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United States Accused of Violating International Labor Laws, Remains Far Behind Developed Nations

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** By: Mia Bornstein*



This past month, a group of labor and trade union leaders filed a complaint with the United Nations' labor agency, alleging numerous violations of international labor law under the Trump administration during the COVID-19 pandemic.[1] The complaint detailed violations in numerous areas of labor law across a myriad of industries.[2] These included allegations of inadequate safety protections, companies forcing employees to return to work, and retaliations and prohibitions on worker unionization attempts.[3] Industries included meatpacking, fast-food, warehousing, healthcare, gig workers, airports, and retail.[4] While this complaint referred specifically to allegations arising from the COVID-19 pandemic, the United States has remained far behind in labor laws for decades, and many of these industries have faced similar allegations in the United States before.

Labor union leaders filed their complaint with the International Labor Organization, the United Nations' tripartite agency bringing together governments, employers, and workers of respective member states.[5] The agency aims to set labor and workplace standards and promote compliance with these standards globally.[6] Of the organization's conventions, the United States has ratified a mere 14 out of 190 total, which includes only two of eight fundamental conventions.[7] This is less than nearly every other member state, and far less than most European countries and other nations with which the United States ordinarily compares itself.[8] Historically, the United States Department of Labor has claimed to meet or exceed many ILO conventions.[9] However, many doubted the honesty of that claim then, and it is unlikely that this has changed.[10]

Over the past years, federal protections for employees in the workplace have either remained largely unchanged or have been weakened. Factors such as limited resources and intense opposition from special interests have inhibited agencies like OSHA's abilities to address unsafe and hazardous conditions.[11] The Trump administration's Labor Department has attempted to repeal workplace regulations since President Trump took office, and the current Secretary of Labor has "spent decades helping corporations gut or evade government regulations, including worker protections," one reporter claimed.[12]

A 2019 report by the Economic Policy Institute found that employers were charged with violating federal law in 41.5% of all NLRB-supervised union elections in 2016 and 2017.[13] These allegations included illegal firings, retaliation, and methods of discipline.[14] Yet, the enforcement agency tasked with protecting workers' rights to unionize and organize, the NLRB, has either hobbled or fractured employees' abilities to fight against employer violations in the law in recent years.[15] Ultimately, these decisions have impacted tens of millions of low-wage workers.[16]

The gig worker economy[17], for instance, employs an estimated 40% of the United States workforce,[18] a population growing in strength in the wake of the 2009 Financial Crisis and only expected to continue growing as a result of the global pandemic.[19] Continuing to recognize these workers under independent contractor status means that millions are generally not afforded fundamental protections of labor safety laws, including the right to join a union, have health insurance benefits, or to earn sick leave, minimum wage, or overtime.[20] Legislation passed in response to the pandemic was the first time that the US established unemployment insurance eligibility for such workers, albeit enacted only as temporary relief.[21] Protections for gig workers are just a single example among many of the US failing to acknowledge and respond to an evolving economy and workforce.

Many agree that the United States' continued inability to protect workers through union protections and wage laws has contributed to inequality in the country unlike any in recent history.[22] As the federal government continues to ignore the violations in safety and labor laws, the international community is taking notice. In 2020, European trade union leaders called on the EU to investigate illegal anti-unionization efforts in Europe, citing the rise in the union-busting industry in the United States. A finding by the ILO, that the United States has violated international labor laws, could make it far more difficult for the United States to exert influence in labor policy around the world.[23]

As these allegations are brought to light, millions of workers around the United States continue to work in dangerous conditions without the ability to demand more safety or higher pay. Until the United States can catch up with labor law around the world, the country will only continue to draw the condemnation of the international community as a regressive nation for labor and employment.

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- [1]Eli Rosenberg, *U.S. Accused of Violating International Labor Laws, Forced-labor Protections in New Complaint*, Wash. Post(Oct. 7, 2020) <https://www.washingtonpost.com/business/2020/10/08/international-complaint-worker-protections/>.
- [2]*AFL-CIO, SEIU File Complaint Charging Trump Administration's COVID-19 Response Violated Global Labor Standards*, Service Employees Int'l Union(Oct. 7, 2020) <https://www.seiu.org/2020/10/afl-cio-seiu-file-complaint-charging-trump-administrations-covid-19-response-violated-global-labor-standards>.
- [3]*Id.*
- [4]*Id.*
- [5]*About the ILO*, Int'l Labor Org.<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>, (last visited Oct. 20, 2020).
- [6]*Id.*
- [7]Ratifications for United States of America, Int'l Labor Org.https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871, (last visited Oct. 20, 2020).
- [8]David Weissbrodt & Matthew Mason, *Compliance of the United States with International Labor Law*, 98 Minn. L. Rev.1842, 1845-1846 (2014).
- [9]*Id.* at 1843.
- [10]*Id.*
- [11]Eyal Press, *Trump's Labor Secretary is a Wrecking Ball Aimed at Workers*,The New Yorker(Oct. 19, 2020) <https://www.newyorker.com/magazine/2020/10/26/trumps-labor-secretary-is-a-wrecking-ball-aimed-at-workers>.
- [12]*Id.*
- [13]Celine McNicholas et al., *Unlawful: U.S. Employers are Charged with Violating Federal Law in 41.5% of All Union Election Campaigns*, Economic Policy Institute2 (Dec. 11, 2019) <https://files.epi.org/pdf/179315.pdf>, (last visited Oct. 21, 2020). The National Labor Relations Board is the federal agency tasked with enforcing the National Labor Relations Act, which guarantees the rights of private sector employees to unionize, collectively bargain, and to organize to improve their wages and working conditions. *See Introduction to the NLRB*, Nat'l Labor Relations Board<https://www.nlr.gov/about-nlr/what-we-do/introduction-to-the-nlr>, (last visited Oct. 21, 2020).
- [14]McNicholas, *supra* note 13.
- [15]In 2018, the Trump administration's NLRB reversed a judge ruling rejecting a settlement with employees of McDonald's, making it far more difficult for employees to join together to address problems in the workplace. In 2019, the administration continued to recognize Uber and Lyft drivers as independent contractors, restricting their abilities to unionize for better pay. Emily Bazelon, *Why Are Workers Struggling? Because Labor Law Is Broken*, New York Times(Feb. 19, 2020) <https://www.nytimes.com/interactive/2020/02/19/magazine/labor-law-unions.html>.
- [16]*Id.*
- [17]The "gig economy" is a term generally used to refer to contingent workers, or people that are in non-standard employment relationships. These might include drivers, delivery-people, personal assistants, handymen, cleaners, cooks, dog-sitters, and babysitters, but also lawyers, nurses, doctors, teachers, journalists, and programmers. Orly Lobel, *The Gig Economy & the Future of Labor and Employment Law*, 51 Univ. San Francisco L. Rev.51 (2017).
- [18]*Id.* at 56.
- [19]Alex Rosenblat, *Gig Workers are Here to Stay. It's Time to Give Them Benefits.*, Harv. Bus. Rev.(July 3, 2020) <https://hbr.org/2020/07/gig-workers-are-here-to-stay-its-time-to-give-them-benefits>.
- [20]Corey Husak & Carmen Sanchez Cumming, *Coronavirus Recession Exposes how U.S. Labor Laws Fail Gig Workers and Independent Contractors*, Wash. Center for Equitable Growth(Apr. 16, 2020) <https://equitablegrowth.org/the-coronavirus-recession-exposes-how-u-s-labor-laws-fail-gig-workers-and-independent-contractors/>(last visited Oct. 20, 2020).
- [21]*Id.*
- [22]McNicholas, *supra* note 13, at 9.
- [23]Rosenberg, *supra* note 1.