

# Testimony for New York City Council Committee on Civil Service and Labor

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*EPI's Marni von Wilpert delivered the following testimony before the New York City Council Committee on Civil Service and Labor on Wednesday, April 19, 2017 at 10:00 a.m.*

## Introduction

Good morning Chairman Miller and members of the Committee.

My name is Marni von Wilpert. I serve as an Associate Labor Counsel at the Economic Policy Institute. EPI is a think tank that studies the economy and how government policies affect the lives and well-being of America's workers. EPI believes that every working person deserves a good, safe job with fair pay, affordable health care, and retirement security.

At EPI, we are tracking the labor and employment policies coming out of the White House, Congress, and federal agencies. We are committed to monitoring policy actions as they unfold and assessing their impact to reveal whether policymakers are working for – or undermining – a fair economy.

I am here today to support the City Council Resolution affirming New York City's workers' rights to collectively bargain, and the Resolution urging Congress to vote against proposed national right to work legislation.

Strong unions and collective-bargaining rights foster a vibrant middle class. For example, collective-bargaining helps working women gain economic self-sufficiency and **narrows the gender wage gap**. And collective-bargaining is an important tool for fueling wage growth for both low- and middle-wage workers. The decline in collective bargaining rights has contributed to an era of persistent wage stagnation in our country.

## Attack on Private-Sector Collective Bargaining: National Right to Work

### SECTIONS

1. Introduction • 1
2. Attack on Private-Sector Collective Bargaining: National Right to Work Legislation • 1
3. Attack on Public Sector Collective-Bargaining • 2
4. Trump's and Congress' Actions on Labor • 3
5. Conclusion • 4

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Endnotes • 5

# Legislation

Republicans in the House and Senate have introduced so-called “National Right to Work” legislation. [H.R. 785 Rep. King (R-IA) / S. 545 Sen. Paul (R-KY)]. These bills would reverse the gains unionization has brought to workers by undermining unions’ collective-bargaining strength.

The so-called “right-to-work” (RTW) laws are misleadingly named. They do not produce any guarantee of employment for people ready and willing to work. Instead, what these laws do is eliminate the requirement that employees who chose not to become union members still pay a fee for their fair-share of the union’s collective-bargaining costs. RTW creates a clear incentive for workers to be free-riders – by getting the benefits of collective-bargaining without having to pay for it. For example, RTW laws entitle employees to the benefits of a union contract—including the right to have the union take up their grievances if their employer abuses them—without paying their fair share of the cost. It is a blatant strategy to starve unions.

RTW laws do not protect employee rights. Instead, they take away the right of employees to democratically decide by majority vote how to fund their collective efforts to improve wages and working conditions. Under already-existing federal law, no one can be forced to join a union as a condition of employment, and the Supreme Court has made clear that workers cannot be forced to pay any portion of union dues used for political activities. All this law does is weaken unions by encouraging free-riders, which in turn, lowers wages and benefits of both union and non-union workers alike. For example, wages in RTW states are consistently lower than those in non-RTW states.<sup>1</sup> National RTW legislation would lower wages for New York City’s workers in the private sector, and it should be opposed.

## Attack on Public Sector Collective-Bargaining

In the public sector, there is a similar attack on collective-bargaining playing out in the courts. In 2016, Public-sector workers had a union membership rate (34.4 percent), more than five times higher than that of private-sector workers (6.4 percent). In 2016, 7.1 million employees in the public sector belonged to a union. And New York continues to have the highest union membership rate (23.6 percent) in the country.<sup>2</sup>

In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the Supreme Court upheld the use of fair-share fees in public-sector unions against a challenge based on the First Amendment. The Court held that public-sector employees who are hired in unionized agencies do not need to become members of the union, but they must pay their fair-share of dues to cover the union’s collective-bargaining costs, since they benefit from the collective-bargaining agreement with the employer. But the fair-share fees can only be great enough to cover the cost of the union’s activities in administering the collective-

bargaining agreement. Non-union members may opt-out of paying any portion of fees that go to the union's political activities.

In 2016, the Supreme Court heard oral argument in *Friedrichs v. California Teachers Association*, 136 S.Ct. 1083 (2016), which, among other things, addressed whether *Abood* should be overruled and public-sector fair-share fee arrangements invalidated under the First Amendment. On March 29, 2016, the Supreme Court affirmed *Abood* by an equally divided, 4-4 split.

Organizations including the National Right to Work Foundation have continued litigating challenges to public-sector unions' fair-share fee requirements. One of those cases, *Janus v. AFSCME*, (7th Cir.) (Docket No. 16-3638), may be heard in the Supreme Court's upcoming fall term. A Supreme Court decision that undermines public-sector unions' collective-bargaining strength would be detrimental to workers, as well as to state and local governments. In public-sector right-to-work states, public employees earn lower wages and compensation than comparable private sector employees.<sup>3</sup> Those lower wages may impede local governments' ability to recruit and retain highly skilled employees to serve in government.

This attack on collective bargaining in both the private and public sectors would particularly harm high-road states like New York – which continues to have the **highest union membership** rate in the nation – and municipalities like New York City, that strive to create an economy that works for everyone.

## Trump's and Congress' Actions on Labor

President Trump and congressional Republicans are advancing an agenda that favors corporate interests ahead of workers' well-being and wages. For example, Congress and the President have used a legislative tool called the Congressional Review Act to nullify Obama-era regulations that were put in place to protect workers' basic rights to a safe workplace and a fair day's pay.

On March 27, President Trump signed a Congressional Review Act resolution to nullify the **Fair Pay and Safe Workplaces rule**. (H.J. Res. 37/S.J. Res. 12). That rule required federal contractors to disclose their violations of labor and employment protections, including protections for wage and hour requirements, safety and health, collective bargaining, family medical leave, and civil rights protections, and directed that such violations be considered when awarding federal contracts. In addition, the rule mandated that contractors provide each worker with written notice of basic information including wages, hours worked, overtime hours, and whether the worker is an independent contractor or employee. Finally, the rule prohibited contractors from requiring workers to sign pre-dispute arbitration agreements for discrimination, harassment, or sexual assault claims.

Currently, there is no effective system to ensure that taxpayer dollars are not awarded to

contractors who violate basic labor and employment protections. As a result, the federal government awards billions of dollars in contracts to companies that break the law. This rule would have helped ensure that federal contracts (and taxpayer dollars) are not awarded to companies with track records of labor and employment law violations.

On April 3, President Trump signed a Congressional Review Act resolution to nullify an OSHA recordkeeping rule regarding OSHA's ability to enforce an employer's statutory duty to maintain accurate workplace injury and illness records. (H.J. Res. 83 / S.J. Res. 27). Failure to keep injury records means that employers, OSHA, and workers cannot learn from past mistakes, and makes it harder to prevent the same tragedies from happening to others in the future. As [the New York Committee for Occupational Safety and Health found](#), construction deaths have been on the rise in New York City as the number of OSHA inspections has gone down. Furthermore, the federal effort to undermine unions will hurt worker safety in New York City, since [evidence from OSHA and the New York Committee for Occupational Safety and Health shows](#) that unionized construction sites are far safer than non-unionized sites.

And on April 6, the Department of Labor [announced](#) a 3-month delay in the final rule on Occupational Exposure to Crystalline Silica in the construction industry, which established a new permissible exposure limit for construction workers. Studies have linked exposure to silica to lung cancer, silicosis, chronic obstructive pulmonary disease, and kidney disease. About 2.3 million workers are exposed to respirable crystalline silica in their workplaces, including 2 million construction workers who drill, cut, crush, or grind silica-containing materials such as concrete and stone. OSHA estimates that the rule will [save over 600 lives and prevent more than 900 new cases of silicosis each year](#). Delaying this health and safety rule needlessly puts construction workers' lives at risk, and is unfair to responsible employers who do not cut corners with their workers' health and safety.

## Conclusion

Perhaps the most worrying aspect of Trump's attack on workers' rights is how much of it is happening in the dark, behind closed doors.

Trump says publicly that he wants to create jobs by rebuilding America's infrastructure – but then quietly signed legislation eviscerating the Fair Pay/Safe Workplace and OSHA recordkeeping regulations, which would have protected workers' pay, health and safety on the very jobs Trump promised to create.

Trump [says publicly](#) that construction workers are the backbone of America – but then quietly authorizes the Department of Labor to delay enforcement of the Silica rule, a rule that would protect over 2 million of those same workers from lung cancer-causing silica dust.

Trump [says publicly](#) that he is fighting for workers who have been left behind, but then quietly installs senior staff in the Department of Labor who have lobbied for years to bring down Davis-Bacon prevailing wage laws, which if repealed, would suppress those

workers' already-stagnated wages.

At EPI, we are committed to paying close attention not just to what Trump says, but also shining a spotlight on what he does. Despite his campaign promises to help working people, President Trump's actual agenda advances policies that would do little to reverse the stagnant wage growth and rising inequality that have left so many behind.

By delaying and overturning rules that benefit workers, and advancing wage-reducing right-to-work legislation, the Trump administration and congressional Republicans' actions have shown that they do not value the lives and well-being of working people.

## Endnotes

1. Elise Gould and Will Kimball, *"Right-to-Work" States Still Have Lower Wages* (2015), available at, <http://www.epi.org/publication/right-to-work-states-have-lower-wages/>
2. Bureau of Labor Statistics, Union Members Survey (January 26, 2017), available at, <https://www.bls.gov/news.release/union2.nr0.htm>
3. See generally, Jeffrey Keefe, *Eliminating fair share fees and making public employment "right-to-work" would increase the pay penalty for working in state and local government* (2015), available at, <http://www.epi.org/publication/eliminating-fair-share-fees-and-making-public-employment-right-to-work-would-increase-the-pay-penalty-for-working-in-state-and-local-government/>