

President Biden's first 18 months

Assessing the Biden administration's record for workers

Report • By Margaret Poydock, Ihna Mangundayao, Adewale A. Maye, Celine McNicholas, and Andrea Sanchez-Tercero • August 25, 2022

When President Biden took office on January 20, 2021, the country had been battling the COVID-19 pandemic for 10 straight months.

Workers were facing health risks in the workplace unprecedented before March 2020. Many essential workers were becoming sick with COVID on the job.¹ On the economic side, millions had lost their jobs.² Millions more were forced to quit their jobs to care for children who were home from school or day care or to protect their health or the health of vulnerable family members.

Of the 22 million jobs lost during the pandemic recession, not even 60% had been restored by January 2021: Economywide employment was still 9.5 million jobs below the pre-pandemic peak. Worse, progress toward a jobs recovery had been faltering in recent months. Between August and November 2020, the number of new jobs created declined steadily each month. In December 2020, the economy *lost* a significant number of jobs.

In short, recovery had not just stalled, it had begun reversing. Further, workers were contending with a long-broken system of labor and employment laws made significantly worse by the Trump administration's concerted and unrelenting attack on working people.

President Biden promised to address this situation and to be the most pro-union president in American history. How has he done so far? With midterms approaching, we review the Biden administration's record of pro-worker actions over the last 18 months.

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Advancing equity, diversity, and inclusion in the workforce

Advanced equity and racial justice through the federal government

On January 20, 2021, President Biden issued an executive order (EO) titled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”³ The EO directed federal agencies and departments to identify and redress inequities in their programs that serve as barriers to equal opportunity.

Specifically, it directed the head of each agency—in consultation with the Director of the Office of Management and Budget—to conduct an equity assessment for their agency. Each agency’s findings were to be presented in a report within 200 days of the date of the order, along with plans for allocating federal resources to advance fairness and opportunity. The executive order allowed many agencies to make progress in building equity and racial justice into federal programs.

For example, within the first year after the order was issued, the Treasury Department appointed a director of racial equity, awarded \$738 million to minority-owned businesses (without regard to size), and elevated the role of community-based financial institutions through the Freedman’s Bank Forum.⁴

The Department of Housing and Urban Development appointed a senior advisor for racial equity, pledged to administer and enforce the Fair Housing Act to prohibit discrimination based on sexual orientation and gender identity, and initiated the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) to address barriers to equitable home appraisals faced by families of color and other underserved communities.⁵

In total, over 90 government agencies mobilized in response to the executive order and advanced strategic action plans to expand equity.⁶

Empowered workers who have been discriminated against by reversing the Trump EEOC’s conciliation rule

On June 24, 2021, President Biden signed a resolution protecting the existing process for workers who have filed a discrimination case with the Equal Employment Opportunity Commission (EEOC).⁷ The resolution rescinded a Trump-era EEOC regulation that rigidly defined the required steps of the “conciliation” process.

The conciliation process occurs once the EEOC determines “there is reasonable cause to believe discrimination has occurred” and is an opportunity for all parties to agree to a

solution without a lawsuit.⁸ Historically, the EEOC has had flexibility in how it approached the conciliation process according to the specifics of the case, including the option of preserving the anonymity of complainants and redacting sensitive information.

The rigid requirements imposed on the EEOC by the Trump regulation would have encouraged employers to focus on whether the regulation’s terms were met by the EEOC—in an attempt to avoid litigation on a technicality—rather than on responding to the allegations of bias. This would undermine the power of the EEOC in its investigative obligations. Employees would also be deterred from reporting discrimination given the obstacles to obtaining justice. In addition, because the rule would have required the EEOC to provide each employer with sensitive information about the complainant and the case during conciliation, workers seeking justice could find themselves in an even more vulnerable position with respect to their employers.

Expanded equity, diversity, and inclusion training in the federal workforce, reversing a Trump ban on EDI training

President Biden directed federal agencies to expand the availability of equity, diversity, and inclusion (EDI) training for their workforce. EDI training supports employees in building the skills to promote respectful and inclusive workplaces with increased understanding of implicit and unconscious bias.⁹ The directive was part of President Biden’s executive order “Advancing Diversity, Equity, Inclusion, and Accessibility in the Federal Government.” Biden’s EO simultaneously revokes the misleadingly named executive order “Combating Race and Sex Stereotyping” issued by former President Trump. The Trump EO had prohibited federal contractors and subcontractors from providing certain workplace diversity training and programs.¹⁰

Has proposed to restore the original religious exemption rule for hiring, rescinding a problematic rule that left the door open for discrimination

Under the Biden Department of Labor (DOL), the Office of Federal Contract Compliance Programs (OFCCP) has proposed to rescind a problematic Trump administration rule that left the door open for discrimination in hiring.

The Trump rule was a revision of a long-standing rule that permits qualifying federal contractors that are religious organizations to hire individuals who share their religious beliefs.¹¹ The Trump rule vastly expanded who can use the religious exemption, even “permit[ting] a contractor whose purpose and/or character is not primarily religious to qualify for” the exemption.¹² And, in an unprecedented move, the rule even allowed for-profit corporations to use the religious exemption. The revised rule left the door open for

employers to misuse the religious exemption to discriminate in hiring.¹³

The OFCCP proposal under the Biden DOL would restore the religious exemption to its original goal and intent, preserving religious freedom while protecting workers from discrimination.

Allowing agencies to govern effectively

Revoked Trump-era anti-regulation executive orders

One of President Biden's first actions after taking office was issuing executive orders that revoked several anti-regulation actions taken by the Trump administration.¹⁴ Regulations are often misunderstood by the general public to be simply burdensome rules that interfere with "getting things done." Those who push an anti-regulatory agenda have a vested interest in propagating that myth. In fact, regulations instruct *how* to do something—they include requirements to put a law into action.

Not only does regulation help make the economy fairer, the lack of regulation and the associated consequences can be disastrous. As EPI's Heidi Shierholz and Celine McNicholas point out, "the lack of sensible regulations can lead to economic catastrophe and the loss of millions of jobs," as happened in the financial crisis of 2008–2009.¹⁵

Appointing pro-worker leaders

Nominations to key administrative and judicial posts are an important indicator of a new president's priorities. In contrast to President Trump's pro-corporate, anti-worker appointments, President Biden has nominated a slate of individuals that have put forward policies advancing workers' rights.

Appointed a union member to head the Department of Labor

In March 2021, **Marty Walsh** was confirmed as the Secretary of Labor, marking the first time in decades a union member has held the position.¹⁶ As the former mayor of Boston, Marty Walsh helped enact policies that support working people, including a \$15 an hour minimum wage and paid sick leave.¹⁷

In July 2021, **Julie Su** was confirmed as Deputy Secretary of Labor.¹⁸ As the former secretary of the California Labor and Workforce Development Agency, Su oversaw the agency that coordinates California's workforce programs and enforces state labor laws.¹⁹

With Secretary Walsh and Deputy Secretary Su at the helm, the Department of Labor has

worked toward reversing the harmful actions put forward by the Trump administration while also promulgating new rules that set higher standards for workers. (These actions are described in more detail throughout this report.)

Appointed lawyers with extensive union experience to the National Labor Relations Board

In July 2021, **Gwynne Wilcox** and **David Prouty** were confirmed as Board Members of the National Labor Relations Board (NLRB, the Board). **Jennifer Abruzzo** was confirmed as the agency’s General Counsel.²⁰ Ms. Wilcox and Mr. Prouty spent much of their careers representing unions and individual employees.²¹ Prior to being confirmed General Counsel, Ms. Abruzzo spent over two decades at the NLRB in various capacities, giving her unparalleled knowledge of the agency’s functions.²²

These appointments stand in stark contrast to President Trump’s management- and corporate-sided lawyer nominations.²³ Under the Biden administration, the Board and General Counsel Abruzzo have worked toward restoring the agency to its original purpose of promoting and encouraging the practice of collective bargaining—undoing damage done under the Trump administration.²⁴ (For specifics, see the section “Protecting the right to organize” in this report.)

Nominated a Supreme Court justice with a history of protecting workers’ rights

In April 2022, **Ketanji Brown Jackson** was confirmed as an associate justice on the U.S. Supreme Court, marking the first time a Black woman has been named a Supreme Court justice. Justice Brown Jackson has a history of making decisions supporting workers’ rights and collective bargaining, including invalidating a string of executive orders issued by President Trump that limited federal employees’ right to bargain collectively.²⁵

Demonstrated a commitment to racial economic justice with key Fed nominations

In May 2022, **Dr. Lisa D. Cook** and **Dr. Philip Jefferson** were confirmed to serve as members of the Federal Reserve Board of Governors.²⁶ Dr. Cook’s appointment marks the first time a Black woman has sat on the Board in its 108-year history. Further, Dr. Cook and Dr. Jefferson’s appointments mark the first time two Black governors will serve simultaneously. As EPI’s Adewale Maye writes, these appointments acknowledge the critical importance of Black economists and their work in achieving racial economic justice and promoting policies that ensure broadly shared prosperity and opportunity for all workers.²⁷

Bringing jobs and profits home

Issued an order increasing federal purchases of American-made content

On January 25, 2021, President Biden signed EO 14005, implementing a government program to direct the use of taxpayer dollars to U.S. manufacturing.²⁸ This executive order bolsters the American manufacturing industry, increasing domestic competitiveness and rebalancing U.S. trade.²⁹ Increased investments in American-made goods boosts domestic supply and creates new jobs and opportunities for American workers, especially targeting the middle class.³⁰ The Made in America Executive Order also strengthens domestic supply chains, ensuring access to critical products during times of crisis.

Supported Special Drawing Rights' issuance by the International Monetary Fund, boosting U.S. exports

In August 2021, the Biden administration voted to authorize an issuance of \$650 billion in special drawing rights (SDRs) by the International Monetary Fund. SDRs are a reserve currency the IMF issues to low- and middle-income countries. By releasing more SDRs, the IMF helped economies that had been battered by the COVID-19 economic shock to access currencies they needed to finance crucial imports. For the U.S., the SDRs represented no economic obligation, but they did boost U.S. exports by supporting the economies of low- and middle-income trading partners.³¹ The Trump administration had previously blocked an SDR issuance earlier in the COVID-19 pandemic, depriving low- and middle-income countries of needed resources and suppressing U.S. exports.

Led multinational effort to institute a global minimum corporate tax rate

For decades, flawed features of the U.S. corporate tax code provided incentives for U.S. multinational corporations to use other countries as tax havens—through creative accounting—in order to evade their fair share of taxes in the U.S. The Tax Cuts and Jobs Act (TCJA), signed into law by former President Trump, provided further incentives to move production facilities and jobs—not just accounting profits—offshore.³²

Under the Biden administration, the Treasury Department has led a multinational effort to institute a global minimum tax on offshore earnings of multinational companies.³³

Currently, over 130 countries have agreed to the framework. If instituted, it would sharply curtail the ability of companies to use abusive tax havens, and it would pare back the tax advantages of moving jobs and production offshore.

Investing in critical infrastructure and services while creating and supporting good jobs

Enacted historic investments in our nation's infrastructure

In November 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA), which invests \$1.2 trillion into our nation's infrastructure. The IIJA expands investments in surface transportation, public transit and rail, water, and broadband internet infrastructure, and makes new investments in renewable energy and electric vehicles.³⁴ The law is estimated to support more than 770,000 jobs over the next 10 years.³⁵

Enacted major reform to the U.S. Postal Service

In April 2022, President Biden signed the Postal Service Reform Act into law. The Act had passed Congress with bipartisan support. This historic legislation is the first major reform to the Postal Service in more than a decade.³⁶

The Postal Service is a critical resource for Americans: Not only does it provide secure delivery of everything from mail ballots to lifesaving medications, but it also provide good middle class jobs.³⁷ The Postal Service Reform Act will move the Postal Service toward greater financial stability by undoing the burdensome pre-funding mandate for retiree health benefits and enacting Medicare integration to maximize postal service employees' participation in the program.³⁸ It further enshrines into law six-day mail delivery—which has long been under threat³⁹—and institutes strong reporting and transparency guidelines.⁴⁰

Enacted historic investments to fight climate change and reduce health care costs

In August 2022, President Biden signed the \$750 billion Inflation Reduction Act, a comprehensive bill that will reduce energy, health care, and prescription drug costs for American families.⁴¹ The historic legislation invests \$370 billion over the next 10 years for clean energy and climate programs, representing the United States's single biggest step to date in tackling the climate crisis.⁴² The legislation also helps reduce health care costs for Americans by allowing Medicare to negotiate lower prices with pharmaceutical companies as well as reducing Medicare out-of-pocket costs for drugs.⁴³

Protecting the rights of immigrant workers

Ended mass immigration raids at worksites

The Biden administration took a sharp turn away from the harmful policy of worksite raids—which had been in full force during the Trump administration—with Policy Statement 065-06, issued in October 2021, titled “Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual.”⁴⁴

The Trump administration had pushed a bigoted and xenophobic narrative that pitted immigrants against native-born U.S. workers under the false premise that the economy is a zero-sum game with a fixed number of jobs. That led to foolish and cruel policies under the previous administration—perhaps none worse than worksite raids carried out by Immigration and Customs Enforcement, where hundreds of low-wage workers were rounded up, harming communities and businesses and separating families.⁴⁵

Such raids do not improve conditions for workers but serve only to increase the immense power that employers already have over workers—power that they use to keep workers from complaining in the face of workplace violations and to discourage them from joining and forming unions.⁴⁶ Immigrant raids punish workers, while employers rarely suffer any consequences at all for breaking the law—when they do, it usually amounts to no more than a slap on the wrist.⁴⁷

In addition to ending the practice of mass worksite raids, the Biden administration memo commits the Department of Homeland Security (DHS) to focus on adopting policies and practices that penalize employers for breaking the law, encourage immigrant workers to come forward and report violations, and improve cooperation with labor standards enforcement agencies.

Issued updated guidance and policies that help protect the labor rights of immigrant workers

In November 2021, National Labor Relations Board General Counsel Jennifer Abruzzo took an important step toward protecting immigrants involved in labor disputes with their employers when she released a detailed memo titled “Ensuring Rights and Remedies for Immigrant Workers Under the NLRA [National Labor Relations Act].” The memo outlines policies and instructions to NLRB field offices on how to handle cases that involve workers who may have issues arise regarding their immigration status or work authorization when exercising their NLRA-protected right to take collective action.⁴⁸ This was followed up with a one-page fact sheet in May 2022 to help witnesses in these cases understand their

rights with respect to immigration status and the NLRA and NLRB investigations.⁴⁹

It is important to remember that immigrant workers—even those who lack an immigration status or who have only a temporary status—are protected by U.S. labor and employment laws and the NLRA.⁵⁰ The NLRB’s guidance clearly delineates a range of actions the agency can take to protect immigrant workers, such as seeking immigration status protections, seeking injunctive relief, and cooperating with other federal agencies.

Provided guidance on how immigrant workers in labor disputes can request support for immigration status protection from the Department for Homeland Security

While the NLRB’s actions discussed in the previous section are geared toward protecting workers’ freedom of association, the Department of Labor took an important step with great potential to protect immigrant workers in other types of workplace disputes.

In July 2022, DOL issued guidance in the form of a four-page Frequently Asked Questions document aimed at immigrant workers who have come forward to report labor and workplace abuses to DOL or are considering doing so. The FAQ informs these workers how to seek DOL’s support when requesting immigration status protections from the Department of Homeland Security, which has final say on issues of status and deportation.⁵¹

Specifically, the guidance helps immigrant workers involved in labor disputes understand how to request a “Statement of DOL Interest.” This statement expresses DOL’s formal support for a worker and requests that DHS use prosecutorial discretion to provide the worker with one of the possible forms of postponement of deportation, such as deferred action or parole.

Allowing workers to remain in the United States through deferred action or parole would allow both undocumented workers (who lack an immigration status) and migrants with nonimmigrant work visas (whose status is tied to their employer) to proceed in their labor disputes without fear of retaliation based on their immigration status. In addition, deferred action and parole may include the issuance of an employment authorization document from the Department of Homeland Security. Granting work authorization would allow workers to lawfully seek employment elsewhere so they could support themselves and their families.⁵²

Given the large backlogs and lengthy processing times for U and T visas for victims of crime and trafficking, which usually take years before they are issued,⁵³ prosecutorial discretion from DHS has the potential to benefit workers by being granted much faster. It could also benefit more workers in labor disputes who may not meet the narrow requirements for those visas.

For this process to ultimately be a success, DHS also needs to issue complementary

guidance and formalize the process for immigrant workers in labor disputes who wish to request immigration status protections, something that immigrant and worker advocates have called for.⁵⁴

Protecting the right to organize

Withdrew a Trump rule that would have curtailed efforts to combat federal workplace discrimination

As part of a January 2021 regulatory rulemaking freeze, President Biden withdrew a Trump EEOC rule that would have curtailed efforts to combat workplace discrimination.⁵⁵ The rule had prohibited union representatives from using official time to represent co-workers in equal employment opportunity matters. This effectively limited the right of federal workers to choose their representative in the EEOC complaint process. Further, the rule created enormous cost burdens for federal workers who want to file a workplace discrimination complaint. This had serious implications for Black workers, who are disproportionately represented in federal employment covered by a union contract.⁵⁶

Revoked a series of Trump executive orders that undermined federal workers' right to form unions and collectively bargain

Within his first week in office, President Biden released the “Executive Order on Protecting the Federal Workforce.”⁵⁷ This EO reversed several Trump-era rules and guidelines that undermined protections for federal employees and their right to collective bargaining.

One of the Trump EOs was a transparent attempt to politicize career positions in the federal government.⁵⁸ It would have effectively undermined protections from unfair firings or firings without cause. Affected employees would have been removed from their bargaining units and barred from future representation by a union.

Another of the Trump EOs undermined the collective bargaining process in the name of “developing efficient, effective, and cost-reducing approaches to federal sector collective bargaining.” This effectively led to less favorable contracts for workers. Another EO weakened due process protections for federal workers subject to discipline.

Finally, Trump EO 13837 significantly reduced the amount of “official time” an employee could use to perform their duties as a labor representative. This undermined unions’ abilities to negotiate fair contracts, address claims of unfair labor practices by employers, and enforce due process in disciplinary actions.

Championed the Protecting Right to Organize Act

President Biden has been a vocal supporter of unions and the right to organize.⁵⁹ The day before the House of Representatives passed the Protecting Right to Organize (PRO) Act, the Biden administration issued a Statement of Administration Policy⁶⁰ in support of the bill.⁶¹

The House passage of the PRO Act on March 9, 2021, marks a critical step toward restoring workers' right to organize with their co-workers and bargain collectively for better pay, benefits, and fairness on the job.⁶² This fundamental right has been eroded for decades as employers exploit weaknesses in the current law and lobby the government to weaken current protections. The result has been stagnant wage growth, unsafe workplaces, and rising inequality.

The Senate has not yet acted on this crucial bill.

Established a task force to encourage worker organizing and collective bargaining

In April 2021, President Biden issued an executive order establishing the White House Task Force on Worker Organizing and Empowerment.⁶³ The task force is chaired by Vice President Kamala Harris and vice-chaired by Labor Secretary Marty Walsh.⁶⁴ In February 2022, the task force released a report with policy recommendations ranging from increasing workers' awareness of their rights on the job to strengthening enforcement of current U.S. labor laws.⁶⁵

Reinstated and recovered back pay for workers who were illegally fired for union activity

Notably, the decades-long chronic under-resourcing of the National Labor Relations Board has created challenges to its enforcement capacity. This has been particularly true amid the recent surge of interest in forming unions—and in the face of employers' anti-union activity. Despite limited resources, NLRB staff have worked to improve performance and deliver results.

In FY2021, the Board recovered at least \$56 million—44% more than in the previous year—on behalf of workers whose rights were violated. Additionally, the Board worked to increase the number of workers who were reinstated in their jobs after being unfairly fired. They succeeded in increasing reinstatement offers from employers by 545%. The NLRB also worked to address backlogs and delays in the system, reducing the median age of pending cases by 15%. These significant improvements are emblematic of the Board's recommitment to protecting the rights and well-being of workers.

Advocated for a more stringent test to protect workers against misclassification and thereby protect their right to organize

NLRB General Counsel (GC) Abruzzo recognized that misclassification robs employees of their rights under the National Labor Relations Act, the law that provides most private-sector workers the right to unionize and collectively bargain. Independent contractors—or workers who have been misclassified as such—are not covered or protected by the Act.⁶⁶

Misclassification is a rampant issue, with the U.S. Department of Labor estimating that as many as 30% of firms misclassify workers as independent contractors. In a February 2022 brief, the General Counsel called for a broader test that would provide “for the greatest possible protections for workers.” This could have significant implications in expanding the rights of countless workers who have been misclassified.

Called for college athletes to be protected under the National Labor Relations Act

NLRB General Counsel Abruzzo provided guidance to NLRB regional field offices to treat athletes at private academic institutions as employees. This guidance grants college athletes protections under the NLRA,⁶⁷ which would allow them to collectively bargain and have input into their workplace conditions.

The GC indicated that she intends to prosecute as violating the NLRA those who misclassify “such employees as mere ‘student-athletes’” and misrepresent the protections to which they are entitled. Proper classification of student employees could have a monumental impact in the lucrative industry of college athletics, which has historically exploited its athletes.

Sought to ban anti-union ‘captive audience meetings’

NLRB General Counsel Abruzzo is seeking to ban captive audience meetings, wherein employees are required, in a group setting, to listen to the employer’s anti-union views or else face termination or other discipline.

Captive audience meetings are among the most frequently used tactics to thwart unionization efforts,⁶⁸ with employers spending large sums hiring “anti-union consultants” to host these meetings.⁶⁹ Ending captive audience meetings would free workers of severe intimidation tactics that inhibit their ability to make decisions regarding unionization of their own accord.

Urged reinstatement of the *Joy Silk* doctrine, which would help workers form a union without undue employer interference

In April 2022, NLRB General Counsel Abruzzo issued a brief urging the Board to reinstate the *Joy Silk* doctrine.⁷⁰ The *Joy Silk* doctrine is a legal precedent, followed by the National Labor Relations Board from 1949 until the 1970s,⁷¹ that allowed unions to gain recognition via card check rather than going through an election process. That is, the union could be recognized by the NLRB if they got a majority of workers in the proposed bargaining unit to sign cards saying they support the union. An employer who wanted the workers to go through the election process would have to demonstrate “good-faith doubt” that there is majority support for a union (and the NLRB would have to find the employer’s claim to be true).

Urged monetary consequences for employers who engage in bargaining delay tactics and unfair labor practices

In June 2022, NLRB General Counsel Abruzzo filed a motion urging the Board to require that employers make employees whole with monetary relief for the potential increased benefits and pay that workers lose out on when these employers stall or impede the collective bargaining process.⁷² As it stands, employers can delay bargaining for years on end and face only limited monetary consequences, thereby limiting the incentives to bargain in a timely manner and in good faith.

In a separate brief, the General Counsel also urged the board to include consequential damages when assessing remedies in unfair labor practices.⁷³ The GC urged the board to go beyond back pay and reinstatement relief and to consider reimbursement for associated emotional distress, foreseeable costs related to job loss or demotion, and expenses related to health, housing, transportation, child care, and immigration. Broadening the scope of remedies would further deter employers’ unlawful conduct and help to make workers whole.

Urged overturning the Trump-era *Boeing* test that made it easier for employers to restrict workers’ NLRA rights

In March 2022, NLRB General Counsel Abruzzo filed a brief urging the Board to overturn the Trump-era *Boeing* test. The *Boeing* test had replaced the “reasonably construe” standard for analyzing whether workplace rules unduly infringe on workers’ rights under the National Labor Relations Act.⁷⁴

“Reasonably construe” is a stronger standard for protecting workers’ rights. Under this standard, the National Labor Relations Board would strike down a workplace rule when “a reasonable employee could conclude that the workplace rule in question prohibits or ‘chills’ the exercise of rights.” For example, an employer’s “no loitering” rule would be deemed unlawful if it prevented workers from remaining at their workplace after working hours to engage in protected concerted activity.

The *Boeing* test dictates that the Board consider (1) the nature and extent of the potential impact on NLRA rights, and (2) the employer’s legitimate justifications associated with the rule. This employer-friendly test effectively gave employers more leeway to adopt rules, policies, and handbook provisions that limit workers’ freedom to exercise their NLRA rights.⁷⁵

Took action to prevent employers from gerrymandering bargaining units

In January 2022, NLRB General Counsel Abruzzo urged the National Labor Relations Board to reject the so-called *PCC Structurals* standard, which was adopted under the Trump Board.⁷⁶ Under *PCC Structurals*, the Trump Board changed the standard for what constitutes an “appropriate” bargaining unit. This gave employers greater ability to thwart workers who wish to form a union. Employers could essentially redefine who would be in the bargaining unit—packing it with workers who are less likely to vote for a union.⁷⁷

GC Abruzzo called for a return to the *Specialty Healthcare* standard, which stipulates that the bargaining unit defined by employees when petitioning to form a union at their workplace was presumptively appropriate if the employees shared a “community of interest.” Under the *Specialty Healthcare* standard, the NLRB would respect the workers’ choice unless the employer made a compelling case as to why the bargaining unit was not appropriate.

Opposed Trump-era rules regarding access for union representatives

NLRB GC Abruzzo has opposed Trump-era Board rulings (*UPMC*, *Kroger*) that allowed employers to restrict union representatives’ access to public spaces in their facilities.⁷⁸ These decisions deprived employees and unions of key opportunities to talk about workplace issues.

The Trump Board allowed employers to blatantly discriminate against union communications in particular. Employers could single out and exclude union organizers and others engaging in union communications from public spaces. Meanwhile, these employers would give the general public and other (nonunion) groups unfettered access to communicate with employees or consumers in these spaces.⁷⁹

Protecting workers' economic stability

Paused student loan debt payments

On January 20, 2021, President Biden directed the Department of Education to freeze monthly payments and interest on federal student loans through September of that year. The president then extended the freeze four more times—until January 31, 2022, then May 1, 2022, then August 31, 2022, and finally until December 31, 2022.⁸⁰ These extended breaks have given an estimated 41 million borrowers much-needed relief as they struggled to retain their economic security amid the ongoing COVID-19 pandemic and turbulent U.S. economy.⁸¹

Enacted comprehensive fiscal stimulus to boost recovery from the pandemic recession

In March 2021, President Biden signed the American Rescue Plan Act (ARPA) into law. This \$1.9 trillion relief and recovery bill helped the economy recover at a tremendous pace and aided working families through difficult times.⁸² The ARPA reflected lessons learned from the disastrously slow recovery from the Great Recession and financial crisis of 2008–2009. Following the 2008 crisis, it took 75 months for private-sector employment to regain its pre-recession peak. In contrast, this time around private-sector employment regained its pre-recession peak in just 28 months—even though the job loss from the pandemic recession was well over twice as large as that experienced during the Great Recession.⁸³

The faster recovery this time was directly driven by the ARPA. The ARPA kept families afloat by extending enhanced unemployment insurance benefits and eligibility until September 2021. It provided a \$1,400 stimulus check to most adults in the U.S. and introduced an expanded Child Tax Credit. It also increased Affordable Care Act subsidies and provided additional funding for housing and rental assistance programs, among many other things.⁸⁴ And on a community level, the ARPA provided state and local governments with essential funds to make transformative investments to support an equitable recovery.⁸⁵

Canceled student loans for over 300,000 borrowers with disabilities

In August 2021, the Department of Education announced that it would cancel \$5.8 billion worth of student loans for over 300,000 borrowers. Borrowers are eligible for loan cancellation if they have a total and permanent disability that prevents them from working.⁸⁶

Is seeking to restore the quality of employment services for job seekers

In April 2022, the Biden Department of Labor proposed a rule that would restore the quality of employment services for unemployed job seekers, which had been undermined by a Trump rule. The Biden DOL rule would require states to use state merit staff to provide employment services, including job search, job referral, and placement assistance.⁸⁷

The rulemaking is a response to a Trump rule that allowed states to privatize these services—using contractors or other personnel, instead of public employees, in the administration of the employment services program. Privatization is very likely to compromise the quality of employment services, as well as reduce the quality of jobs for those providing the services.⁸⁸

If finalized, the Biden rule would restore the long-standing state merit staffing requirement that helps ensure that job seekers receive unbiased, efficient, and equitable delivery of employment services.⁸⁹

Canceled student loans for 200,000 victims of predatory lending practices

In June 2022, the Department of Education agreed to cancel approximately \$6 billion in student loans for around 200,000 borrowers. These borrowers were victims of predatory lending practices by for-profit schools.⁹⁰ Their claims had been left in limbo under the Trump Department of Education.

Canceled \$10,000 in student debt for borrowers earning less than \$125,000

In August 2022, President Biden announced that \$10,000 in federal student loan debt would be canceled for individuals making \$125,000 or less per year. The Biden administration is providing an additional \$10,000 in student loan forgiveness for individuals who received Pell Grants during college, for a total of \$20,000 in canceled debts for those borrowers.⁹¹

Protecting workers' jobs

Reinstated the nondisplacement rule for federal contractors

In December 2021, President Biden reinstated and expanded an executive order from the

Obama administration that gives employees of federal contractors the right of first refusal for employment on a new contract when a federal service contract changes hands.⁹²

Protecting workers' health and safety

Issued guidance to mitigate COVID-19 in workplaces

On January 29, 2021, the Occupational Safety and Health Administration (OSHA) issued guidance to mitigate the impact of COVID-19 in workplaces.⁹³ The guidance specifically called for employers to provide further protections, beyond those already in place, for workers who are unvaccinated or at high risk of severe illness, and it recommended nonpunitive accommodations for workers who must isolate or quarantine due to the virus. Importantly, OSHA provided reporting guidance for workers who have been retaliated against for speaking out about COVID-related health and safety concerns in their workplace.

Acted to protect workers in health care settings from COVID-19

On June 21, 2021, OSHA adopted an Emergency Temporary Standard (ETS) defining the steps employers are required to take to protect health care workers and support staff from the hazards of COVID-19.⁹⁴ Among other things, it mandated that employers provide appropriate personal protective equipment to employees and that they cover the cost if they require employees to be tested for COVID.

Pursued a vaccine-or-test mandate to further protect workers from COVID-19 in the workplace

In early November 2021, OSHA proposed an additional ETS requiring employers to take steps to mitigate the health dangers posed by COVID-19 in the workplace.⁹⁵ The centerpiece of the ETS was a vaccine-or-test mandate for employees of firms with over 100 employees.

The vaccine-or-test mandate was seen as a key plank in an effective public health response to the continuing havoc wreaked by COVID-19. Not only would it have reduced deaths and hospitalizations, but it also would have increased economic growth—since a healthier workforce is a more productive workforce. However, OSHA officially withdrew the ETS after the Supreme Court prevented it from going into effect in January 2022.⁹⁶

Protecting workers' legal rights and enforcing labor standards

Improved job quality for workers on federal construction projects

In February 2022, President Biden signed an executive order requiring project labor agreements (PLAs) on federal construction projects over \$35 million.⁹⁷

PLAs establish fair wages and benefits for all workers on these projects. Further, PLAs help ensure worker health and safety protections while providing a unique opportunity for workforce development: These agreements can be written to engage local populations, provide jobs for underrepresented groups, and develop experience for apprentices. PLAs are also effective mechanisms for controlling construction costs and ensuring efficient completion of projects.⁹⁸

President Biden's executive order is expected to affect \$262 billion in federal construction contracting and improve job quality for nearly 200,000 workers.⁹⁹

Revoked Trump executive order that privatized apprenticeship programs

In February 2021, President Biden revoked an executive order issued by President Trump that allowed third-party private entities to develop government-funded apprenticeship programs.¹⁰⁰ By permitting third parties to set their own standards for government-funded apprenticeship programs, the Trump executive order inhibited the Department of Labor from providing proper oversight of federal apprenticeship program standards. This jeopardizes the quality of the program.¹⁰¹

Rescinded the Trump joint employer rule

In September 2021, the Biden DOL rescinded a Trump administration rule that dramatically narrowed the set of circumstances whereby a firm can be found to be a "joint employer" under the Fair Labor Standards Act (FLSA). The joint employer standard ensures that when two or more firms control the terms and conditions of employment (such as pay, schedules, and job duties),¹⁰² all of those firms are held accountable for upholding workers' rights.¹⁰³

The Trump rule enabled employers to limit and evade their liability for violations under the FLSA, making it harder for workers to hold all parties who set their terms of employment accountable. The Trump rule would have cost workers more than \$1 billion annually by increasing wage theft and by incentivizing workplace fissuring.¹⁰⁴

A judge in the U.S. District Court for the Southern District of New York struck down most of the Trump rule in September 2020, finding that “the Department’s novel interpretation for vertical joint employer liability conflicts with the FLSA and is arbitrary and capricious.”¹⁰⁵ The Biden DOL then rescinded the rule in its entirety in 2021.¹⁰⁶

Suspended rulemaking narrowing the joint employer standard in EEOC matters

The Biden administration suspended a proposed Trump EEOC rule governing the joint employer standard. The rule would have significantly narrowed the definition of joint employer in EEOC matters, making it more difficult to hold employers accountable for discrimination and harassment.¹⁰⁷ It would have limited workers’ rights under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Genetic Information Nondiscrimination Act, and the Americans with Disabilities Act.

Encouraged the Federal Trade Commission to ban noncompete agreements

On July 9, 2021, President Biden issued executive order 14036, which encourages the Federal Trade Commission to ban or limit noncompete agreements.¹⁰⁸

Noncompete agreements—which employees are often required to sign as a condition of employment—block employees from working for a competitor for a set period of time if they leave their current job. Nearly 1 in 5 U.S. workers is bound by a noncompete agreement,¹⁰⁹ and it’s not just highly paid workers with access to trade secrets who are required to sign—30% of those subject to noncompetes earn less than \$13 an hour.¹¹⁰

Noncompetes severely restrict the most important point of leverage nonunionized workers have: the fact that they can quit and work somewhere else. Regulating noncompete clauses levels the playing field for employees, restoring their ability to improve their working conditions.

Banned the use of forced arbitration in cases of sexual harassment and sexual assault at work

In February 2022, President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act into law. This bipartisan bill allows workers who experience sexual harassment or sexual assault at work to file a case in court rather than be forced into arbitration.¹¹¹ The bill allows victims to hold perpetrators and institutions accountable outside of closed-door arbitration proceedings and shine light on systemic issues of wrong-doing.

This is an important step toward dismantling a system that favors predispute binding arbitration clauses. These clauses waive an individual’s fundamental rights to seek

accountability in court when they are hurt or when their rights are violated. In 2017, 56.2% of private-sector nonunion workers were subject to forced arbitration agreements. It is projected that share will grow to 80% by 2024.¹¹²

Is working to strengthen employee status under the Fair Labor Standards Act

As of June 2022, the Biden Department of Labor is developing a proposed rule to prevent workers from being misclassified under the FLSA.¹¹³ The rule would replace a Trump DOL rule that makes it easier for employers to classify workers as independent contractors rather than as employees.¹¹⁴ While *employees* are protected under the Fair Labor Standards Act—ensuring them the right to a minimum wage and overtime, among other fundamental worker protections—independent contractors are not.

The Trump rule is estimated to cost workers more than \$3.7 billion annually.¹¹⁵ The Biden Department of Labor had sought to delay and withdraw the Trump rule in 2021. However, a district court in the Eastern District of Texas vacated the Biden DOL's attempts to delay and withdraw the rule and stated that the Trump rule was in effect as of March 2021.¹¹⁶

Raising workers' pay

Strengthened protections for tipped workers

In October 2021, the Biden DOL finalized a rule that updated regulations on the amount of time tipped workers can spend working on nontipped duties while their employer takes a tip credit.¹¹⁷ The rule reinstated and strengthened critical protections for those workers who depend on tips for a significant portion of their wages.

An employer can take a tip credit—meaning the employer can pay tipped employees less than the standard minimum wage—if the total of employee wages and tips adds up to at least the standard minimum wage. In addition, the Department of Labor has historically limited the amount of time tipped workers can spend on tasks that directly support their tipped work but for which they do not receive tips (for example, a server rolling silverware or vacuuming under tables). The “80/20 rule” dictates that tipped workers should not spend more than 20% of their total work time on such tasks. This ensures tipped workers can spend the majority of their time (at least 80%) doing activities for which they earn tips. Workers who spend more than 20% of their time on such tasks must be paid the regular minimum wage for the additional time over 20%.¹¹⁸

The Biden DOL rule revised a Trump administration rule that had sought to do away with the 80/20 rule.¹¹⁹ EPI estimated that the Trump rule would have cost tipped workers \$700 million annually.¹²⁰ (The Trump rule was finalized but did not go into effect before President Biden took office.)

The Biden DOL rule reinstated the 80/20 rule. It also further strengthened protections for tipped workers by explicitly stating that employers cannot apply the tip credit to time spent performing side duties if the time spent on those tasks exceeds 30 consecutive minutes.¹²¹

Raised the minimum wage for federal contractors to \$15 an hour

On January 30, 2022, the Biden DOL finalized a rule that implemented executive order 14026, raising the hourly minimum wage for employees on federal contracts to \$15 an hour.¹²² The rule also phases out the subminimum wage for tipped workers on federal contracts and continues to increase the federal contract minimum wage in line with inflation.

Nearly 390,000 federal contractors, about half of whom are Black or Hispanic, benefit from the rule.¹²³ In addition to increasing the incomes of federal contractors, the new minimum wage standard also helps to raise wages throughout the labor market. Higher contractor wages force other firms to raise wages in order to recruit and retain workers who now have higher-paid options elsewhere.¹²⁴

Proposed much-needed updates to regulations requiring federal contractors to pay their workers the local prevailing wage

In March 2022, the Biden DOL proposed a rulemaking that would amend regulations issued under the Davis-Bacon and Related Acts (DBRA), which requires that workers on federally funded construction projects be paid at least the local prevailing wage including fringe benefits.¹²⁵ These updates represent the first comprehensive review of the DBRA in 40 years. If finalized, the rule would modernize prevailing wage rates to ensure they are reflective of local wages.¹²⁶

Conclusion

President Biden took office faced with the enormous task of reversing the harmful anti-worker policies implemented by President Trump. Over the last two years, the Biden administration has largely halted, withdrawn, or reversed the Trump administration's pro-corporate, anti-worker agenda while simultaneously implementing policies that set higher standards for workers and their families.

However, these actions are just a start. More must be done to address the weak labor standards and extreme economic inequality U.S. workers face today. Namely, Congress must pass labor law reform and a higher federal minimum wage. The freedom to form a union, and a strong national wage floor, are foundational and are two of the most powerful tools Congress can grant workers to advance their rights. Not until these measures are in

place can we begin to make real progress toward reducing racial and gender wage gaps and addressing economic inequality overall.

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126. Ihna Mangundayao, Margaret Poydock, and Jennifer Sherer, “[EPI Comments on DOL’s Proposed Updates to the Davis-Bacon and Related Acts Regulations](#),” comments submitted to the Department of Labor, May 17, 2022.