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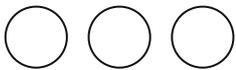


OPINION

Commentary: Lawmakers must act to protect workers from wage theft

Elizabeth Stork and Estee Ward

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COVID-19 has not only endangered lives and livelihoods around the world, it is exacerbating a crisis in labor law enforcement, making income inequality and racial inequality worse. New York state legislators could address this crisis and generate much-needed revenue for the state by passing the Empowering People in Rights Enforcement Worker Protection Act.

Even before the pandemic, New York faced a crisis in enforcement of its labor laws, with more than \$3 billion in wages and benefits stolen from New Yorkers each year. Wage theft can occur in many forms, including sub-minimum wages, shaving workers' time, improper pay deductions and failing to pay overtime wages. Over the past decade, state Department of Labor investigators' average case load has doubled, and the agency now only investigates violations for half of the time period covered by the labor law.

Before the pandemic, it took the Labor Department more than two years on average to resolve wage theft claims. With the agency now putting wage theft investigations on hold to devote more resources to unemployment claims, workers will face even longer waits.

At the same time, forced arbitration effectively leaves workers with no avenue for private enforcement of their rights. Most employers force workers to sign arbitration requirements as a condition of employment, denying them the right to go before a judge or jury when their employer breaks the law. Instead, private arbitrators, whose fees are typically paid by the employer, decide workers' claims. Arbitration requirements typically prevent co-workers from banding together and require strict confidentiality.

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These requirements are imposed on more than 64 percent of low-income workers, 59 percent of Black workers, 54 percent of Latinx workers, and nearly 58 percent of female workers, all groups who are disproportionately employed in the state's essential occupations.

Because forced arbitration heavily favors employers, most workers abandon their claims. Experts estimate that forced arbitration reduces the number of employment claims that would otherwise have been filed by 98 percent.

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This is exactly what happened to a group of workers at a restaurant in Corona, Queens, a neighborhood ravaged by the coronavirus, who sought help from Make the Road New York because they were paid sub-minimum wages without overtime pay. Their employer, who had been sued for wage theft before, told the workers they could sign arbitration requirements or lose their jobs. Because the requirements prevented them from bringing wage claims together, and each worker's claim on its own would have been too costly to litigate, the workers were unable to recover their stolen wages.

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The new EMPIRE Act would allow whistleblowers to pursue monetary penalties for labor violations, including wage theft and safety violations, on behalf of the Labor Department without lengthy delays, and to distribute those penalties to the state and aggrieved workers. This public enforcement tool would not be restricted by forced arbitration requirements. A similar law in California raised approximately \$88 million for the state in 2019 alone, and similar legislation has been proposed in Massachusetts, Maine, Oregon, Vermont, Connecticut and Washington.

The pandemic has shown us that worker health is public health and has led to important changes, like New York's new paid sick leave law. As we reopen and rebuild, we must make these changes meaningful by ensuring that people can enforce the rights they have.

More Information

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