

THE BIDEN PLAN FOR STRENGTHENING WORKER ORGANIZING, COLLECTIVE BARGAINING, AND UNIONS

Strong unions built the great American middle class. Everything that defines what it means to live a good life and know you can take care of your family – the 40 hour workweek, paid leave, health care protections, a voice in your workplace – is because of workers who organized unions and fought for worker protections. Because of organizing and collective bargaining, there used to be a basic bargain between workers and their employers in this country that when you work hard, you share in the prosperity your work created.

Today, however, there's a war on organizing, collective bargaining, unions, and workers. It's been raging for decades, and it's getting worse with Donald Trump in the White House. Republican governors and state legislatures across the country have advanced anti-worker legislation to undercut the labor movement and collective bargaining. States have decimated the rights of public sector workers who, unlike private sector workers, do not have federal protections ensuring their freedom to organize and collectively bargain. In the private sector, corporations are using profits to buy back their own shares and increase

CEOs' compensation instead of investing in their workers and creating more good-quality jobs. The results have been predictable: rising income inequality, stagnant real wages, the loss of pensions, exploitation of workers, and a weakening of workers' voices in our society.

Biden is proposing a plan to grow a stronger, more inclusive middle class – the backbone of the American economy – by strengthening public and private sector unions and helping all workers bargain successfully for what they deserve.

As president, Biden will:

- Check the abuse of corporate power over labor and hold corporate executives personally accountable for violations of labor laws;
- Encourage and incentivize unionization and collective bargaining; and
- Ensure that workers are treated with dignity and receive the pay, benefits, and workplace protections they deserve.

This plan is a critical addition to Biden's proposals to ensure all workers have access to quality, affordable health care; to guarantee all workers are able to send their children to quality public schools and have access to universal pre-kindergarten; to provide education and training beyond high school, including federally Registered Apprenticeships; to support a clean energy revolution that creates millions of unionized middle-class jobs; and to meet our commitment to invest first in American workers and ensure that labor is at the table to negotiate every trade deal.

CHECK THE ABUSE OF CORPORATE POWER OVER LABOR

President Trump and Republican leadership think this country was built by CEOs and hedge fund managers, but they're wrong. Joe Biden knows that our country was built by hard-working Americans. While we could survive without Wall Street and investment banks, our entire economy would collapse without electricians to keep our lights on, auto workers on the line building our cars,

drivers who deliver all things we need for our daily lives to our markets, firefighters, ambulance drivers, service workers, educators, and millions more. Yet employers steal about \$15 billion a year from working people just by paying workers less than the minimum wage. On top of that, workers experience huge losses in salary caused by other forms of wage theft, like employers not paying overtime, forcing off-the-clock work, and misclassifying workers. At the same time, these companies are raking in billions of dollars in profits and paying CEOs tens and hundreds of millions of dollars.

In addition, employers repeatedly interfere with workers' efforts to organize and collectively bargain. In nearly all union campaigns, corporations run a campaign against the union. Three in four employers hire anti-union consultants, spending approximately \$1 billion each year on these efforts. Corporations fire pro-union workers in one of every three union campaigns and about half of corporations threaten to retaliate against workers during union campaigns. Even workers who successfully are able to form a union are later impeded by corporations who bargain in bad faith. About half of newly organized groups of workers do not have a contract a year later and one in three remain without a contract two years after a successful union election.

Biden will ensure employers respect workers' rights. Specifically, he will:

- **Hold corporations and executives personally accountable for interfering with organizing efforts and violating other labor laws.** Biden strongly supports the Protecting the Right to Organize Act's (PRO Act) provisions instituting financial penalties on companies that interfere with workers' organizing efforts, including firing or otherwise retaliating against workers. Biden will go beyond the PRO Act by enacting legislation to impose even stiffer penalties on corporations and to hold company executives personally liable when they interfere with organizing efforts, including criminally liable when their interference is intentional.

- **Aggressively pursue employers who violate labor laws, participate in wage theft, or cheat on their taxes by intentionally misclassifying employees as independent contractors.** As president, Biden will put a stop to employers intentionally misclassifying their employees as independent contractors. He will enact legislation that makes worker misclassification a substantive violation of law under all federal labor, employment, and tax laws with additional penalties beyond those imposed for other violations. And, he will build on efforts by the Obama-Biden Administration to drive an aggressive, all-hands-on-deck enforcement effort that will dramatically reduce worker misclassification. He will direct the U.S. Department of Labor to engage in meaningful, collaborative enforcement partnerships, including with the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission, the Internal Revenue Service, the Justice Department, and state tax, unemployment insurance, and labor agencies. And, while Trump has weakened enforcement by sabotaging the enforcement agencies and slashing their investigator corps, Biden will fund a dramatic increase in the number of investigators in labor and employment enforcement agencies to facilitate a large anti-misclassification effort.
- **Ensure federal dollars do not flow to employers who engage in union-busting activities, participate in wage theft, or violate labor law.** Biden will institute a multi-year federal debarment for all employers who illegally oppose unions, building on debarment efforts pursued in the Obama-Biden Administration. Biden will also restore and build on the Obama-Biden Administration's Fair Pay and Safe Workplaces executive order, which Trump revoked, requiring employers' compliance with labor and employment laws be taken into account in determining whether they are sufficiently responsible to be entrusted with federal contracts. He will ensure federal contracts only go to employers who sign neutrality agreements committing not to run anti-union

campaigns. He also will only award contracts to employers who support their workers, including those who pay a \$15 per hour minimum wage and family sustaining benefits. The tax dollars of hard-working families should not be used to damage the standard of living of those same families.

- **Penalize companies that bargain in bad faith.** Too many employers pretend to bargain with unions (“surface bargaining”) with no intent of reaching an agreement. Biden will give the NLRB the necessary power to force any employer found to be bargaining in bad faith back to the negotiating table, as called for in the PRO Act. And, he will require those companies to pay a penalty, in addition to making workers whole for the time the company stalled negotiations.

ENCOURAGE AND INCENTIVIZE UNION ORGANIZING AND COLLECTIVE BARGAINING

Unions and collective bargaining are essential tools for growing and sustaining a stronger, more inclusive middle class. 16 million workers in the United States are union members or are in a job that provides them union representation. More than six in ten of those individuals are women and/or people of color. Union workers earn roughly 13% more than non-union workers on a similar job site. They also experience drastically lower rates of labor standards violations, like employers engaging in wage theft or failing to meet safety and health requirements.

But today, union members make up just 10.5% of the American workforce. That’s down from 35% in the 1950s. It is no coincidence that this decline has occurred at the same time as rising income inequality. When workers are blocked from organizing and engaging in collective bargaining, stagnant wages and a declining middle class are the predictable results.

Joe Biden believes the federal government should not only defend workers’ right to organize and bargain collectively, but also *encourage* collective

bargaining. That's the mission put forward by the National Labor Relations Act, signed into law in 1935, which states that "encouraging the practice and procedure of collective bargaining" is part of the "policy of the United States." Toward that end, President Biden will:

- **Make it easier for workers who choose to unionize to do so.** Today, workers face an uphill battle of anti-union intimidation and intense employer opposition when trying to organize a union. And, too many employers are able to "run out the clock" on negotiating an initial collective bargaining agreement. Biden strongly supports the provisions of the PRO Act that address union organizing, as well as additional aggressive remedies that will:
 - ban employers' mandatory meetings with their employees, including captive audience meetings in which employees are forced to listen to anti-union rhetoric;
 - reinstate and codify into law the Obama-Biden Administration's "persuader rule" requiring employers to report not only information communicated to employees, but also the activities of third-party consultants who work behind the scenes to manage employers' anti-union campaigns;
 - codify into law the Obama-Biden era's NLRB rules allowing for shortened timelines of union election campaigns; and
 - stop employers from stalling initial negotiations with newly formed unions.

A co-sponsor of the original Employee Free Choice Act, Biden supports workers choosing to form a union if a majority signs authorization cards empowering a union to represent them. He will go beyond the PRO Act by allowing workers to use this process, called "card check," as an initial option for forming a union, not merely an option granted when the employer has illegally interfered in the election process.

- **Provide a federal guarantee for public sector employees to bargain for better pay and benefits and the working conditions they deserve.** Public sector unions provide the voice that workers – including educators, social workers, firefighters, and police officers – need to ensure they can serve their communities. And, public sector unions have been and continue to be an essential pathway to the middle class for workers of color and women, who disproportionately work in the public sector. Yet, in many states across the country, public sector workers do not have the right to bargain collectively. In states such as Iowa, Wisconsin, Florida, Michigan, and Indiana, these rights are increasingly under attack. As president, Biden will establish a federal right to union organizing and collective bargaining for all public sector employees, and make it easier for those employees who serve our communities to both join a union and bargain. He will do so by fighting for and signing into law the Public Safety Employer-Employee Cooperation Act and Public Service Freedom to Negotiate Act. He will work to ensure public sector workers, including public school educators, have a greater voice in the decisions that impact their students and their working conditions. He will also strongly encourage states to pursue expanded bargaining rights for state licensed and contracted workers, including child care workers and home health care workers. And, he will look for federal solutions that will protect these workers’ rights to organize and bargain collectively. Finally, he will reinstate the Obama-Biden rule, which the Trump Administration has since reversed, making it easier for independent-provider home care workers to join a union.
- **Ban state laws prohibiting unions from collecting dues or comparable payments from all workers who benefit from union representation that unions are legally obligated to provide.** Currently more than half of all states have in place these so-called “right to work” laws, which in fact deprive workers of their rights. These laws

exist only to deprive unions of the financial support they need to fight for higher wages and better benefits. As president, Biden will repeal the Taft-Hartley provisions that allow states to impose “right to work” laws.

- **Create a cabinet-level working group that will solely focus on promoting union organizing and collective bargaining in the public and private sectors.** As president, Biden will create a cabinet-level working group that includes representatives from labor. In the first 100 days of the Administration, the working group will deliver a plan to dramatically increase union density and address economic inequality. The group will consider whether there are very specific areas where the federal government could waive preemption of the National Labor Relations Act to allow cities and states to pursue innovative ways to increase union organizing and collective bargaining without undermining current workers’ protections, like allowing for neutrality agreements and card check. The group will also be tasked with working with unions and trade associations to further explore the expansion of sectoral bargaining, where all competitors in an industry are engaged in collective bargaining with a single or multiple unions.
- **Ensure workers can bargain with the employer that actually holds the power, including franchisors, and ensure those employers are accountable for guaranteeing workplace protections.** During the Obama-Biden Administration, the NLRB issued the landmark *Browning-Ferris Industries* decision. If allowed to stand, this decision would allow unions to collectively bargain with the employer that actually controls their wages, benefits and working conditions — which is often not the staffing agency or the franchisee, but a large corporation or franchisor like McDonald’s. The Trump Administration and Trump’s handpicked NLRB majority proposed reversing this decision. As president, Biden will enact legislation codifying the *Browning-Ferris Industries* joint employer

definition into law, as called for in the PRO Act, and restoring the broad definition of joint employment to wage and hour law.

- **Ensure that workers can exercise their right to strike without fear of reprisal.** The right of workers to withhold their labor, or to strike, is fundamental to balancing power in the workplace. But too many workers risk reprisal, punishment, or termination when they seek to bring pressure on employers by participating in strikes, picket lines, and boycotts. Low wage workers face especially high barriers to exercising their right to strike. They often have too few resources to sustain long strikes, and instead require short, periodic strikes, or “intermittent strikes,” to be able to bring pressure to their employer. Under current law, these types of strikes are not sufficiently protected. And, because low-wage workers often do not have specialized skills, they are more often “permanently replaced” – or functionally fired – while striking. Workers are also often limited in the pressure they can exert on employers because of restrictions on boycotting “secondary” businesses that have influence over their employer. These secondary boycotts are essential for promoting workers’ voices. For example, after tomato growers unsuccessfully led strikes of their employer at the turn of the century, they successfully boycotted Taco Bell and other fast-food giants who bought the tomatoes to gain better wages and working conditions. Biden has supported secondary boycotts since he entered public service, and has long supported banning “permanent replacement” of workers. As president, Biden will fight for passage of the PRO Act to protect intermittent strikes, ban permanent strike replacements, and remove the ill-conceived ban on secondary boycotts once and for all.
- **Empower the National Labor Relations Board to fulfill its intended purpose of protecting workers.** Congress created the National Labor Relations Board (NLRB) to encourage union organizing, support collective

bargaining, and protect workers' rights. The Obama-Biden Administration appointed officials to the NLRB who supported workers' right to organize and collective bargain, and made critically important decisions such as ensuring that workers could organize in micro-units. Trump has undermined this progress and the intent of the NLRB by appointing board members with long histories of anti-union activities. As president, Biden will appoint members to the NLRB who will protect, rather than sabotage, worker organizing, collective bargaining, and workers' rights to engage in concerted activity whether or not they belong to a union.

- **Reinstate and expand protections for federal employees.** The federal government should serve as a role model for employers to treat their workers fairly. Yet, Trump has gutted the ability of federal employees to collectively bargain, stripped them of their union representation, and made it easier to fire federal employees without “just cause.” On Biden’s first day in office, he will restore federal employees’ rights to organize and bargain collectively, and will direct his agencies to bargain with federal employee unions over non-mandatory subjects of bargaining.
- **Expand long overdue rights to farmworkers and domestic workers.** When Congress extended labor rights and protections to workers, farmworkers and domestic workers – who are disproportionately immigrants and people of color – were left out. Still today, millions of these workers are not fully protected under federal labor law. As president, Biden will support legislation, including the Fairness for Farmworkers Act and Domestic Workers’ Bill of Rights, that expands federal protections to agricultural and domestic workers, ensuring that they too have the right to basic workplace protections and to organize and collectively bargain. And, through the Domestic Workers’ Bill of Rights, Biden will ensure domestic workers have a voice in the workplace through a wage and standards board.

- **Extend the right to organize and bargain collectively to independent contractors.** Some workers are correctly classified as independent contractors, but are not very different from employees. They bring only their labor, and perhaps a small amount of capital investment, to the organization with which they do business. These workers lack individual bargaining power and, as a result, are at grave risk of exploitation by big business. Biden supports modifying antitrust law and guaranteeing that these independent contractors can organize and bargain collectively for their mutual protection and benefit.

ENSURE THAT ALL WORKERS ARE TREATED WITH DIGNITY AND RECEIVE THE PAY, BENEFITS, AND WORKPLACE PROTECTIONS THEY DESERVE

During the Great Depression, Franklin Delano Roosevelt ushered in labor protections and established the safety net for a reason. The excesses of business threatened the very fabric of our community in the Roaring Twenties, as children slaved away in factories and workers labored for poverty wages. Basic protections like the minimum wage and overtime pay allowed workers to earn their fair share.

But it has been far too long since we have increased those standards. Today's corporate culture treats workers as a means to an end and institutes policies to suppress wages.

As president, Biden will ensure that workers receive the pay and dignity they deserve. He will:

- **Increase the federal minimum wage to \$15.** As Vice President, Biden helped get state and local laws increasing the minimum wage across the finish line – including in New York State – and has supported eliminating the tipped minimum wage. He firmly believes all Americans are owed a raise, and it's well past time we increase the federal

minimum wage to \$15 across the country. This increase would include workers who aren't currently earning the minimum wage, like the farmworkers who grow our food and domestic workers who care for our aging and sick and for those with disabilities. As president, Biden will also support indexing the minimum wage to the median hourly wage so that low-wage workers' wages keep up with those of middle income workers.

- **Invest in communities by widely applying and strictly enforcing prevailing wages.** The prevailing wage, or the wage earned by the median worker in the same occupation in the same region, is an essential mechanism for securing middle class jobs. Taxpayer dollars should always be used to build the middle class, not to foster wage-cutting competition among employers in the construction or service industries. When President Obama put Vice President Biden in charge of the American Recovery and Reinvestment Act (ARRA), Biden made sure that Davis-Bacon Act and Service Contract Act standards were strictly enforced, requiring that the prevailing wage be paid to construction workers and service workers on all projects funded by ARRA. As president, Biden will build on this success by ensuring that every federal investment in infrastructure and transportation projects or service jobs is covered by prevailing wage protections.
- **Stop employers from denying workers overtime pay they've earned.** The Obama-Biden Administration fought to extend overtime pay to over 4 million workers and protect nearly 9 million from losing it. The Trump Administration reversed this progress, implementing a new rule that leaves millions of workers behind. Since Trump walked away from protecting these middle-class workers, they have lost over \$2.2 billion in foregone overtime wages. As president, Biden will ensure workers are paid fairly for the long hours they work and get the overtime they have earned.

- **Ensure workers in the “gig economy” and beyond receive the legal benefits and protections they deserve.** Employer misclassification of “gig economy” workers as independent contractors deprives these workers of legally mandated benefits and protections. Employers in construction, service industries, and other industries also misclassify millions of their employees as independent contractors to reduce their labor costs at the expense of these workers. This epidemic of misclassification is made possible by ambiguous legal tests that give too much discretion to employers, too little protection to workers, and too little direction to government agencies and courts. States like California have already paved the way by adopting a clearer, simpler, and stronger three-prong “ABC test” to distinguish employees from independent contractors. The ABC test will mean many more workers will get the legal protections and benefits they rightfully should receive. As president, Biden will work with Congress to establish a federal standard modeled on the ABC test for all labor, employment, and tax laws.
- **Eliminate non-compete clauses and no-poaching agreements that hinder the ability of employees to seek higher wages, better benefits, and working conditions by changing employers.** In the American economy, companies compete. Workers should be able to compete, too. But at some point in their careers, 40% of American workers have been subject to non-compete clauses. If workers had the freedom to move to another job, they could expect to earn 5% to 10% more – that’s an additional \$2,000 to \$4,000 for a worker earning \$40,000 each year. These employer-driven barriers to competition are even imposed within the same company’s franchisee networks. For example, large franchisors like Jiffy Lube have no-poaching policies preventing any of their franchisees from hiring workers from another franchisee. As president, Biden will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to

protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

- **Put an end to unnecessary occupational licensing requirements.** While licensing is important in some occupations to protect consumers, in many occupations licensing does nothing but thwart economic opportunity. If licensed workers choose to move to new states for higher-paying jobs, they often have to get certified all over again. As president, Biden will build on the Obama-Biden Administration's efforts to incentivize states to reduce unnecessary licensing requirements and to ensure licenses are transferable from one state to the next.
- **Increase workplace safety and health.** No one should get sick, injured, or die simply because they went to work. Every worker has the right to return home from work safely. But Trump has attempted to weaken several occupational and safety regulations established during the Obama-Biden Administration. For example, he rolled back regulations requiring companies to report their workplace injuries so they are disclosed to the public. He removed the restrictions on line speeds in pork plants, making meatpacking jobs even more dangerous. He reduced the number of Occupational and Safety Health Administration (OSHA) investigators and safety enforcement efforts, despite the fact that OSHA inspections reduce injuries. As president, Biden will reinstate these critical safety protections and ensure all appointments to committees and advisory boards under OSHA intimately understand the consequences of not having functional safety standards in place. He will direct OSHA to substantially expand its enforcement efforts. He will increase the number of investigators in OSHA and the Mine Safety Health and Administration (MSHA). He will also direct OSHA, the U.S. Department of Agriculture, MSHA, and other relevant agencies to develop comprehensive

strategies for addressing the most dangerous hazards workers encounter in the modern workplace.

- **Ensure workers can have their day in court by ending mandatory arbitration clauses imposed by employers on workers.** Sixty million workers have been forced to sign contracts waiving their rights to sue their employer and nearly 25 million have been forced to waive their right to bring class action lawsuits or joint arbitration. These contracts require employees to use individual, private arbitrations when their employer violates federal and state laws. Biden will enact legislation to ban employers from requiring their employees to agree to mandatory individual arbitration and forcing employees to relinquish their right to class action lawsuits or collective litigation, as called for in the PRO Act.
- **Expand protections for undocumented immigrants who report labor violations.** When undocumented immigrants are victims of serious crimes and help in the investigation of those crimes, they become eligible for U Visas. The Obama-Biden Administration expanded the U Visa program to certain workplace crimes. As president, Biden will further extend these protections to victims of any workplace violations of federal, state, or local labor law by securing passage of the POWER Act. And, a Biden Administration will ensure that workers on temporary visas, including guest teachers, are protected so that they are able to exercise the labor rights to which they are entitled.