



# RIGHTSIZING THE WORKPLACE:

How Public Power Can Support a 21st Century Labor Market That Works for All

## Introduction

Economic insecurity is a long-standing problem in the United States, and millions today are struggling to get by. Around the country, approximately 80 percent of Americans are living paycheck to paycheck, and 40 percent of Americans can't afford a \$400 emergency (Hayes 2017; "Report on the Economic Well-Being of US Households in 2017" 2018). The median annual wage per household today, approximately \$50,000 a year, is approximately the same as it was in the 1970s when accounting for inflation (Vo 2012; Desilver 2018). While discussions about the future of work heat up, it is important to recognize that the challenges facing workers today—and in the future—are not new. Insecure, precarious work is increasingly the norm across many sectors of the 21st century economy.

***As a whole, our economy today is stacked against workers and in favor of corporations and employers. Without robust and appropriate public intervention, workers will continue to face obstacles in the workplace, and our broader economic well-being will be stymied.***

Curbing corporate and employer power and reclaiming public power are essential steps toward addressing the collective changes that hold workers back on the job and at home. There are certainly specific challenges that workers face, which differ depending on the kind of job an individual holds, where they live and work, and their age, gender, and race. However, as a whole, our economy today is stacked *against* workers and in favor of corporations and employers. Without robust and appropriate public intervention, workers will continue to face obstacles in the workplace, and our broader economic well-being will be stymied. For a detailed discussion of the high-level trends that are shaping the future of work, see the companion report to this issue brief, *Left Behind: Snapshots from the 21st Century Labor Market* (Mabud and Forden 2018).

In this brief, we examine two occupations that seem very different at face value: domestic work and truck driving. In doing so, we demonstrate how the structural problems throughout our economy are affecting workers in two seemingly dissimilar industries, and we lay out a set of policies that can begin to address some of the economic insecurity facing these workers. Finally, we argue that taking on these reforms will redefine the role that government must play in a healthy economy.



## Why This Matters

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Today's workers are facing a challenging landscape. Nearly 50 years of flawed economic ideology, which prioritizes shareholders and executives, has created workplaces that are stacked against workers. When combined with a decades-long decline in union membership, insufficient protections for workers in the modern workforce, and long-running exclusions for women and workers of color, most people today are being left behind in our current economy. Many workers can no longer rely on strong wages, good benefits, or healthy labor markets to provide them with economic security or mobility. Distorted policy choices and the resulting structural imbalances—outsized corporate power and eroded worker agency—are shaping work now and will continue to do so in the future.

The 20<sup>th</sup> century social contract relied on employers – monitored and enforced by collective action from workers – to provide the basic building blocks for a good life in the United States. But many workers, particularly women and workers of color, were left out of that social contract. Markets and government worked together to deny many of those most marginalized in our society that chance. Racist compromises in the New Deal meant that agricultural and domestic workers, predominantly workers of color, were left out of key labor protections and the right to unionize (Flynn et al 2016). Furthermore, the GI Bill, which provided a pathway to the middle class for veterans, excluded Black veterans.

As the relationships between workers and employers shift in the 21<sup>st</sup> century, these trends of worker disempowerment are continuing. Long-running declines in unionization rates have resulted in a greater share of workers increasingly disempowered in today's economic landscape. Notably, Black workers disproportionately benefited from union membership in the 20<sup>th</sup> century – which suggests that declines in unionization rates have disproportionately harmed Black workers (Farber et al. 2018; Konczal 2018). Moreover, relationships between employers and employees are weaker today than they were for many jobs in the 20<sup>th</sup> century. The rise of gig work and the fissuring of the workplace mimics the long-running challenges faced by agricultural and domestic workers.

Meanwhile, concentrated private power is increasingly wielding “influence over markets and politics in ways that rig economic outcomes in their favor” (Abernathy, Hamilton, and Morgan 2019). When corporations and the financial sector have ever-growing influence over our economy, they can leverage that power to extract from workers or consumers. Recent research argues that as employer power rises across the country, local labor markets are increasingly looking like company towns, where a small number of firms serve as the primary employer of the entire local labor market (Azar et al. 2018). The result is that workers don't have a choice but to accept the terms of employment offered to them – resulting in low wages, few benefits and poor working conditions. The authors find that going from the 25th percentile to the 75th percentile in labor market concentration was associated with a 17 percent decline in wages (Azar et al. 2018). The erosion of unions and other institutions that promote worker power reinforce the disempowerment of workers in a labor market that is already tilted against them.

The increasing power of the corporate sector has been accompanied by changes in the way that stakeholders within a corporation are prioritized. Since the 1970s, corporations have been guided by a shareholder-first mentality (also known as “shareholder primacy”), where the interests of shareholders are prioritized above all other stakeholders in a firm, including workers. We can see the result of this flawed ideology by following where corporate profits go. Prior to the 1970s, approximately 40 cents of every dollar was reinvested back into the company—in wages, hires, innovation, and benefits—but today, less than 10 cents are reinvested into the company on average (Mason 2015). Additionally, CEO pay has skyrocketed 937 percent since the 1970s, but workers have only seen 10 percent growth in median compensation (Mishel and Scheider 2017).



***A 21st century labor market that serves all workers will require a new way of thinking about markets and a new way of thinking about government.***

The result is a 21<sup>st</sup> century American workforce that is being left behind by employers, corporations, and the wealthiest among us. The introduction of technology is exacerbating these dynamics by creating or replacing existing labor markets. As platforms become a dominant way that workers and consumers interact, these companies have enormous influence over the employment terms that workers face, which workers are ranked highly or not, what workers are paid, and which skills are prioritized. There is a corrosive tension between the classifying workers as independent contractors and the extent to which these platforms seek to control their behavior. Moreover, the algorithms used to govern behavior on these platforms can make or break workers' access to the labor market altogether. Similarly, the inflexibility of automated background check systems can exclude workers unnecessarily.

A 21<sup>st</sup> century labor market that serves all workers will require a new way of thinking about markets and a new way of thinking about government. We have a strong diagnosis of what has gone wrong in our economy and how to fix it. It's clear that the private sector alone can not and will not be able to solve power imbalances in labor markets and beyond, which is why we must explore how to deploy public power—the power of the government—to serve collective interests and keep the goals of dignity, justice, and economic stability at the forefront of policy decisions. By using public power in a way that challenges these imbalances head on and gives workers a leg up in the economy, the future of the labor market will be better—for all.

***We must explore how to deploy public power—the power of the government—to serve collective interests and keep the goals of dignity, justice, and economic stability at the forefront of policy decisions.***

Outsized corporate power and diminished worker power affect Americans at work across the economic and occupational spectrum. In this brief, we examine truck driving and domestic work, two very different occupations that are facing similar roadblocks to well-being in the labor market and beyond. While these challenges manifest in different ways, a shared set of policy responses would support the many workers across various industries, including truck drivers and domestic workers, who help grow our economy.

## How Do We Define the “Future of Work?”

For those looking beyond today's labor market, “the future of work” is a commonly used phrase. Commentators are frequently referring to the fear of impending labor-displacing technological change. As Paul (2018) has argued, these fears are likely overblown. Data do not suggest that the so-called “robot revolution” is imminent, and even if it were, technological progress can be labor complementary. For example, the widespread introduction of personal computers made workers more productive rather than displacing workers all together. When discussing the future of work in the context of automation and technological change, truck drivers are often the first workers that come to mind. Estimates on self-driving vehicles replacing the trucking industry range from 294,000 long-haul truck drivers to the entire 2.1 million workforce (Viscelli 2018).

Others often refer to the fastest-growing industries when thinking about the future of work, which, as of 2018, are the technology, health, and energy sectors (Martin 2018). As the Baby Boomer generation ages, the care sector—comprising of childcare, elder care, and home health care—is undoubtedly among the fastest-growing fields (Campbell 2018). In this brief, we focus on domestic workers, who are one part of the care sector.



We suggest that no matter how we think about the future of work, we must look at the underlying, and entrenched, structural dynamics that will fundamentally shape the ways that truck drivers and domestic workers experience the 21st century economy from here on out. While there are certainly fluctuations in the way that labor markets are changing, including technological progress and trade relations, who benefits and who loses from these changes will be determined by *power*. This includes the power of workers relative to their employers; the power of the private sector relative to the public sector; the ways in which our institutions are set up to extract power from communities of color; and the ways in which the power of the public is used to negotiate interests and generate a healthier, more inclusive economy and society.

***Who benefits and who loses from these changes will be determined by power.***

In the end, we must examine these underlying power dynamics and rebalance them in order to develop resilient policy for creating a 21st century labor market

## **On the Job Today: Domestic Workers and Truck Drivers**

Domestic work and trucking are two occupations that come up frequently in discussions about the future work. At first glance, these two occupations are very different. Domestic workers are disproportionately women of color, whereas truck drivers are predominantly white men (Bureau of Labor Statistics 2019). By definition, domestic work takes place in the context of the home and tends to be rooted in the informal sector, while truck drivers deliver and transport goods across neighborhoods, cities, and states. Domestic workers are among the lowest paid workers in the US, making a median hourly wage of about \$10 or roughly \$20,800 annually—well below the America’s median household income of \$57,652 (Burnham and Theodore 2012). Meanwhile, truck drivers earn about \$40,000 a year on average. However, it is important to note that trucking is not a monolith in terms of work or job quality; there is a wide range of working conditions and compensation within trucking. Work conditions and compensation vary with the kind of trucking (long haul versus short haul), whether they are considered employees or independent contractors or have the opportunity to unionize, among other factors.

Despite the dissimilarities, both trucking and domestic work are essential, infrastructural occupations that support the rest of the economy. By taking care of children, the elderly, and housework, domestic workers enable large swaths of the population to engage in productive activity and participate in the economy. Without truck drivers moving goods around the country, people wouldn’t have food in their grocery stores, mail in their mailboxes, or packages arriving at their front doors.<sup>1</sup> Moreover, both occupations are comprised of largely solitary work, which means that individual workers are vulnerable to workplace abuse and the sectors at large face challenges in organizing.

These occupations not only share the role they play in our economy, but they also face a similar set of challenges because of excessive power at the top of the economy and declining worker power. The key challenges facing domestic workers and truck drivers are:

- Employer concentration and shareholder primacy are on the rise;
- Collective action and unionization are largely unavailable to many workers; and
- Worker misclassification is increasingly prevalent.

<sup>1</sup> Arguably, the entire backbone of online commerce is comprised of truck drivers: those who transport goods across the country, warehouse drivers, and delivery drivers all play a crucial role.



## Employer Concentration and Shareholder Primacy Are on the Rise

Because of policy choices over the last half century, there has been a marked uptick in corporate concentration in the US. From tax policy that favors corporate interests to the deregulation of the banking and financial sectors, many policy changes have given corporations a leg up within entire sectors and cleared the pathway for greater concentration across the economy—which greatly harms workers and their well-being.

### In Trucking

The trucking sector has not been immune to these trends, which seem likely to continue. Consolidation and deregulation has skyrocketed in the trucking industry since the 1980s following policy decisions such as the Motor Carrier Act, a 1980 law designed to deregulate the trucking industry. According to a 2016 report on the logistics industry, “concentration and rising fleet sizes are expected in the next 10 years” (Deloitte 2016). While the sector is still fragmented with a number of small firms, rising concentration means that smaller competitors are having a harder time surviving in the business (Miller 2018). Since 1999, for example, UPS has acquired more than 40 companies, including both competitors and companies in its supply chain (UPS n.d.). Moreover, in 2017, Knight Transportation merged with Swift Transportation to become the largest trucking company in the US, which then subsequently acquired Abilene Motor Express, creating an industry behemoth that manages 23,400 tractors (Miller 2018; “It’s Official and Knight-Swift Is the Largest Trucking Company in the US” 2017).

The increasing activity of private equity (PE) in trucking and logistics is driving the growing consolidation of this industry: “Justin Shin, a vice president at the private investment firm CriticalPoint Capital, remarks that this fragmentation makes the industry particularly ‘well-suited for [private equity groups] that look for [a] consolidation model.’ The ‘consolidation model’ he refers to is the widely used strategy of combining two or more companies in order to cut duplicative operating costs, leverage economies of scale, and gain market share.” In 2017, the industry saw a 40 percent increase over 2015 of PE acquisitions in merger and acquisition (M&A) deals in transportation and logistics, and “as of the end of Q1 2018, PE firms were responsible for 35 of the 44 [transportation and logistics] acquisitions that occurred during that quarter” (Palmer 2018).

The story of XPO Logistics Inc., one of the largest logistics firms in North America, highlights the early stages of consolidation sweeping across the industry and illustrates the role of shareholder primacy in the sector. In 2018, XPO CEO Bradley Jacobs said that the firm was prepared to spend up to \$8 billion on acquisitions on approximately a dozen targets the company had identified. This was not a new approach for the company, which had grown quickly through acquisitions in 2012 through 2015 (Baskin and Chao 2015). Jacobs made clear that the intended beneficiaries for this series of deals were shareholders. As he told the *Wall Street Journal*, “We’re patient, we’re disciplined and focused on doing one or two deals that are likely to create immense shareholder value” (J. Smith 2018a).

In late 2018, Spruce Point Capital, a firm that focuses on short selling, reported extensive mismanagement at XPO—the report was likely intended to drive down share price and extract value (Spruce Point Capital Management 2018; “Spruce Point Capital Management | Spruce Point Capital Management Is a New York Based Investment Fund Manager” n.d.). In light of the subsequent drops in share prices, XPO backed away from its acquisition attempts and instead issued two share buybacks totaling \$2.5 billion (J. Smith 2019a). Around the same time, there were widespread reports of worker mistreatment, “including alleged pregnancy discrimination, worker misclassification and hazardous conditions at warehousing and trucking sites run by XPO” (J. Smith 2018b). Moreover, the Teamsters argued that “freight companies [were] unfairly pushing the cost of fuel, insurance, maintenance and lease payments onto contracted drivers and that the truck drivers should be classified as employees” (J. Smith 2018b).<sup>2</sup> Taken together, the story of XPO logistics is one example of a firm that prioritizes its shareholders even as it mistreats and misclassifies workers.

<sup>2</sup> This primarily applies to drayage, which is the transport of goods over short distances, and intermodal XPO operations. Freight drivers are employee drivers.



Throughout the trucking industry, the profits being paid out to shareholders and CEOs are being made on the backs of truck drivers who are often misclassified as independent contractors and who bear the brunt of vehicle upkeep, weather, and traffic; low pay and mileage-based pay; and poor working conditions. Meanwhile, trucking company CEOs earn much more. In 2017, J.B. Hunt’s CEO earned \$859,000, which was 15 times its median employee pay, while in 2018 FedEx paid its CEO a whopping \$15.6 million or nearly 5,000 times more than its average delivery driver (“How Much Does FedEx Ground Pay?” n.d.; McEvoy 2018; AFL-CIO n.d.)

## In Domestic Work

Consolidation trends are less of an issue for domestic workers, as domestic workers are primarily hired by individual households. However, employer power in and over labor markets is on the rise. The introduction of new labor market platforms, such as Handy.com and Care.com, are increasingly aggregating customers and inserting themselves as a middleman in labor markets for domestic workers—replacing more traditional labor market intermediaries.

As a result, these platform companies have enormous power in setting the terms of employment for domestic workers around the country. For example, when people searching for a caregiver enter the characteristics that they are looking for in Care.com, the website prompts a pay range that starts at the minimum wage of the searcher’s area, potentially lowering the wage that the demand side of the market is willing to pay.<sup>3</sup> Moreover, rating systems on these platforms can impose more explicit employer racial bias into the labor market and give care-seekers an easy platform to retaliate against workers.

## Worker Misclassification Is Also on the Rise

Employee misclassification is when companies incorrectly classify workers as something other than an employee. In most cases, workers are misclassified as independent contractors when they should be classified as employees, whether deliberately to save costs or accidentally. Misclassification can cause significant harm to workers: Independent contractors are not covered by employment or labor laws, and employers are not responsible for withholding income tax, Social Security, or Medicare.

While there is no universal test to determine whether a worker is an employee or an independent contractor, a growing number of states, including California, New Jersey, and Massachusetts, use the “ABC test” to determine how a worker should be classified (R. Smith 2018).

This test evaluates whether:

(A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work; and in fact (B) that the worker performs work that is outside the usual course of the hiring entity’s business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed (Kun and Sullivan 2018).

If the answers to these three criteria are “yes,” then the worker can be classified as an independent contractor.

The National Labor Relations Board (NLRB) also has its own standards for determining if a worker is an independent contractor or not: It examines the opportunities workers have for entrepreneurial activity, in addition to the level of control an employer has over a worker. However, a 2019 recommendation by the NLRB found that Uber drivers, who frequently argue that they are misclassified, are independent contractors rather than workers

<sup>3</sup> Until recently, Care.com did not mandate that customers and workers advertise wages in line with the local minimum wage.



(Sophir 2019). In the near term, the Trump administration’s antagonistic position on these issues will not allow the NLRB to be an effective vehicle for addressing issues of misclassification.

## In Trucking

As a result of deregulation, trucking has seen a big jump in worker classification as independent contractors. As Sainato writes, “Between 1997 to 2016, the number of independently contracted long-haul freight-truck drivers increased by more than 90 percent” (Sainato 2018). Moreover, the California Labor Commissioner’s Office found that port truck drivers have been routinely misclassified (Maynard and Deniz 2019), and a National Employment Labor Project (NELP) report found that in 2014, 65 percent of port truck drivers were misclassified as independent contractors (R. Smith, Marvy, and Zerolnick 2014). In 2018, California passed SB 1402, which establishes joint liability between port trucking companies and their client firms if they are found to have misclassified workers in some circumstances (Baker 2018). These wins were achievable in large part because of organizing by workers around this issue.

## In Domestic Work

Handy.com, one of the most prominent labor market platforms for domestic workers, has been working with local lawmakers and corporate lobbyists to cement labor law exclusions for domestic workers around the country. As Pinto, Smith, and Tung (2019) write, Handy.com’s and its partners’ goal is “to pass policies that lock so-called ‘gig’ workers who find jobs via online platforms into independent contractor status, stripping them of the basic labor rights and protections afforded to employees and allowing the companies to evade payroll taxes and worker lawsuits.”

These efforts demonstrate how much emergent labor market platforms have to lose if the workers on their platforms were classified as employees. The very viability of these firms is underpinned by the ability to skirt liability for the well-being and protection of workers.

## Collective Action and Unionization Are Unavailable to Many Workers

Collective action and unionization not only empower workers and offer agency to bargain for better working standards, pay, and benefits, but they also provide an important counterweight to the rise in concentrated private power. Unionization rates have been in decline since the 1980s, caused by decades of conservative attacks on unionization, rampant deregulation, and an outdated labor law system that fails to provide sufficient support to workers. The result is that workers have less agency on the job, work no longer serves as a pathway to social and economic mobility, and economic inequality has reached soaring heights.

## In Trucking

Truck drivers have been affected by the broader decline in unionization rates throughout the country. In 1998, 24.4 percent of production and transportation workers (which include truck drivers) were unionized, but only 13.3 percent are today (Bureau of Labor Statistics 1998, Bureau of Labor Statistics 2018). Without unions to negotiate over wages and working conditions, pay can be particularly low for long-haul drivers because pay is often based on mileage. If a driver therefore gets stuck in traffic or is unable to drive because of inclement weather, the driver bears the cost of that through reduced hourly pay. Similarly, port truck drivers in California are generally paid by the volume of the types of containers that they move, and recent shifts in the industry have incentivized trucking companies to push costs onto drivers.

Extensive investigative reporting by *USA Today* found that “port trucking companies in southern California have spent the past decade forcing drivers to finance their own trucks by taking on debt they could not afford. Companies then used that debt as leverage to extract forced labor and trap drivers in jobs that left them destitute” (Murphy 2017). This amounts to modern-day indentured servitude. Many of these drivers are immigrant and



receive low wages, and many do not speak fluent English, which together create ripe conditions for exploitation. Additionally, many of these drivers continue to be classified as independent contractors despite repeated court rulings that California port truck drivers should not legally be classified as such (Khouri and Dolan 2018; *New Prime Inc. v. Oliveira* 2019)

## In Domestic Work

Domestic workers lack many of the key labor protections that other workers have access to. Because of New Deal exclusions borne out of racist compromises, domestic workers are not covered by the foundational labor laws in the US: the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), the Occupational Health and Safety Act (OHSA), as well as civil rights laws, such as Title VII (which protects workers from discriminatory behavior by employers), the Americans with Disabilities Act, and the Age Discrimination in Employment Act (DWE n.d.). As a result, domestic workers are not required to receive minimum wages, overtime, or safe working conditions. Importantly, domestic workers cannot unionize under existing labor law—which is particularly harmful for a group of workers who do not have other protections.

Even with federal and state labor protections, organizing domestic workers is difficult given the dispersal of worksite locations. Without the power of collective action, domestic workers are vulnerable to wage theft and employer exploitation of all kinds. This is particularly true given that many domestic workers are undocumented and therefore have even less recourse over abusive employment practices than those with less precarious immigration statuses.

***The push for this kind of legislation has not only used public power in an effective way to protect vulnerable workers, but it has also created a constituency to maintain these rights.***

Labor organizers, notably the National Domestic Workers Alliance, have made some progress through the Domestic Workers’ Bill of Rights legislation that passed in New York in 2010. Similar legislation has also been passed in Hawaii and California. These state bills of rights provide domestic workers with overtime pay, paid time off, and rest days, among other protections and benefits. The push for this kind of legislation has not only used public power in an effective way to protect vulnerable workers, but it has also created a constituency to maintain these rights.

## Solutions to Correct for Power Imbalances on the Job

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In the conclusion of *Left Behind*, Mabud and Forden (2018) argue that an inclusive 21st century social contract must curb corporate power, build worker power, and redefine the role that government can play in limiting economic insecurity.

In this section, we draw on those recommendations and explore some high-level solutions for the ways that concentrated power at the top of the economy and declining worker power are harming domestic workers and truck drivers. Absent additional reforms, the policy solutions offered below are neither comprehensive nor sufficient to correct for these fundamental power imbalances—but they are necessary to ensure that workers across a wide-range of sectors are empowered to work with dignity and agency. None of these policies is a silver-bullet fix to the insecurities that workers around the country are facing; rather, they can reinforce each other in ways that rebalance the power dynamics that govern well-being in our country.



***Absent additional reforms, the policy solutions offered below are neither comprehensive nor sufficient to correct for these fundamental power imbalances—but they are necessary to ensure that workers across a wide-range of sectors are empowered to work with dignity and agency.***

We explicitly look at policies that address structural changes in the economy, rather than shorter-term fluctuations. In *Left Behind*, we argue that the imbalance of power at the top and diminished worker power provide the backdrop for the ways in which technological change and trade are negatively affecting workers. Therefore, these policy changes focus particularly on those structural dynamics, ignoring band-aid solutions to shorter-term changes in the economy.

## Curb Corporate Power

First and foremost, **we must prevent powerful firms from dominating the economy.** Over the last 50 years, we have seen the rise of large companies holding sway over an increasing share of our economy and politics. As a result, these firms are able to set the rules of the game in their favor, exploit workers, pay lower wages, and shirk on their responsibilities to their workers. To undo this harmful influence on workers and the economy, we must revive antitrust law and enforcement to protect workers.

Second, **we must build workers' decision-making and ownership power.** Prior to the 1970s, firms focused on long-term value creation, rather than short-term share price maximization, and they invested in hiring new workers, raising wages and benefits, spending capital to spur innovation and efficiency. Starting in the 1970s, we saw a shift in corporate ideology toward shareholder primacy, and companies began prioritizing shareholder wealth over the interests of other stakeholders, including workers. Therefore, resources were being funneled away from productive investments—many of which directly benefited workers—in order to pay out to shareholders (Milani and Tung 2018).

## Use Antitrust Law to Protect Workers

Antitrust law—the set of rules that were written to prevent companies from behaving anticompetitively and gaining too much market power but have been lax for decades—can be used to guarantee workers more power in the economy and in their workplaces. Mergers between companies and along the supply chain—what economists call horizontal and vertical mergers, respectively—can drive down wages, benefits, and working conditions. This is particularly notable when we see high levels of employer concentration (Steinbaum 2018). As Abernathy, Hamilton, and Morgan (2019) point out, “Regulators can specifically clarify that antitrust law can and should be used to counteract the fissured workplace and mitigate differential labor market outcomes for women and people of color.”

Currently, antitrust law is also being used to entrench existing legal exclusions. For example, independent contractors are prevented from unionizing because existing antitrust laws would perceive such action as collusive behavior (Lao 2018). The idea that bargaining by independent contractors constitutes anticompetitive behavior was recently upheld in Seattle, Washington, which had developed an innovative unionization and bargaining process for drivers for services such as Uber and Lyft. The US Court of Appeals found that the process violates federal antitrust law, overturning a previous decision by the US District Court to dismiss the case (*Chamber of Commerce of the United States of America and Rasier, LLC v. City of Seattle*; Seattle Department of Finance and Administrative Services; and Fred Podesta 2018). This is particularly damaging as we see the rise of labor market platforms in domestic work, which has the potential to crystalize already existing exclusions. Antitrust enforcement must take a more nuanced view of labor markets, in conjunction with reforms that decrease the



likelihood of misclassification. There are substantive differences between the power of consolidated companies and individual workers organizing (Paul 2015).

The rise of online labor market platforms in the domestic work sector has increasing sway over the employment terms that domestic workers can expect. Antitrust law could be used to crack down on platforms that act like monopsonists in the labor market, as well as release domestic workers from the fear of being hit with an antitrust violation if they try to unionize (in conjunction with other labor law reforms like ending the exclusions built into the New Deal). Moreover, both trucking and domestic workers face barriers to collective bargaining. As workers are increasingly misclassified as independent contractors, and as independent contracting becomes a more prevalent form of work, neither truck drivers nor domestic workers cannot organize without the threat of being accused of antitrust violations.

By defining collusive and harmful behavior on the part of firms—including no-poaching agreements, misclassification of workers as independent contractors, and forced arbitration clauses as anticompetitive—antitrust law can and should come down on such firms with outsized market and employer power (Steinbaum, Bernstein, and Sturm 2018). The Federal Trade Commission (FTC), for example, does not currently use labor market outcomes as a way to determine whether markets are too concentrated and should be subject to antitrust laws (Naidu et al. 2018). Doing so would broaden the ways in which antitrust laws are used and give worker concerns more weight in the assessment process.

### Building Workers' Decision-Making and Ownership Power

One way to push back against shareholder dominance is to give workers a stake in the ownership and decision-making bodies within American firms. Giving workers a seat at the table can take any number of different forms, ranging from codetermination, which gives workers the legal right to co-manage corporations alongside other stakeholders, to cooperative models where the business is fully owned and managed by workers. Holmberg (2017) argues that absent real “stakeholder decision power,” worker benefits will never be sufficient to ensure business decisions that focus on the long-run health of the firm and all of its stakeholders. Building worker agency, especially through a codetermination or cooperative system, has the potential to hold back the short-term incentives that are driving rampant shareholder-first prioritization in the US.<sup>4</sup>

The cooperative model has a proven track record for domestic workers. For example, the Si Se Puede cleaners' cooperative is a women-run, women-owned cleaning business that seeks to bring together immigrant women. “The cooperative is designed to create living wage jobs that will be done in a safe and healthy environment, as well as to provide social support and educational opportunities for our members” (Si Se Puede Women's Cooperative n.d.). By retaining control over management decisions and the way that firm profits are distributed throughout the company, the cooperative model can be a way to empower members, build their income security by setting fair wages, and establish a stronger client base. It also helps protect them from employer abuses by establishing contractual guidelines and protections. Additionally, domestic worker cooperatives can facilitate collective action for broader legal protections. For example, nannies from the Beyond Care Coop in New York organized for the New York domestic workers' bill of rights, which gives domestic workers the right to overtime pay, paid time off, and protection under New York State Human Rights Law (NY State Dept. of Labor, n.d.; “Beyond Care History Timeline” 2015).

As we see the rise of shareholder primacy and consolidation in the trucking sector, corporate decisions are increasingly pushing costs onto truck drivers. With a greater voice at the decision-making level, truck drivers would have a greater voice in holding corporations accountable to the well-being of all of their stakeholders—not only the shareholders at the top— and have the potential to challenge and counter these harmful trends (Palladino and Karlsson 2018).

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<sup>4</sup> While stock options offered by the employer are also a form of worker ownership, that is less likely to be effective to push back against shareholder dominance because individual stock ownership does not generate the same kind of collective power as codetermination or other forms of worker stake at the top levels of the company can.



## Strengthen Worker Power

While reducing the power that large corporations hold in our economy is deeply important in increasing worker well-being, these policies must be accompanied by a concurrent rise in worker power. Without workers who are empowered to put pressure on firms to improve working conditions, wages, benefits, and other issues that are crucial to worker well-being, reforms that restructure the top of the economy will only go so far.

To increase worker power in the economy, **we must ensure that all vulnerable workers are covered by labor law**. Because of racist New Deal exclusions, domestic and agricultural workers have long been denied the rights that other workers hold under US labor law. As workers are increasingly misclassified as independent contractors, more workers are also facing the same exclusions from their employers. For a truly equitable economy, all workers should share the same labor protections under the law.

Second, **we must broaden the levels of unionization**, which would help workers meet the changes—and challenges—that are happening in the way that labor markets are structured. As workers increasingly work across multiple worksites, rather than one main office building, the current firm-based bargaining structure in the US has become antiquated and is inadequate.

While stronger rights for independent contractors and more broad levels of unionization will not solve the problem of misclassification, they are important short-term measures. In the longer term, courts and agencies should clarify issues of misclassification, with the aim of reducing the prevalence of this practice. However, the changes to the legal framework cannot wait for these determinations if we are to support workers in the labor market as it currently exists.

### Ensure That All Workers Are Covered by Labor Law

Today's labor laws are woefully inadequate for all workers, but they are particularly so for the most vulnerable workers in our economy. Long-standing New Deal era carveouts have prevented agricultural and domestic workers from enjoying the benefits and legal protections that workers in other sectors do. Revising labor law to close these loopholes, clarifying that the definition of “employee” is broadened to include independent contractors and lower-level managers and expanding the definition of joint employment to expand rights to subcontractors and franchisees, would significantly increase economic well-being in today's labor markets (Abernathy, Hamilton, and Morgan 2019; Forden 2019).

***Today's labor laws are woefully inadequate for all workers, but they are particularly so for the most vulnerable workers in our economy.***

Domestic workers would clearly benefit from more inclusive labor law, since they are in a category of workers who are explicitly excluded from these labor protections. NLRA coverage would be an important start to ensure that domestic workers feel more secure in the labor market, and it would open the door to collective bargaining, which could eventually drive up wages and benefits.

Truck drivers would also benefit from these changes to labor law, as there has been a widespread industrial shift towards classifying truck drivers as independent contractors. This misclassification, alluded to above, is benefiting consolidated employers in the industry on the backs of individual drivers. Strengthening the ability to collectively bargain would help truck drivers experience higher wages and improve working conditions, which are widely reported to be terrible for truck drivers around the country. (*New York Times* Editorial Board 2018). As surveillance and monitoring technology becomes more prominent in the trucking industry (Haubursin 2017), strengthening collective bargaining laws and increasing labor law coverage would empower workers to demand agency over the technology and data currently being used against them.



## Broadening the Levels of Unionization

As corporations grow in size and scope, they are increasingly taking over multiple states, worksites, and countries. As Madland (2016) argues, workers spanning multiple worksites ought to bargain together as one unit, rather than as separate bargaining units or unions. In the long term, this might come to resemble sectoral-level bargaining, where workers that belong to the same industry can bargain together regardless of geographic location (Andrias and Rogers 2018).

Broadening the levels of unionization would allow domestic workers and truck drivers to aggregate their interests in ways that is hard in a job with fragmented worksites. In both sectors, workers are spread out over multiple worksites and often have few to no relationships with other workers in their sector. Domestic workers, for instance, may not be in contact with other workers in their area, even if they share similar interests, challenges, and concerns, while long-haul truck drivers are often on their own for weeks at a time and have few relationships to other truck drivers (Gabriel 2017).

A more sectoral-style bargaining system is not without precedent in the US. The National Master Freight Agreement and the Railway Labor Act both aggregate interests beyond the firm level (“National Master Freight Agreement” 2008; Paul, Hastings, Janofsky & Walker LLC 2005). Moving toward a system that looks more like sectoral bargaining would aggregate workers’ interests and allow them to advocate for issues that are common to individual workers—eventually raising workplace standards across the sector.

## Strengthen Public Power

Reforms to the ways that the 21st century labor market is set up will only do so much to strengthen economic security and worker well-being. For workers to be able to thrive on their jobs, they also must have the means to live a good life outside of work. As Abernathy, Hamilton, and Morgan (2019) argue in *New Rules for the 21st Century: Corporate Power, Public Power, and the Future of the American Economy*, a democratic government is beholden to its people; as such, it has a responsibility to look after the well-being of its people—in ways that private actors, corporations, and markets do not have the obligation to.

**We must take key benefits out of the realm of the market** and out of the hands of employers and **deploy government power**, which would give workers a solid foundation to live a dignified life.

## Take Key Benefits Out of the Realm of the Market and Use the Power of Government

Marketizing key benefits reinforces and entrenches long-existing inequalities in our economy and society more broadly. Doing so inherently divides society into those who can access the benefits that enable civic and economic participation and those who cannot, which has historically followed racial divisions. As Mabud and Forden (2018) argue in *Left Behind*, the 20<sup>th</sup> century social contract, which is deeply rooted in the employer-employee relationship, is no longer working in today’s labor markets.

Using the power of government to pull key benefits out of the employment relationship and into a more universal model will not only begin to push against the “bootstraps” narrative so prevalent in our culture, but this will also give everyone the foundation to live a secure life. Workers would be empowered to leave bad jobs, including jobs with poor working conditions and abusive employers.

Public sector benefits can take any number of forms, from a federal jobs guarantee (Paul, Darity, Hamilton 2018) and a guaranteed income (Goodman 2018) to universal child and elder care (Astor 2019) and universal health care (Scott 2018; Darity, Hamilton, and Mabud 2019). A suite of policies aimed to support people in the 21<sup>st</sup> century economy would benefit both domestic workers and truck drivers by setting an important floor for the ability of workers to access quality benefits.



Because of the largely informal nature of domestic work, domestic workers often lack benefits, paid time off, the ability to save and invest for retirement, and other essential building blocks of well-being (NDWA 2017). The National Domestic Workers Alliance has begun to meet some of these challenges with the creation of Alia, one of a few portable benefits platforms. While Alia is a tremendous step forward for domestic workers, it continues to tie benefits to the workplace. For example, if a domestic worker wanted to go back to school, they would only be able to pay for childcare for a certain period of time. With a universal childcare program, on the other hand, the worker would not have to worry about balancing work, school, and childcare, freeing up the ability to pursue personal and professional goals.

Like domestic workers, truck drivers can face harrowing workplace conditions. Having a set of essential benefits would allow truck drivers to move between jobs or find better work without the fear of losing their benefits. Historically, this was achieved through union health and welfare plans that covered whole industries or regions and multi-employer pension plans (“Pensions” n.d.). Moreover, as an increasing number of truck drivers are misclassified as independent contractors, the standard suite of retirement, health, and leave benefits is no longer available to these workers. Considering the extensive health issues that can arise from sitting in trucks for hours at a time, the absence of these benefits has the potential to cause significant harm. Moreover, hours of service regulations and pressures from customer demands can lead to unsafe working conditions, such as rushing hauls or exceeding hours. A publicly provided set of benefits would ensure that workers are able to live secure, healthy lives—regardless of the type of job they have.

## Conclusion

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For too long, the building blocks for a good life—solid benefits, strong wages, and safe working conditions—have been left to the whim of markets and employers rather than guaranteed for all. The landscape we see for workers today—a labor market that is insecure, precarious, and offers an unequal distribution of security—is the result of handing over the goods and services that are necessary for a good life to the private sector and without rules, regulations, and institutions that put workers first before profit motives.

The government has both a moral and democratic responsibility, as well as the sheer scale and the accompanying power needed, to create an economy that works for the many, not the few. Policies that seek to curb the power of corporations and strengthen worker power alongside a robust public sector can strengthen our pursuit of an inclusive 21st century social contract. The reforms listed above are not a comprehensive list, but they do construct a path forward for new rules that would support domestic workers and truck drivers in the 21st century economy.

***The government has both a moral and democratic responsibility, as well as the sheer scale and the accompanying power needed, to create an economy that works for the many, not the few.***

As our economy experiences disruptions in the form of technological change or new trading regimes, working to ensure that Americans have a solid foundation on which to build a good life becomes more important than ever. Without using government power to shore up the protections and the checks and balances that workers and the private sector need, respectively, the long-running power imbalances in our country will continue to run rampant.



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