

# 13



## Protecting Our Rights Together

You may have certain rights and opportunities to organize, join a union, and take action with other workers to improve your pay and working conditions without being punished by your employer.



From New York to Florida, from Florida to Texas and California, in several states in many cities and towns I became a part of the struggle... – for better working conditions, for more pay, for improvements in the deplorable conditions of women workers, Negro workers, Mexican workers. Many times we tried and failed partially; but most of the time we were successful.”

– Luisa Moreno,  
Leader in the U.S. Labor movement and social activist who convened the 1939 Congreso de Pueblos de Habla Española, the First National Latino Civil Rights Assembly

# What is Collective Action?


Confronting your boss to challenge discrimination or advocate for better wages and benefits can be intimidating and risky, especially when you are doing it on your own. However, many people often find that when they are dealing with a problem at work, others are dealing with it as well.


As workers, there are ways in which you can work together with your co-workers to improve and change your working conditions, and there are federal and state laws that may protect your organizing activities.

Your ability to work together with your coworkers to seek improvements in your workplace is important because it levels the playing field. Unless you organize, employers hold all the cards when setting wages and working conditions. This power imbalance can make it difficult for a single employee acting alone to challenge discrimination, unfair wages, work schedules, and/or lack of employee benefits. When employees work together to try and make change in the workplace, this collective action can increase the chances that your employer will respond to your demands.

# Who is Protected by the Law?

The National Labor Relations Act (NLRA), a federal law, covers all private employees.<sup>206</sup> Public employees in New York State, who are not covered under the NLRA, are covered under New York State's Taylor Law.<sup>207</sup>

 **IMMIGRATION STATUS:** The NLRA applies to covered employees regardless of their immigration status. However, depending on your immigration status, you may not be able to obtain the same remedies provided to other employees under the NLRA.

 **FARMWORKERS:** Farmworkers now have the right to organize with co-workers or join unions to seek better working conditions. If employers attempt to punish workers for exercising these rights, workers may file complaints with the NYS Public Employment Relations

Board.<sup>208</sup> Employers may file complaints against workers however if they strike or engage in work stoppages or slow-downs.<sup>209</sup>

The law does **not** apply to independent contractors and **may not** apply to certain part-time employees or temporary employees.<sup>210</sup> However, just because an employer says you are an independent contractor, does not mean you actually are one under the law. Your employer may be “misclassifying” you as an independent contractor, which qualifies as an unfair labor practice that violates the National Labor Relations Act.<sup>211</sup> For example, you may be considered an employee if your employer “controls” how you do your work. This may be the case if your employer requires you to work 40 hours a week, requires you to work at 9 a.m. every weekday, or requires you to work from a certain location. Your employer could be found liable for misclassification and be ordered to cease the practice and to compensate employees for any losses in earnings or benefits.<sup>212</sup>

# What is a Union?

A union is an organization made up of workers who are able to bargain for better wages and working conditions. Unions advocate for all workers in the “bargaining unit” (a group of people within a workplace who qualify for union protection even if they aren’t members) by negotiating with the employer to improve wages, hours, working conditions, insurance, pensions, and other employee benefits.

Unions can provide job protection for workers. New York is

an “at-will” employment state, meaning that an employer can fire you for any reason or even **no** reason, unless they are discriminating against you based on your status in a protected class, such as your sex or gender. If you are part of a union, however, the union may require the employer to have a reason for firing you. If an employer fires you for no reason, then the union can help advocate on your behalf. The union can also help advocate for you if you believe you were fired for an illegal reason (like discrimination).

# What are My Legal Rights?

Under the NLRA, covered private employees have the right to join together to improve their wages and working conditions.<sup>213</sup> This means that you can form a union at work, join a union, or try to bargain collectively without a union.<sup>214</sup> The law also protects employee's rights to engage in collective bargaining and other concerted activities for that purpose.<sup>215</sup>

You have the right to discuss employment conditions with your co-workers without being punished, and it is unlawful for an employer to interfere with, restrain, or coerce employees in their exercise of these rights.<sup>216</sup>

For more information on the types of protected activity under the NLRA, visit: <https://www.nlrb.gov/rights-we-protect/whats-law/employers/interfering-employee-rights-section-7-8a1>.

Under New York's Taylor Law, public employees (those working for the government or governmental agencies in New York State) have the right to organize and bargain collectively, but they do not have the right to strike.<sup>217</sup>

**As of November 1, 2021**, Employers in New York with at least 10 employees are required to allow their employees to establish joint employer-employee workplace committees, even if the workplace is not unionized. This committee can serve as a forum for employees to collectively assert their shared health and safety concerns. The law also protects employees who establish or participate in a committee from retaliation.<sup>218</sup>

**NOTE:** You must still comply with any workplace rules, even when engaging in concerted activity. For example, so long as your employer applies the rule fairly and consistently to all employees, your employer may prohibit all employees from using work hours and resources (like printers) for personal or non-work related purposes, such as union activity.

**WAGES:** In New York State, workers have the right to ask about, discuss, or share their pay rates and wages with coworkers.<sup>219</sup> Therefore, if you discuss your hourly rate with another employee, your employer is prohibited from punishing you for sharing such information.

**RETALIATION:** If you and your co-workers engage in protected concerted activity, the law prohibits your employer from firing, suspending, disciplining, or punishing you or from taking any negative employment action against you as a result of that activity.<sup>220</sup> If your employer retaliates against you, this violates the law. You may be able to recover back pay and, if you were fired, the employer may be required to rehire you.



**IMMIGRATION STATUS:** You have the same rights under the NLRA regardless of your immigration status; however you may be exempt if you work in an industry, such as farm labor, that is not covered.<sup>221</sup> It is illegal for your employer to threaten to report you to immigration authorities or to other law enforcement officials for engaging in such activity.<sup>222</sup> This would constitute retaliation under the law. It is also illegal for your employer to impose more onerous requirements, such as to require new immigration papers, because you engaged in concerted activity.<sup>223</sup> Note, however, that your immigration status may limit the remedies that you can recover if you take administrative or legal action. Note also, that even though it is illegal, your employer may still retaliate against you so you should contact a lawyer or legal advocate for guidance. For assistance, visit the Additional Resources section at the back of this Toolkit.



## What Can I Do to Assert My Rights?

**ADVOCATE FOR YOUR RIGHTS THROUGH A UNION:** If you are covered by the above protections, joining, forming, or participating in a union can be one way to protect your right to work together with other workers. There are hundreds of national unions, with thousands of local chapters. Unions are often organized by the type of work performed by the union members—for example, there are unions for home health care workers, teachers, nurses, construction workers, teamsters, electrical workers, and other types of work.

If your workplace is already unionized, you can ask about

joining the union as a member by contacting the union representative. If your workplace is not unionized, you could talk to your co-workers about wanting to form a union and research which union and local chapter would best represent you and your co-workers.

**JOIN THE FREELANCERS UNION:** Independent contractors, also called freelancers, have the option of joining the Freelancers Union. Although referred to as a union, it does not provide the same type of benefits and protections a union traditionally provides. Instead, the Freelancers

Union is more like an advocacy group that pushes for better working conditions for freelancers. It also provides its members with “portable” benefits, such as health, dental, life insurance, disability, and liability insurance. These benefits are “portable” in that a freelancer can “carry” these benefits with them, regardless of where or for whom they work. The Freelancers Union, although based in New York City, offers free membership to freelancers nationwide.

**NYC:** In New York City, freelancers may file a lawsuit if they are not paid for their work. They can also file a claim with the New York City Office of Labor and Policy Standards by email at [freelancer@dca.nyc.gov](mailto:freelancer@dca.nyc.gov) or by phone at (212) 436-0380. If you file a lawsuit because you were not paid for a freelance project and win, you can also recover double damages and attorneys’ fees.

**SEEK ASSISTANCE FROM A WORKER CENTER:** Worker Centers are community based organizations that provide various forms of support to low-wage workers, including workers who are not covered by a union. They typically provide a range of services, such as legal representation to recover unpaid wages, language and skills classes, worker rights education, training, and access to health clinics and other benefits. Worker Centers also engage in advocacy and organizing on behalf of workers, building coalitions of workers to take action to push for better wages and working conditions. For a non-exhaustive list of worker centers in New York State, visit the Additional Resources Section at the end of this Toolkit.

**JOIN A WORKER COOPERATIVE:** In contrast to traditional businesses that are hierarchically owned and managed, worker cooperatives are owned and controlled by the workers where the workers elect the board of directors, make business decisions democratically, invest collectively in the business, and typically distribute a portion of the profits annually to all of the worker-owners based on their own determination. Further, worker cooperatives are committed to creating a non-exploitative economy by creating socially just jobs and supporting the community. By starting a cooperative, you have a voice that counts, more control over setting work hours and wages, more leadership and career advancement opportunities, and the ability to establish healthier relationships with managers, co-workers, and the community.

There are successful worker cooperatives in all industries, including healthcare, manufacturing, education, food/restaurant, plumbing, publishing, childcare, commercial and residential cleaning, and other trades.

- In NYC, the City Council provides funds to organizations in the Worker Cooperative Business Development initiative. Find out about these resources and supports for worker cooperatives here: <https://www1.nyc.gov/nycbusiness/article/worker-cooperatives>.

- The New York City Network of Worker Cooperatives also provides leadership development, training programs, courses, and networking events, as well as a list of other organizations that provide similar services. You can access or review these resources here: <https://nycworker.coop/home/>.

**FORM AN EMPLOYEE RESOURCE GROUP:** You and your co-workers can form an employee resource group. An employee resource group is a group of workers who share a common trait. For example, you could form an employee resource group for women, a group for new mothers, for mothers returning to work, or a group based on age, disability, or LGBTQ status. Employee resource groups can be used as a space for women and minority workers to freely discuss the types of problems they face at work and strategize ways to improve their work environment.

**FILE AN ADMINISTRATIVE CHARGE:** If an employer disciplines you, threatens you, or takes any action against you or other workers for engaging in concerted activity, you can file a complaint with the National Labor Relations Board (NLRB). The NLRB is the government agency responsible for protecting an employee’s rights under federal law. Once you file a charge with them, they will investigate the complaint and your employer. If the NLRB determines that your employer violated the law, they can order the employer to pay damages, including back pay, and if you were fired, order the employer to reinstate you. Note that these remedies may be limited depending on your immigration status.

For public employees, you can file a charge with the Public Employee Relations Board: <http://www.perb.ny.gov>.

Employees can file an unfair labor practice charge against an employer individually, through a union, or through a worker representative. Contact information for the New York Regional Offices for the National Labor Relations Board are below. You can also visit <https://www.nlr.gov> to learn more.

- Buffalo Office: (716) 551-4931
- Albany Office: (518) 431-4155
- Manhattan Office: (212) 264-0300
- Brooklyn Office: (718) 330-7713

**NYC:** In New York City, you can report violations of workplace laws, such as paid sick time requirements, to the NYC Department of Consumer Affairs (DCA). To file a complaint, visit: <https://www1.nyc.gov/site/dca/workers/workersrights/file-workplace-complaint.page>. Within DCA, the Office of Labor Policy and Standards (OLPS) protects and promotes labor standards and policies to create fair workplaces. OLPS provides targeted resources and support for people of color, women, and immigrants. For more information, visit: <https://www1.nyc.gov/site/dca/about/office-of-labor-policy-standards.page>.