



## Bad bosses: US prosecutors crack down on labour violations

*New report argues that traditional avenues for redressing widespread violations against workers are inadequate.*

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State and local prosecutors across the United States are increasingly bringing criminal charges against employers who violate their workers' rights by stealing wages or providing unsafe work environments, says a new report from the Economic Policy Institute (EPI), a progressive, Washington DC-based think-tank.

“This is happening now in large part because worker organisations – like unions and advocacy groups – have pushed for it in many instances. This is happening now also because we have in our country a growing understanding of how extreme workplace violations have become,” Terri Gerstein, a senior fellow at EPI and the [report](#)'s author, told Al Jazeera.

Prosecutors are also reconsidering their roles and thinking of ways they could use their prosecutorial power to pursue economic and social justice by holding bosses who violate the law to account, Gerstein added.

Gerstein's paper is the second in EPI's New Enforcers series, which focuses on players at the state and local levels working to uphold and promote employee rights. The [first](#) report released last year, also authored by Gerstein, argued for increased state and local enforcement of workers' rights.

The cases brought forth by state and local prosecutors focus on workplace crimes involving wage theft, misclassification of workers as independent contractors, payroll fraud, labour trafficking, workplace sexual assault, and unsafe working conditions.

Not everyone agrees that the increase in local and state prosecutors taking up more workplace-violations cases will ultimately benefit workers.

“[EPI] is trying to put under one umbrella things that everyone I know agrees are serious crimes with other things that in my view should not be classified as crimes or sometimes not well enough defined whether you're committing a crime or not,” Walter Olson, a senior fellow with the libertarian think-tank Cato Institute, told Al Jazeera.

Olson concurs with the report's premise that wage theft, worker's compensation insurance fraud and workplace sexual assault are serious crimes. But he says some employers may be misclassifying workers as independent contractors in some cases because they are "unable to figure out what the law requires".

"A lot of these things are detached from the traditional requirement of criminal law of so-called 'mens rea', which is, 'you knew it was wrong, and you did it anyway'," he said.

### **Accountability: The shift to the state and local**

Wage theft – an employer's refusal to pay wages owed – is a multibillion-dollar crime.

In the 10 most populous US states, 2.4 million workers lose \$8bn annually or \$3,300 per year to minimum wage violations – nearly a quarter of their earned wages, according to a [2017 EPI report](#).

But in decades past, wage theft and other crimes against workers have not been a part of a prosecutor's traditional docket, said Gerstein, who is also director of the State and Local Enforcement Project at the Harvard Law School Labor and Worklife Program.

Traditional methods of addressing such violations against workers via government agencies that are underfunded and under-resourced have been inadequate, she added.

"The economy has grown significantly, but the ability of reinforcement agencies has not," Gerstein said. "There are a lot of people who are unable to get redress for serious violations at work."

The decline in union density in the US is also something that gives rise to the high rates of violations we see today, she continued.

In 1983, the first year for which union data are available, the union membership rate was 20.1 percent, according to the US Bureau of Labor Statistics. In 2020, the percentage of workers who were members of unions was just 10.8 percent.

The US – both at the federal and state levels – extends an array of worker protections covering wages paid and hours worked and safety hazards in the workplace. It also guarantees economic security in the event of injury or unemployment, discrimination or sexual harassment.

But employers have also become savvy in using forced arbitration provisions that take away workers' rights to take their bosses to court, according to the EPI. Forced arbitration is an agreement signed between an employee and employer promising that the employee will not sue even if a dispute arises.

More than half or 56.2 percent of all private-sector non-union workers were required by their employers to sign a forced arbitration pact, according to a [2018 EPI report](#).