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**The Role of State Attorneys General In The Fight For Workers’ Union Rights**

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**Introduction**

What makes unions so influential—the power of organized voices advocating for common worker interests—also makes them a target for fierce opposition from certain employers and corporate political interests. Recent [union-busting efforts](https://www.theguardian.com/us-news/2023/feb/26/amazon-trader-joes-starbucks-anti-union-measures) by two of the nation’s largest corporations, [Amazon](https://www.nytimes.com/2023/12/08/business/economy/amazon-union-workers.html#:~:text=The%20company%20has%20disciplined%20union,to%20interact%20with%20co%2Dworkers.&text=Noam%20Scheiber%20has%20covered%20union%20organizing%20at%20Amazon%20since%202019) and [Starbucks](https://bpr.studentorg.berkeley.edu/2024/02/05/starbucks-union-busting-and-the-labor-movement/), exemplify just how far employers are willing to go to undermine that power. As the “[People’s Lawyer](https://agstudies.org/attorney-general-101/),” state attorneys general (AGs) play an important role in defending workers’ right to unionize against corporate and political opposition.

**Unions Benefit Workers, Families, And Society**

Although only [10% of the U.S. workforce](https://www.npr.org/2024/01/23/1226034366/labor-union-membership-uaw-hollywood-workers-strike-gallup) belongs to a union today, union advocacy has played a vital role in improving the lives of countless workers and their families. In addition to combating [child labor exploitation](https://www.pbs.org/newshour/classroom/lesson-plans/2023/09/6-facts-about-labor-union-history-in-the-us), union leaders have fought for essential employment [benefits](https://aflcio.org/2016/9/7/five-ways-america-would-be-different-without-labor-unions) and [safety nets](https://www.unionplus.org/blog/union-made/eight-reasons-thank-unions), such as sick leave, family medical leave, vacation time, [higher wages](https://www.americanprogress.org/article/how-unions-are-crucial-for-building-working-class-economic-power/), workplace breaks, [safer working conditions](https://time.com/5663465/labor-day-union-history/), unemployment insurance, and Social Security benefits. Unionized workforces also contribute to broader [economic stability](https://equitablegrowth.org/strong-unions-push-firms-to-reduce-riskier-debt-lowering-risks-of-unemployment-for-u-s-workers/#:~:text=Similarly%2C%20unions%20have%20been%20shown,all%20workers%20in%20the%20economy.) by encouraging firms with organized employees to mitigate financial risks, benefiting society as a whole.

Despite a [steep decline](https://www.gisreportsonline.com/r/decline-american-union/) in union membership since the 1950s, belonging to a union today continues to literally pay off. Union workers, for example, earn [30% more](https://www.unionplus.org/page/benefits-union-membership) on average than their non-union counterparts. Union workers are also [more likely](https://www.unionplus.org/page/benefits-union-membership) to have job-related health coverage and guaranteed pensions, and [less likely](https://www.epi.org/publication/state-attorneys-general-can-play-key-roles-in-protecting-workers-rights/) to face minimum wage violations. They also benefit from reduced wage gaps across [gender, racial, and ethnic lines](https://www.epi.org/publication/unions-and-well-being/).  These benefits underscore the importance of state AGs’ work in defending and advocating for workers’ union rights.

**The National Labor Relations Act (NLRA) and State Labor Laws**

U.S. workers have not always had a [national right](https://mises.org/mises-daily/history-labor-unions-colonial-times-2009#:~:text=According%20to%20some%20legal%20doctrines,liberty%20against%20(private)%20aggression) to negotiate collectively for their own interests. In 1935, amidst a turbulent period of [citywide strikes, factory takeovers, and violent clashes](https://www.archives.gov/milestone-documents/national-labor-relations-act#:~:text=Also%20known%20as%20the%20Wagner,employers%20in%20the%20private%20sector) between union organizers and law enforcement, Congress passed the [National Labor Relations Act](https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act) (NLRA). This landmark legislation granted [most private-sector employees](https://www.nlrb.gov/resources/faq/nlrb#:~:text=Most%20employees%20in%20the%20private,supervisors%20(with%20limited%20exceptions).) the federal right to organize, join a union, and collectively bargain with their employers over wages, hours, and other employment conditions.

While the NLRA helped secure union rights for most U.S. workers, it also aimed to advance economic stability. The Act recognized that protecting the right of employees to organize and collectively bargain was essential for promoting the free exchange of goods and services by reducing “sources of industrial strife and unrest” and restoring “equality of bargaining power between employers and employees.” Its passage marked a significant victory for workers, not only providing [federal protections](https://maineaflcio.org/news/labor-history-how-national-labor-relations-act-jumpstarted-labor-movement-maine) against union retaliation, but also requiring employers to bargain with unions in good faith.

In addition to the NLRA, many states have enacted labor laws that govern workers’ right to organize. For instance, some of these state laws extend union rights to workers not covered by the NLRA, such as public employees. Other laws, like the so-called [right-to-work laws](https://www.bloomberglaw.com/external/document/X8JDHS0O000000/labor-relations-professional-perspective-right-to-work-laws-and-) adopted [by a majority of states](https://www.nrtw.org/right-to-work-states/), have weakened unions by allowing workers to benefit from union representation without paying any dues.

**The Role of State Attorneys General**

The [National Labor Relations Board](https://www.nlrb.gov/about-nlrb/what-we-do/introduction-to-the-nlrb) (NLRB) is the federal agency responsible for enforcing the NLRA. However, state AGs can collaborate closely with the NLRB to ensure a more unified and effective approach to protecting workers’ national union rights. They can also [influence those rights](https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1326&context=honorstheses) by advocating for stronger or weaker federal provisions.

Moreover, as [top legal officers](https://www.naag.org/attorneys-general/what-attorneys-general-do/#:~:text=As%20chief%20legal%20officers%20of,representative%20of%20the%20public%20interest.) in their jurisdictions, state AGs play a crucial role in defending state laws that either safeguard or undermine workers’ right to organize. In their [law enforcement role](https://www.acslaw.org/projects/state-attorneys-general-project/about/), state AGs can investigate and prosecute employers who violate state union laws.

[As legal advisors](https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=3370&context=lawreview), state AGs can issue formal opinions and advisories that provide legal clarity on critical issues pertaining to organizing and collective bargaining rights. And through [community outreach initiatives](https://stateimpactcenter.org/files/A-Role-for-State-Attorneys-General-in-a-Just-Transition.pdf), state AGs can express public support for unionization efforts and educate workers on important legal changes.

**Examples of State Attorneys General Protecting Workers’ Union Rights**

Below are five notable actions taken by state AGs to defend and promote workers’ union rights:

* **Collaborating With The NLRB To Improve Enforcement of Union Rights:** In 2024,[Michigan AG Dana Nessel](https://www.michigan.gov/ag/news/press-releases/2024/08/15/ag-nessel-partners-with-national-labor-relations-board-to-strengthen-worker-protections) announced that her office had entered into a Memorandum of Understanding (MOU) with NLRB Regional Directors to strengthen the enforcement of workers’ rights through information sharing, staff cross-training, and collaborative investigations. The collaboration seeks to address key labor issues that threaten workers’ union rights, such as the misclassification of workers as independent contractors and employer retaliation against workers who exercise their rights. [Misclassifying workers](https://www.dpeaflcio.org/factsheets/misclassification-of-employees-as-independent-contractors) and [punishing them for organizing](https://www.epi.org/publication/shortchanged-weak-anti-retaliation-provisions-in-the-national-labor-relations-act-cost-workers-billions/) are common tactics used to [hinder unionization efforts](https://www.lockelord.com/newsandevents/publications/2024/10/nlrb-about-to-rule-that-independent-contractor-mis#:~:text=The%20NLRB%20held%20in%20Velox,engage%20in%20union%20activity%20because). This [MOU](https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2024/August/MOU-NLRB.pdf?rev=88b21a8e6c1943c8aa23be12d363887d&hash=D8CC9286991B65799942C8EEB1A10AC5) illustrates how state AGs can proactively defend workers’ national union rights by partnering with the NLRB to enhance enforcement mechanisms for NLRA violations.
* **Issuing Formal Opinion Removing Barrier to Public-Sector Union Recognition**: In 2022, [Wisconsin AG Josh Kaul](https://www.doj.state.wi.us/news-releases/ag-kaul-issues-ag-opinion-university-wisconsin-hospitals-and-clinics-authority%E2%80%99s-power) issued a [formal opinion](https://www.doj.state.wi.us/sites/default/files/news-media/6.2.22_AG_Opinion_Signed.pdf) affirming that the University of Wisconsin Hospitals and Clinics Authority could legally engage in collective bargaining with a union formed by employed nurses. [Hospital administrators had argued](https://wisconsinexaminer.com/briefs/uw-health-can-bargain-with-unions-ag-kaul-says-in-legal-opinion/) that a state law prevented them from recognizing such a union. AG Kaul’s opinion is significant because it provided strong legal authority against that argument, making it more difficult for hospital administrators to use it as pretext in discussions with nurses. A few months after the opinion, hundreds of nurses voted to strike, [resulting in a pivotal agreement](https://www.seiuwi.org/campaigns/uw-health-nurses/) with health administrators. Additionally, given that courts often consider [legal opinions from AGs to be persuasive,](https://www.naag.org/issues/civil-law/attorney-general-opinions/) AG Kaul’s opinion could strengthen the union’s position in future litigation on this issue.
* **Supporting and Celebrating Starbucks Workers’ Union Victory:** In 2021 and 2022, [New York AG Letitia James](https://ag.ny.gov/press-release/2022/attorney-general-james-visits-starbucks-workers-buffalo) strongly supported Starbucks workers’ historic unionization efforts. She publicly affirmed and celebrated their achievements, joined other elected officials in urging Starbucks to immediately cease illegal union-busting activities, and met with workers to discuss strategies for overcoming challenges. She also committed to fully backing them in their continued efforts to advance union rights. These actions highlight how state AGs can leverage their position as powerful pro-union allies, inspiring and empowering workers to persevere in their struggle to organize and collectively bargain with formidable corporations.
* **Defending Public-Sector Unions’ Right to Collect Fair Share Fees:** In 2018, a coalition of 21 AGs [filed an amicus brief](https://www.attorneygeneral.gov/wp-content/uploads/2018/02/janus_states_amicus.pdf) in [*Janus v. AFSCME*](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf)*,* insupport of allowing public-sector unions to collect agency fees from represented non-union members to cover the cost of representation. The coalition argued that unions require significant resources to operate effectively and that states rely on the collection of these agency fees to ensure efficient public services, uninterrupted by strikes or labor unrest. This brief demonstrated extensive state opposition to prohibiting public-sector unions from collecting agency fees, laying the groundwork for critical legal arguments that could bolster pro-union strategies in other areas. While the Court ruled that unions could no longer collect agency fees, the coalition’s arguments remain important because they provide a strong foundation for subsequent legal and legislative efforts to protect workers’ union rights.
* **Providing Public Guidance on California Public Employees’ Right to Unionize:** Following the *Janus* decision, at least 14 state AG offices issued guidance on the implications of that ruling. For example, in 2018, former California AG Xavier Becerra [issued an advisory](https://oag.ca.gov/system/files/attachments/press_releases/AG%20Becerra%20Labor%20Rights%20Advisory%20FINAL.pdf) explaining that public-sector employers could no longer automatically deduct mandatory agency fees on behalf of public-sector unions without the affirmative approval of employees. The advisory also emphasized that the Court’s decision did not affect California public employees’ right to “unionize and remain protected from employer retaliation against union activities.” This guidance exemplifies how state AGs can continue to support public workers’ union rights by providing clarity on the meaning and impact of important court decisions.

**Examples of State Attorneys General Undermining Workers’ Union Rights**

Not all state AGs align with workers in their ongoing fight for union rights. Below are two significant anti-union actions taken by state AGs:

* **Opposing Proposed Federal Bill That Would Strengthen Workers’ Union Rights:** In 2021, a coalition of 14 state AGs, led by [South Carolina AG Alan Wilson](https://www.scag.gov/about-the-office/news/sc-ag-alan-wilson-leads-14-state-letter-against-bill-that-would-require-workers-to-join-unions/), sent a letter to U.S. Senate leaders opposing the “Protecting the Right to Organize Act of 2021,” also known as the “PRO Act.” The coalition [argued](https://www.scag.gov/wp-content/uploads/2021/04/02532216.pdf) that the PRO Act would undermine democratic principles by eliminating the right of union-represented employees to opt out of paying union fees. Notably, the letter overlooked the fact that an overwhelming majority of Americans, [68% in 2021](https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx), support unions. It also failed to recognize the many ways in which the bill’s provisions would [greatly benefit workers by providing critical new protections](https://www.hrw.org/news/2021/04/29/why-us-pro-act-matters-right-unionize-questions-and-answers?gad_source=1&gclid=CjwKCAiA9IC6BhA3EiwAsbltODZ_-yKurl_IA3CkRTEeVTTOCrg_HyIgdPF7vdJP6j32TQhP_LQb2RoCOjgQAvD_BwE#_What_is_the_1) for their union rights. This letter illustrates how state AG can join forces to challenge national policy on workers’ rights issues, taking positions that are at odds with the greater public support for union protections.
* **Challenging The Federal Government’s Efforts To Protect Workers’ Union Rights:** In 2023, [Florida AG Ashley Moody](https://www.myfloridalegal.com/newsrelease/attorney-general-moody-takes-action-against-biden-administration-ensure-floridians-are) sued the Biden administration over its decision to condition federal funding on the state’s repeal of certain provisions in [S.B. 256](https://www.flsenate.gov/Session/Bill/2023/256/BillText/er/PDF), which ban public-sector employers in unionized workplaces from deducting fees from members’ paychecks and [impose additional restrictions](https://afscmefl.org/what-sb-256) on public-sector unions. A Florida Phoenix journalist noted that the law’s provisions [do not apply to first-responder unions](https://floridaphoenix.com/2023/10/11/ag-moody-sues-feds-related-to-fl-anti-union-law-biden-administration-concerned-about-union-rights/), which typically align with Republican policies, but do apply to Democratic-oriented unions, such as the Florida Education Association. In her press release, AG Moody argued that challenging the Biden administration’s funding condition was necessary to protect Florida workers from being “strong-armed by unions.” Her lawsuit against the federal government underscores how state AGs can choose to defend state laws that undermine workers’ collective bargaining power, framing union efforts to ensure effective collection of membership fees as harmful to workers.

**Conclusion**

While union efforts have helped secure essential worker protections—such as reduced work hours, safer working conditions, and sick leave—the fight for workers’ right to organize and collectively bargain with employers is far from over. As the top state legal officials responsible for advocating for the public interest, state AGs play a critical role in countering ongoing corporate and political attacks on workers’ union rights.

By collaborating with the NLRB, championing stronger union protections, defending pro-union laws, and issuing legal opinions, advisories, and public statements in support of workers’ union rights, state AGs serve as powerful allies for workers and their families. Conversely, when state AGs defend state laws that weaken union power or oppose efforts to strengthen workers’ union rights, they enable anti-union forces to succeed to the detriment of workers and the society that depends on them.