is not necessarily easy to find or interpret for rank-and-file workers. The federal government could therefore require all companies to regularly share some reasonable amount of workplace information with



workers in an easy-to-interpret format in the same way that companies are required to share basic information about workers' rights. Employers might be required, for instance, to provide basic, easy-to-understand information about organizational performance, average pay for sets of comparable jobs, and top compensation to new hires and on a quarterly basis for existing workers.

- **Permit worker organizations to act on workplace information:** Worker organizations, including unions, also play an important role in distributing, and acting on, workplace information. As part of the reforms to labor law described above, the federal government ought to ensure that new labor organizations have access to, and can act on, information about rank-and-file worker wages, benefits, and work records, as well as top executive compensation and organizational performance (such as financial records). Companies should be required to provide such information to labor organizations, and labor organizations ought to be able to bargain over all questions of firm operations that affect workers, including those that enter the traditional “entrepreneurial core” excluded from collective bargaining under current labor law. In sectors without traditional unions, employers might be required to provide regular workplace information to government agencies (like wage or working standards boards: Andrias 2019; Andrias et al. 2019; Dube 2019) or non-profits (like worker centers or defense funds: Fine 2006) that help enforce workers' rights, especially for low-wage or otherwise disadvantaged workers.

Next, the results about workers' knowledge of their workplace rights suggest that the reach of current labor and employment rights is limited by the fact that many workers do not know what the law says, reiterating findings reported by Richard Freeman and Joel Rogers (2006) in surveys from the mid-1990s. Troublingly, more economically disadvantaged workers—those with lower family incomes and less formal education—are least likely to be aware of the scope of labor and employment law.

Although worker organizations, like unions, can play an important role in educating workers about their rights and helping them to exercise those rights, that option is not available for the vast majority of the labor force. What is more, the survey revealed that while union members were more knowledgeable about some of their rights, they were not always more knowledgeable than nonmembers. This suggests another important point for policy intervention:

- **Create worker- or government-appointed rights monitors for all workplaces:** Worker- or government-appointed monitors could ensure that all workers in a particular workplace—union or not—are aware of their rights and ensure employer compliance with the law. Such monitors could also help workers bring claims against

their employer for violations of those rights, and would be especially important for younger workers and workers who do not have access to a union (the Clean Slate for Worker Power report provides a similar recommendation: Block and Sachs 2020). Monitors might be elected or appointed among existing workers within organizations and could receive training and compensation for their service. That is similar to what many employers provide to union leaders or stewards through the use of “release time”: union-bargained paid time off for union-related service. These monitors might also serve as the basis for building workplace organizations that could later help workers make collective demands of their employers and express collective voice. Of course, for these monitors to be effective, the government must levy meaningful fines on employers that violate workplace laws in the first place. For far too long, the remedies for business violations of workplace safety, health, and labor laws have been too small to make a real difference in employer practices (e.g., McNicholas et al. 2019; Weil 2014).

Lastly, the findings about workplace discussions suggest the need to support opportunities for workers to discuss issues and problems with one another and build up to collective action, especially for those workers who currently do not feel comfortable doing so:

- **Require employers to provide coworker discussion spaces and time:** Reforms to labor and employment law should thus guarantee that workers have a physical location where they can talk about workplace issues or problems free from managerial supervision or interference (see also Andrias and Sachs Forthcoming; Hertel-Fernandez 2020). Where physical spaces are not feasible (for instance, given the nature of work in particular industries), employers might instead be required to create online spaces—such as discussion boards or email lists—that workers could use for similar purposes. Those online spaces, however, should protect workers’ rights to discuss issues and problems without managerial oversight or interference, and the relevant penalties ought to be strong enough to discourage employers from violating them. Such a proposal is very popular, receiving support from over 70 percent of likely voters in an April 2020 Data for Progress poll (including over 60 percent of Republicans). If the goal is to support workers’ discussions that might lead to collective action, labor law reform might also permit workers to invite outside labor organizers to these coworker spaces—something that is sharply restricted under current labor law but would be essential to helping workers to form more institutionalized structures, such as traditional unions (see e.g., Gorman and Finkin 2013, chapter 8).

Taken together, the survey results described in this report underscore the fundamental imbalance in power, information and knowledge between workers and their employers in many American workplaces. But these imbalances are not a foregone conclusion. As the policy reform discussion has indicated, the balance of power between workers and



managers is deeply shaped by the presence (or absence) of public policy and workplace organizations, such as labor unions. Reforms to expand worker voice and power thus ought to be central to a broader progressive agenda to give Americans more representation in politics and the economy. They should also be part of any effort at the federal or state levels to address the COVID-19 outbreak and its economic turmoil. When the US turned to private-sector businesses for production and mobilization in World War II, the Roosevelt administration required that companies provide minimum standards of worker voice and representation (Lichtenstein 2010). Today, policymakers should ask the same of businesses involved in the government's public health and economic response.



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