

Workplace justice: new risks and policy solutions

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The Forced Arbitration Crisis

- ▶ As of 2017, over 60 million workers in the United States were blocked from suing their employers.
 - ▶ 55% of non-union private sector workers
 - ▶ 64% of low-wage workers.
- ▶ By 2024, more than 80 percent of private sector nonunion workers will be blocked from court by forced arbitration clauses with class- and collective-action waivers.
- ▶ Forced arbitration suppresses legal claims and hides systemic violations:
 - ▶ 98% of claims disappear into a “black hole.”
- ▶ Drastically reduces employers’ incentive to invest in compliance.
- ▶ **Burden of enforcement falls on public agencies.**

Whistleblower Enforcement

- ▶ **Workers stand in the shoes of the state to sue in court.**
 - ▶ Values: Recognition of workers' expertise.
- ▶ **Whistleblower brings a representative action, seeking penalties on behalf of state and *all affected employees*.**
 - ▶ Values: Collective action - now impossible for most low-wage workers
- ▶ **Workers can authorize trusted community organizations to participate in litigation and enforcement.**
 - ▶ Values: The most vulnerable workers can participate.

Whistleblower Enforcement

- ▶ **Employers pay up.**
 - ▶ Values: Deterrence of exploitation.
- ▶ **State can participate in litigation, and receives most of the money.**
 - ▶ Values: Partnership between workers & agency; building strong, accountable institutions.
- ▶ **A portion of state revenue funds community labor outreach & education projects.**
 - ▶ Values: Organizations rooted in our communities are the most effective in educating workers about their rights & helping them take action.

It works!

- ▶ The whistleblower model has been used in the US since 1863.
- ▶ Today is the basis for the vast majority of recoveries under the False Claims Act (FCA) (federal and state)..
- ▶ Creates a **culture of compliance** by raising the likelihood of penalties for violations of serious labor violations.
- ▶ CA's PAGA brought in \$88 million to the state in 2019 alone.
- ▶ Justice for workers with forced arbitration clauses
 - ▶ In California, state and federal courts have ruled that PAGA claims **cannot be waived in forced arbitration clauses**.
 - ▶ The claim belongs to the state, which is not a party to the contract with the arbitration clause, and hasn't waived it's claim.

Application in Seattle: Secure Scheduling

- ▶ OLS provides excellent technical assistance to employers - study shows feasibility of compliance
- ▶ Efficient resolution of complaints
- ▶ What's missing: culture of compliance
 - ▶ “Access to Hours” for part-time workers
 - ▶ 1/3 of covered workers are involuntarily part-time
 - ▶ Many employers systemically violating the law

Job security: Just cause employment

- ▶ Problem: arbitrary terminations
 - ▶ Retaliatory & discriminatory firings - hard to prove
 - ▶ Destabilizing to low-wage working families
 - ▶ Discourage workers from organizing and enforcing their rights
- ▶ Just cause requires employers to demonstrate
 - ▶ Performance problem
 - ▶ Economic reason for layoffs or reductions in hours