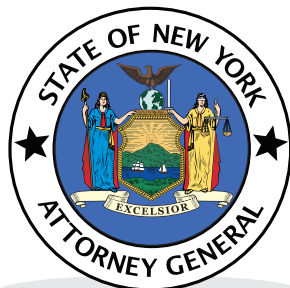


# Working for Justice



A report from the Labor Bureau of  
New York State Attorney General  
**Eric T. Schneiderman**



August 2017



Dear New Yorker,

As your Attorney General, I am privileged to stand with working families all over the state in their struggle for fairness, dignity and respect on the job. In the face of shifting priorities at the federal level, it is more important than ever for states to vigorously enforce worker protection laws and to find creative ways to strengthen workplace rights.

My office remains deeply committed to defending and expanding the rights of all workers. Since I became your Attorney General in January 2011, my Labor Bureau has recovered almost \$30 million in restitution and damages for more than 21,000 workers who were cheated. In the last year alone, we have put \$2.7 million back into the pockets of 1,500 workers in fast food, car washes, construction, film production, elder care, and more. In the most egregious cases, we have put employers in jail for stealing from their workers.

In 2017, sometimes standing up for workers means standing up to the federal government. I joined with unions and worker advocates around the country in helping to defeat the nomination of former fast food CEO Andrew Puzder to serve as U.S. Secretary of Labor. Both Puzder's positions on labor policy issues and his own record as an employer are abysmal, and American workers are better off without him at the helm of the U.S. Department of Labor.

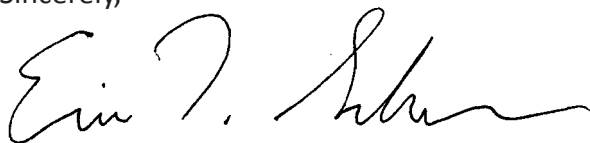
My office has also fought back against employers' growing misuse of employment agreements to limit employees' rights and freedoms. I joined with other states to stand up against mandatory, individual arbitration contracts that deny workers the right to engage in collective actions in order to remedy discrimination, unpaid wages and other issues. The U.S. Department of Justice previously stood with workers on this issue, but reversed course under the new administration. My office also introduced legislation to stop misuse of non-compete agreements, which employers wrongly use to keep workers from moving to better, higher-paying jobs.

In an environment of anti-immigrant rhetoric and policy at the national level, we continue to stand up for immigrant workers in our state. Many of our cases enforcing minimum wage, overtime, and prevailing wage laws have resulted in restitution for immigrant workers. We succeeded in reinstating workers' compensation benefits for immigrant workers after an insurer denied those benefits just because their employer wrongly paid them off the books. And in the face of rising discrimination both on and off the job, my office organized community events with immigrants' rights groups to send the message that in New York State, all workers are protected, regardless of immigration status.

We have expanded our efforts to protect workers from unfair scheduling practices. We are defending regulations that my office advocated for to protect workers from confusing and unfair payroll card fees that can cut in to wages. And we successfully defended the right of child care workers to unionize.

I am honored to serve as your Attorney General. I am proud of the progress we have made on behalf of working families, and I look forward to continuing to fight for workers' rights for a long time to come.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Schneiderman". The signature is fluid and cursive, with a long, sweeping underline.

Eric Schneiderman

# Fair Pay for Honest Work

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No one who puts in an honest day's work should be cheated out of wages that are legally owed. Attorney General Schneiderman has made it a top priority of his administration to enforce New York's labor laws, including minimum wage, overtime, and prevailing wage laws. Since taking office, Attorney General Schneiderman has recovered almost \$30 million in restitution and damages for more than 21,000 workers who were cheated. In the past year, the Attorney General has targeted violations of worker protection laws in the fast food and restaurant industry, as well as by car washes, senior living facilities, delivery contractors, and film companies. The Attorney General has recovered more than \$2.7 million in wages for 1,500 workers in the last year alone, and in the most egregious of these cases, the Attorney General secured jail sentences for bosses who cheated their workers.

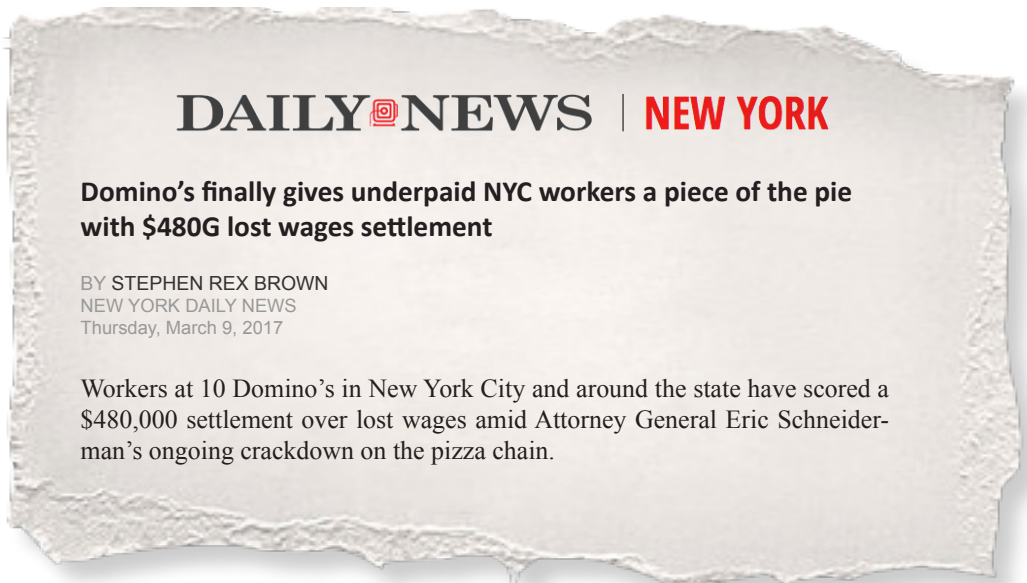
## Civil Wage and Hour Enforcement

If an employer fails to pay a worker all of the wages he or she is legally owed, that is called wage theft. It is taking money out of the worker's pocket, pure and simple.

Wage theft is rampant in the fast food industry. This is particularly appalling since the fast food sector is already among the most unequal in our economy, with CEOs taking home 1,200 times the earnings of the average fast food worker.

Since taking office, Attorney General Schneiderman has brought numerous cases against fast food restaurants that cheated their workers, including McDonalds, KFC, Papa John's, and Domino's. Many of these cases were against fast food franchisees. But last year Attorney General Schneiderman brought a groundbreaking case against Domino's Pizza LLC—the largest pizza delivery chain in the country—that for the first time sought to hold the corporate franchisor jointly responsible for underpaying workers at franchise stores. Three franchisees operating 10 locations were also named in the suit, and accused of underpaying workers at stores in New York City, Westchester, Long Island, Fulton County, and Montgomery County. The lawsuit alleges that Domino's Pizza LLC jointly employed the workers at the ten franchise stores. As the Attorney General's investigation uncovered, Domino's not only exerted extensive control over the franchisees' daily operations, including many related to working-conditions, but the company also required its franchisees to use a computer system with a payroll function that Domino's knew under-calculated wages.

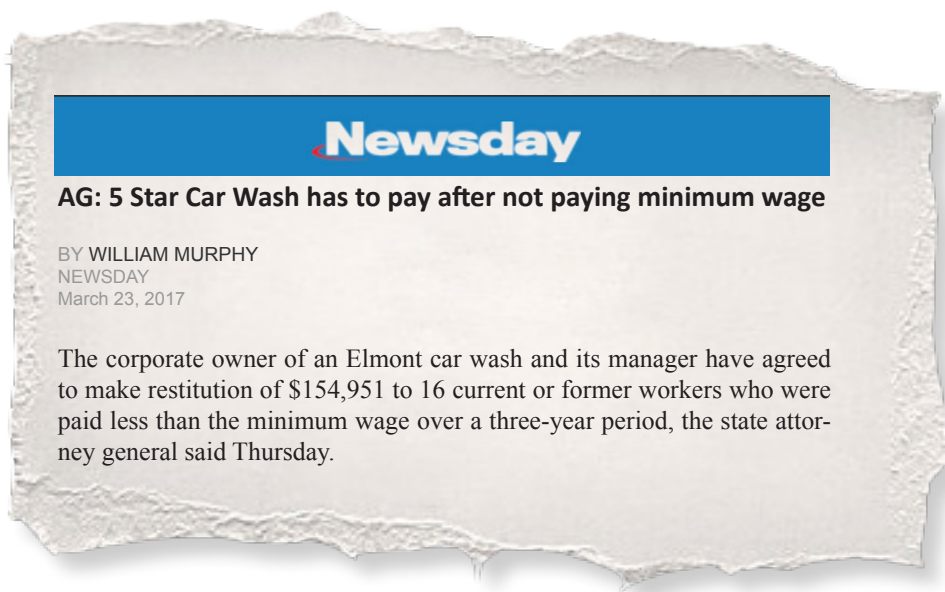
In March, all three Domino's franchisees named in the lawsuit settled, agreeing to pay \$480,000 in restitution to workers who were denied minimum wage, overtime, and other legally owed compensation. In total, Attorney General Schneiderman has now secured settlements with 71 Domino's franchise





locations in New York State, owned by fifteen individual franchisees. These locations comprise more than half of the franchise stores and over a third of the total number of Domino's stores in New York. The Attorney General's office has secured nearly \$2 million in total restitution for Domino's workers statewide through these settlements. This latest round of settlements leaves the Domino's corporation as the sole remaining defendant in the ongoing litigation and alleges that they jointly employed the workers at the ten franchise stores.

Like fast food, the car wash industry is plagued by wage theft and safety violations. In response to these poor conditions, unions have been organizing car wash workers for several years. Attorney General Schneiderman has also taken enforcement action against the operators of dozens of car washes to win restitution for underpaid workers, and protect workers from retaliation for exercising their rights. Most recently, the Attorney General secured \$154,000 in restitution for six current and former employees of 5 Star Car Wash in Elmont. The car wash failed to pay workers minimum wage or overtime, sometimes paying as little as \$6.00 per hour to employees who worked 75 hours per week.



While many employers run afoul of the law by underpaying wages, First Realty Management Co. in Rochester made the rare—and illegal—choice not to pay certain employees any cash wages at all. The company operates seven Legacy Senior Living complexes in the greater Rochester area. First Realty provided fifteen Live-In Safety Coordinators with apartment and utilities at its complexes for free or at a reduced rate, but paid the workers no cash wages. Workers' duties included answering emergency calls from

Legacy residents on an "on-call" basis between 8:00 p.m. and 8:00 a.m., and performing housekeeping or light maintenance for 10 hours each week. While "wages" may include non-cash benefits such as the use of an apartment, the Attorney General's investigation determined that the value of the benefits provided was not sufficient to meet minimum wage standards for the hours the employees worked. For one of the employees, the value she received as "wages" was equivalent to only: \$2.00 per hour for the hours she worked. The company agreed to pay \$328,000 in backpay, damages, interest, and penalties. They also agreed to clearly inform workers of their rights, and submit to monitoring.

The Attorney General also took action to help workers who labor behind the scenes for two high-profile brands. In one case, a delivery contractor for Amazon-Fresh, Amazon.com's grocery service, cheated workers by deducting time for lunch breaks that the workers were never able to take while making back-to-back deliveries. The workers will receive \$100,000 in restitution. In another investigation, the Attorney General found that a production company for The Real Housewives of Atlanta paid production assistants and associate producers daily or weekly salaries, with no additional compensation for overtime. These workers routinely put in 50-hour weeks, and sometimes worked up to 72 hours per week,

performing duties that qualified them for overtime pay. Under a settlement with the Attorney General's office, the company will pay \$411,000 to hundreds of employees who were wrongly denied overtime.

### **Criminal Wage and Hour Enforcement**

Attorney General Schneiderman is committed to aggressive civil enforcement of wage and hour laws in order to put money back in the pockets of workers who have been cheated. But, in certain cases, the AG's investigations uncover evidence of such egregious misconduct that criminal prosecution and even jail time is warranted.

In February, investigators from the Attorney General's office arrested Konstantinos Aronis, the owner of K.M.S. Restaurant Corp., on charges of failing to pay hundreds of thousands of dollars in wages to 34 workers. He was also charged with filing false documents in order to both hide the wage violations and avoid paying unemployment insurance. A month later, Aronis pled guilty. He was sentenced to 60 days in jail and five years of probation, and agreed to pay more than half a million dollars in restitution to workers and the state.

The threat of jail time convinced another restaurant owner to finally pay restitution she owed to her workers. In December 2015, a court ordered Elisa Parto, the owner of the restaurant Elisa's Food & Plus in Port Chester, to pay \$47,000 in restitution to six former employees who worked up to 70 hours per week without overtime. She paid \$21,000, but failed to pay the rest despite several warnings from the court. In March 2017, the court gave Parto three more months to pay, or face six months in jail. The workers finally received the restitution they were owed.



### **AG: Legacy senior living owes back pay to 15 workers**

BY PATTI SINGER  
DEMOCRAT & CHRONICLE  
May 31, 2017

First Realty Management Co., Inc., which the attorney general said operates seven Legacy senior complexes in the area, will pay more than \$238,000 to employees whom the attorney general said were compensated well below the minimum wage.

## Criminal Prevailing Wage Enforcement

Solid, middle-class jobs in industries like construction are vital to the health of our communities, and taxpayer dollars should not be used to replace good jobs with bad ones. Federal and state prevailing wage laws ensure that workers on publicly funded construction projects, like schools, transportation infrastructure, and affordable housing, are paid wages and benefits comparable to the local norms for a given trade. These laws make sure that construction companies do not win government contracts by underbidding their competitors because they pay excessively low wages. Attorney General Schneiderman has brought both civil and criminal cases against contractors who violated prevailing wage laws. These cases are critical not only to protecting family-supporting construction industry jobs, but to ensure that taxpayers get what they pay for on publicly-funded projects.

In May, investigators from the Attorney General's office arrested Vickram Mangru on charges that he cheated ten workers out of almost \$700,000 by failing to pay prevailing wages to workers on several publicly funded New York City construction projects. The New York City Comptroller previously barred Mangru from performing public works projects for the city because he failed to properly pay prevailing wages in the past.

Undeterred, Mangru allegedly started a new company, nominally headed by family members, but whose day-to-day operations he continued to control. With this new company, he allegedly continued to perform public works projects in violation of his debarment, and continued to pay workers less than prevailing wage. The Attorney General charged Mangru with Failure to Pay the Prevailing Rate of Wage or Supplements and with five counts of Falsifying Business Records in the First degree—in an attempt to cover up the underpayments. If convicted of the top count against him, Mangru faces five to 15 years in prison, debarment for an additional five years, and restitution payment for his workers.

Attorney General Schneiderman is engaged in an ongoing effort to root out prevailing wage violations in New York City. The Attorney General's office has arrested eight other subcontractors in the past two and a half years for allegedly violating prevailing wage laws. Those arrests involved work performed at P.S. 196K in Brooklyn; P.S. 7X in the Bronx; the NYCHA Pomonok Houses development in Fresh Meadows, Queens; and, NYC HPD's Sugar Hill houses in Harlem.

## Long Island Press

### Valley Stream Contractor Charged With \$700K Wage Theft

BY TIMOTHY BOLGER  
Long Island Press

A contractor from Valley Stream was arrested for allegedly cheating 10 workers out of nearly \$700,000 in wages and benefits on taxpayer-funded New York City public school construction projects, authorities said.



In his keynote address to the Public Employees Federation annual convention, Attorney General Schneiderman praised PEF for both defending public sector workers, and vital public services that all New Yorkers rely on.

### **Civil Prevailing Wage Enforcement**

In addition to criminal enforcement, Attorney General Schneiderman has pursued innovative civil cases to recover unpaid prevailing wages for workers. Earlier this year, he secured \$255,000 in restitution and penalties in a prevailing wage case that began with a whistleblower complaint. The Laborers' Eastern Region Organizing Fund (LEROF) alerted the Attorney General's office that up to 28 carpenters and laborers were denied prevailing wage and overtime on a Manhattan housing project that was federally funded through the New York City Department of Housing Preservation and Development. In a joint case with the U.S. Department of Labor, the Attorney General's investigation confirmed that the general contractor, a property developer, and their principals falsely certified that workers were paid prevailing wages even though some were not.

The Attorney General filed suit against the general contractor and the property developer under the New York False Claims Act (NYFCA)—marking the first use of the NYFCA to enforce prevailing wage laws. The NYFCA is an important tool for fighting fraud against the government. It allows whistleblowers who have knowledge of fraud against New York State or local governments to file a complaint and to receive a portion of the money recovered. In this case, the union, LEROF, reported the fraud and is using its share of the case proceeds to continue to advocate for workers.

As a state senator, Eric Schneiderman sponsored a set of amendments to the NYFCA that became law in 2010. Those amendments expanded the law to cover claims of tax fraud, strengthened protections for whistleblowers, and extended the statute of limitations on claims to 10 years. The Attorney General's office will continue to use every legal tool available, including the NYFCA, to ensure that contractors on publicly-funded projects pay their workers prevailing wages in accordance with the law.





In his keynote address to the New York State Nurses Association annual convention, Attorney General Schneiderman commended NYSNA for being a “bottom-up, member-powered union” with a “broad vision of social justice.”

## Defending Workers’ Rights to Other Critical Workplace Protections

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In addition to wage and hour safeguards, New York’s labor laws provide other important protections for workers. Attorney General Schneiderman has taken action to protect the rights of New York workers to file for workers’ compensation, even if their employer paid them off the books. He has also fought for the rights of workers in a variety of industries to receive unemployment insurance, after its employers wrongly misclassified them as independent contractors.

### Workers’ Compensation

If a New York worker is injured or made sick on the job, he or she has the right to file for workers’ compensation, which pays for medical care and lost wages. Workers’ compensation insurance is paid for by the employer.

In a recent case, a workers’ compensation insurance carrier sought to void a workers’ compensation policy retroactively, in an attempt to avoid paying out claims filed by an employer’s off-the-books employees. The insurance company’s action would have punished vulnerable workers, many of them immigrants, for the misconduct of their employer. The law prohibits insurers from retroactively voiding workers’ compensation policies for injured workers just because an employer failed to follow the law. Attorney General Schneiderman successfully defended this law, and in doing so defended the rights of all workers from employers and insurance carriers who seek to deny them their right to workers’ compensation benefits when they are injured on the job.



## Unemployment Insurance and Payroll Fraud

Sometimes employers misclassify employees as independent contractors in an effort to avoid providing pay, benefits, and legal protections that a worker is entitled to when she or he is an employee, but that the same worker would not be entitled to if she was an independent contractor. Workers who believe they have denied unemployment benefits because they were misclassified as independent contractors can appeal to the state Commissioner of Labor. When the Commissioner rules in favor of a worker, Attorney General Schneiderman defends the decision to ensure that the worker receives unemployment benefits that are only available to employees.

### ***Did You Know?***

Employees, but not independent contractors, are covered by workers' compensation laws, certain important federal and state anti-discrimination laws, and federal and state wage protections, such as minimum wage and overtime. Employees, but not independent contractors, can unionize. In addition, employees, but not independent contractors, are entitled to receive family medical leave benefits or other customary benefits of employment, such as sick leave, retirement benefits, and health care coverage. Like these benefits, independent contractors cannot claim unemployment insurance benefits, and those who hire independent contractors are not required to contribute to the State's unemployment insurance fund on their behalf. Unemployment insurance provides temporary income for employees who lose their jobs through no fault of their own.

In the last year, Attorney General Schneiderman has successfully defended the Commissioner of Labor's determinations in several unemployment insurance appeals involving worker misclassification. These cases have included construction workers, medical delivery couriers, architects, and exotic dancers. In each instance, the work of the Attorney General's office defended the workers' right to obtain unemployment insurance benefits they had been improperly denied.

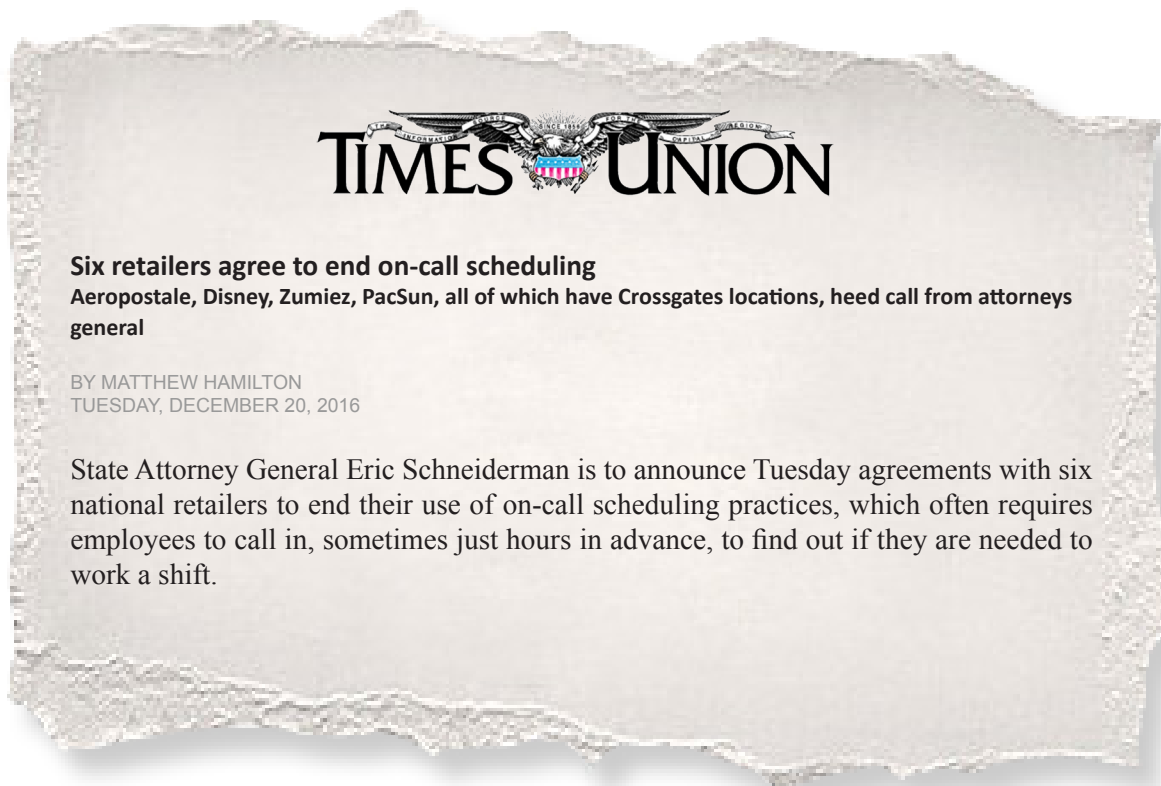
## Fighting for Fair Scheduling

All working people have a lot to juggle in their lives. If you're also responsible for taking care of children or other family members, it's even more challenging. And if you work in a low-wage sector like retail, you may often feel like you're barely keeping your head above water.

In the last several years, many large retail chains have thrown another monkey wrench into the already hectic lives of their workers: unpredictable, last-minute schedule changes. These employers require workers to be on-call, and inform them only the day before, or sometimes the same day, whether they will be required to report for a given shift. If the company doesn't need them, they don't get paid. Companies make last-minute scheduling decisions using sophisticated software that claims to predict staffing needs in real time. Retailers claim this cuts their costs but the practice imposes an incredible strain on the lives of workers.

On-call scheduling makes it difficult to arrange for child care or eldercare. And while canceled shifts cut into workers' pay, the requirement that they be available to work precludes them from taking other jobs or scheduling classes that might help them get a better job.

Attorney General Schneiderman took on these unfair scheduling practices beginning in 2015, when he sent letters to fourteen large retailers requesting information about their scheduling practices, and in particular their use of on-call scheduling. Over the next several months, Abercrombie & Fitch, Victoria's Secret, the Gap, Bath & Body Works, J. Crew, Urban Outfitters, and Pier 1 Imports all announced they would end their use of on-call scheduling.



Attorney General Schneiderman then enlisted eight other attorneys general in the cause of reforming scheduling practices in the retail industry nationwide. He and his colleagues from California, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, and the District of Columbia sent letters to fifteen additional companies doing business in their respective states. That effort paid off. In December, six of the fifteen companies—Disney, Aeropostale, Carter's, David's Tea, PacSun, and Zumiez—agreed to end on-call scheduling in their stores. The other nine companies responded that they did not use the practice of on-call scheduling or had recently ended it.

As a result of the commitments secured by Attorney General Schneiderman and his colleagues, an estimated 288,000 retail workers nationwide no longer endure the stress and unpredictability associated with on-call scheduling.

Attorney General Schneiderman also stands ready to ensure that New York City retailers and fast food stores comply with new fair scheduling laws scheduled to go into effect for city workers on November 26, 2017.

## Protecting Union Rights for Child Care Workers

Thousands of working New Yorkers rely on safe, nurturing, child care furnished by day-care providers who work out of their homes. For some low-income families, that care is partly subsidized by the State of New York. The workers who care for the children of working families not only provide an essential service for the parents, they are also formative figures for young children during a critical period in their cognitive and emotional development. These child care workers deserve respect commensurate with the value of the professional service they provide.

In 2007, Governor Eliot Spitzer issued an Executive Order finding that although child care providers who are partially paid by the state “provide an essential service for working parents... many child care providers lack an organized voice” in government decisions that impact them. The order granted child care providers the right to designate a collective-bargaining representative if the majority of them chose to do so, a right that was later protected by statute. A majority of home-based child care workers outside New York City chose the Civil Service Employees Association (CSEA) to represent them.

In negotiating a first contract, the union secured significant gains that benefited both workers and the children in their care. The contract established as a guiding principle that child care providers are professionals who should be treated with “courtesy, dignity, consideration and respect.” It created a dispute resolution process; allocated more than \$7 million for quality grants to help providers “increase the quality of the environment in which they provide their services”; provided \$500,000 for professional development grants; and arranged for the creation of a union-sponsored health insurance plan for day-care workers, funded in part by more than \$14 million in contributions from the State. While no child care providers were required to join the union, and none are currently required to pay dues or fees to the union, they all benefit from the contract that the union negotiated.

Despite these benefits, a few providers objected to having the union negotiate on their behalf, and challenged the law granting home-based child care workers the right to unionize. They were represented in their legal challenge by a national anti-union foundation that brings legal challenges all over the country seeking to diminish the rights of workers to organize and bargain collectively. Attorney General Schneiderman’s office successfully defended the right of home-based child care workers to join a union.

The plaintiffs alleged that being represented by the union infringed on their free speech rights. A federal district court rejected their claims, and the U. S. Court of Appeals for the Second Circuit upheld that decision, agreeing with the arguments put forth by Attorney General Schneiderman’s office. The Supreme Court declined to review the Second Circuit decision.

The plaintiffs weren’t paying any money for speech they disagreed with. Moreover, since unions are governed by majority rule and not total consensus, no reasonable person would assume that union positions represent the views of every single member. And finally, if they disagreed with the majority opinion of the union, plaintiffs remained free to express their own views, on their own behalf, to the state agency that pays them.

By organizing and bargaining collectively, workers can improve their own employment conditions and benefit their profession. Workers across our economy benefit from strong unions, and Attorney General Schneiderman was proud to once again stand up for the organizing rights of child care workers.

## Making Payroll Cards Fair

New York workers should be able to collect the wages they earn without racking up confusing and unfair fees. Low-wage workers in particular can't afford to be nickel-and-dimed out of their hard-earned pay. Since 2014, Attorney General Schneiderman has been leading the effort to ensure that as employers adopt new payment methods like payroll cards, workers will benefit from added convenience without getting hit in their wallets. This year, he continued the fight, going to court to defend new payroll card regulations that benefit workers.

Employers are increasingly paying workers using payroll cards—prepaid debit cards that provide an alternative to direct deposit or a paper check. Payroll cards can offer important benefits over paper checks, especially for workers without bank accounts, who might otherwise have to pay check-cashing companies.

But a 2014 report by the Attorney General's Labor Bureau found that in many cases, payroll cards came with confusing terms and hidden fees that were cutting into workers' wages. To increase protections for workers, Attorney General Schneiderman proposed legislation requiring clear disclosure of payroll card fees, restricting certain fees, and ensuring that workers can withdraw all of their wages free of charge.

He also called on the New York State Department of Labor to adopt these protections through regulation. The Department of Labor did just that, issuing final rules last September that closely mirrored Attorney General Schneiderman's bill. However, a payroll card company challenged the rules and the state's Industrial Board of Appeals (IBA) revoked them.

Representing the Commissioner of Labor, Attorney General Schneiderman appealed the IBA decision, and is seeking to have the rules reinstated. The payroll card company that challenged the rules argued that the Commissioner of Labor improperly sought to regulate financial institutions by barring them from charging fees on certain debit cards. However, as Attorney General Schneiderman argued in his appeal, the rules only regulate employers, not financial institutions. Financial institutions are free to charge employers whatever fees they choose. The rules only regulate the extent to which the employers can pass those fees on to workers. The Attorney General argued that it is well within the Commissioner's authority to ensure that employers do not force workers to pay fees just to access their own wages.

Attorney General Schneiderman will continue to fight to ensure that all New York workers can access their wages conveniently, and without paying unfair fees.

## Protecting Job Mobility for Workers

It is an essential feature of our job market that workers may seek out and accept new jobs in order to advance in their careers, just as employers may seek to recruit the best-qualified workers, who may work for another employer in the same industry, with an offer of better pay. In rare circumstances, employers may contractually restrict the right of an employee to go to work for a competitor within a certain period. Such restrictions are called non-compete clauses, but under New York State law, they may only be used in narrow circumstances.

Traditionally, non-compete clauses were imposed only for employees that were highly compensated and possessed unique skills, specialized expertise or knowledge, such as access to trade secrets.

In recent years, some employers have begun requiring relatively rank-and-file employees to agree to non-compete restrictions as a condition of hiring or keeping their jobs. In these instances, non-competes do not serve to protect trade secrets, or an employer's legitimate business interests. Instead, they serve to depress wages by restraining competition. Workers don't seek out better paying jobs for fear of being sued and they lose leverage to negotiate a raise at their current job. Non-competes also deter other employers in the same industry from hiring workers for fear of a lawsuit by the original employer.

Attorney General Schneiderman has taken on this practice at three companies—the legal news website Law360, Jimmy John's Gourmet Sandwiches, and Examination Management Services (EMS), a nationwide medical-information-services provider. In each instance, the company agreed to stop using non-compete agreements for most or all of their employees, and to void those for past employees.

Building on the success of these agreements, Attorney General Schneiderman proposed legislation to curb widespread abuse of non-compete agreements. His bill includes a ban on non-competes for all low-wage workers; a requirement that if an employee covered by a non-compete is fired without cause, the non-compete is void; and a first-of-its-kind provision granting employees the right to seek damages when subjected to unlawful non-competes. If enacted, Attorney General Schneiderman's legislation would provide the strongest protections in the nation to prevent employers from locking workers in to low-paying jobs.

## Protecting Workers from Unfair Arbitration Agreements

If the history of the labor movement has taught us anything, it's that workers have more power when they join together and act collectively than when they have to face the boss alone. That is why the federal government and states including New York have long recognized that workers have a fundamental right to join together and act collectively for their mutual aid and protection. Attorney General Schneiderman recently filed a brief in the Supreme Court, together with other attorneys general, to prevent unfair arbitration agreements from eroding this important right.

In the early 20th century, companies that wanted to prevent workers from joining together to demand higher wages or safer working conditions could require workers to sign contracts giving up their ability to join a union or engage in other collective efforts to improve their working conditions. Companies fired, or did not hire, workers who refused. These contracts were called "yellow dog contracts."



States, and eventually Congress, outlawed yellow dog contracts because, as Congress declared, “the individual unorganized worker is commonly helpless to exercise actual liberty of contract and . . . thereby to obtain acceptable terms and conditions of employment.” Congress declared that workers must “be free from the interference, restraint, or coercion of employers” in “self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Congress further mandated that any contract “in conflict with th[is] public policy . . . shall not be enforceable in any court of the United States.”

The principle that workers must be able to act together to better their conditions remains essential — and legally protected — today. In addition to organizing and joining unions, workers can join together to assert their rights in court to address wrongs from wage theft, to sexual harassment, to racial discrimination. However, some employers have attempted to infringe the right of workers to band together by requiring employees to sign contracts that waive workers’ rights to collective action. Much like the yellow dog contracts of old, these contracts serve to isolate and disempower workers.

There are several reasons why individual arbitration is a less effective means of protecting workers’ rights than collective actions. First, workers may justly feel more vulnerable to retaliation if they act alone than if they act as part of a group. Second, workers may not even know their rights are being violated. In a class or collective action, if one worker brings an action, notice is provided to other potentially affected workers. Third, individual claims may be too small to make enforcement practical, even if the harm is large when multiplied over hundreds or thousands of workers. Finally, individual cases often can’t show proof of a pattern of policy, making it difficult to remedy systemic violations.

Moreover, government agencies do not have the resources to replace class and collective actions. If workers cannot act together to enforce their rights, many violations will simply go unaddressed. While state and federal enforcement agencies can take action to protect workers, Congress and state legislatures designed labor and employment laws to enable workers to enforce their own rights.

## Justice Department switches sides in Supreme Court case

BY MARIANNE LEVINE

June 16, 2017

The DOJ said Friday that it will switch sides in a Supreme Court case, dropping its previous support for workers to throw its weight behind management.

The case, *NLRB v. Murphy Oil*, addresses whether an employment contract that requires the employee to waive his or her right to bring a class-action lawsuit against the employer violates the National Labor Relations Act.

The National Labor Relations Board (NLRB) has ruled in several cases that employment contracts waiving class or collective action are invalid. Under the Obama Administration, the U.S. Department of Justice (DOJ) joined the NLRB in defending this position in a recent appeal to the U.S. Supreme Court, but under the new administration, DOJ switched sides. To ensure that workers can continue to protect themselves and their coworkers through collective action and that their employers don't force them to abandon their right to collectively assert their rights, Attorney General Schneiderman joined AG's from ten other states and the District of Columbia in filing an amicus brief in the Supreme Court siding with the NLRB. The states argues that the National Labor Relations Act, the Norris-LaGuardia Act, and state labor laws protect workers from being required to sign away their right to collective actions. The case, *NLRB v. Murphy Oil*, is pending.

# Protecting New Yorkers from the Federal Government's Rollback of Worker Protections

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*The Atlantic*

## Will States Take Up the Mantle of Worker Protection?

BY BOURREE LAM  
JAN 17, 2017

Since November's election, labor advocates have been bracing themselves for an administration they fear will be kinder to owners than to workers. But some are hopeful that there's another way to protect employees, even without the federal government's help: Instead, they're looking to the states.

One of the leaders on this at the state level will be Eric Schneiderman, the Democratic attorney general of New York, who has been active in pushing for increased worker protections in his state.

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Now, in light of the changes coming to the federal government, Schneiderman believes that the role of states will be all the more critical for workplace issues and regulations. "It's clear that we're going to have a vigorous national debate about some stuff that I would have thought would have been settled a while ago but apparently is open for discussion again regarding wages and overtime," said Schneiderman. "Our labor bureau has been very successful in all of these areas, and we're set up to enforce the law and protect New Yorkers and take on the debate if the incoming Labor Secretary really does want to follow through on what I think are some harmful public policies to try to reduce wages, overtime, and worker protections."

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On the part of attorneys general, the shift of enforcement power from the federal government to the states could require their offices to more regularly initiate investigations, file lawsuits, and bring employers to the table for dispute settlement. "If they're actually going to be attacking vulnerable populations such as low wage workers, we stand ready to defend them. And if they are going to violate any of their statutory or constitutional duties, we're prepared to challenge them in court," said Schneiderman.

## Nomination of Anti-Worker Labor Secretary Blocked

There were many warning signs last year that presidential candidate Donald Trump would not be a friend to workers—from his own history of underpaying workers, to his statements that wages are “too high.”

In December, President-elect Trump confirmed many people’s worst fears about his anti-worker approach by nominating Andrew Puzder to become the United States Secretary of Labor. At the time, Puzder was CEO of a fast food company that was sued numerous times for wage theft, discrimination, safety violations, and retaliation against workers who spoke up for their rights.

The logo for Amsterdam News, featuring the words "NEW YORK" in a small, white, sans-serif font above the word "Amsterdam" in a large, white, gothic-style font, all set against a red rectangular background. The entire logo is centered on a piece of white paper with a torn, deckled edge.

# Amsterdam News

### Unions, activists and officials react to Trump’s labor secretary pick

STEPHON JOHNSON | 12/15/2016

New York State Attorney General Eric Schneiderman found the appointment of Puzder “baffling” and “cruel” considering that Trump’s pick was accused of engaging in wage theft and the DOL was responsible for proving those claims to be true.

Attorney General Schneiderman joined with labor leaders and pro-worker elected leaders across the country in opposing Puzder’s nomination. In a statement, Attorney General Schneiderman pointed out that Puzder “has done everything in his power to undermine the rights of American workers, from driving down wages to opposing overtime pay.” Citing Puzder’s history of having his own restaurants investigated and fined by the agency he was tapped to lead, the Attorney General called his nomination “cruel and baffling.”

Two months later, under withering fire from worker advocates, Puzder withdrew from consideration for Labor Secretary. In response to his withdrawal, Attorney General Schneiderman said:

*“I stand with millions of working men and women across America in cheering Andrew Puzder’s decision to withdraw his troubled nomination for Labor Secretary.*”

*“Puzder had no business running the Labor Department -- an agency that uncovered wage theft at a number of Puzder’s own restaurants -- and it remains baffling that President Trump even nominated him in the first place.*”

*“President Trump’s next nominee for Labor Secretary must be committed to protecting workers’ rights, rather than seeking to undermine them at every turn. Whoever that nominee is, I stand ready to use the full force of my office to ensure that workers are treated fairly.”*



Attorney General Schneiderman proudly joined with members of 1199SEIU, NYSNA, AFSCME DC 37, and other unions, as well as local elected officials to oppose efforts in Washington to repeal the Affordable Care Act (Obamacare). The Affordable Care Act has benefited millions of New Yorkers, and Attorney General Schneiderman pledged to do everything in his power to defend it, including going to court to challenge unconstitutional provisions of a proposed replacement bill, if that bill should ever pass.

## Immigrants' Rights Roundtables

New York has a long history of welcoming immigrants from every corner of the globe, and drawing strength from the diversity of perspectives and cultures that immigrants bring to our state.

Following the presidential election, many immigrant New Yorkers were overwhelmed by fears that the new administration was only interested in kicking them and their loved ones out of that country. Many worried that the federal government would no longer protect them from discrimination, or even bias-motivated violence.





Standing with a diverse coalition of labor, religious, and civil rights leaders, Attorney General Schneiderman issued guidance to law enforcement agencies across the state to support investigations and prosecutions of hate crimes.

Attorney General Schneiderman immediately stepped up to assure immigrants, and all New Yorkers, that his office would have their backs, no matter what the new administration did, or failed to do, in the months and years ahead.

Amid a surge of hate crimes nationwide and in New York, the Attorney General's office issued an urgent bulletin to law enforcement offices statewide providing guidance and support to identify, investigate, and prosecute hate crimes against immigrants, religious minorities, ethnic and racial minorities, women, LGBTQ New Yorkers, and other vulnerable communities.

His office also hosted ten roundtables and other events in Manhattan, in neighborhoods with large immigrant communities in Brooklyn and Queens, on Long Island, and in the Hudson Valley. In total, more than 175 organizations participated in these events, including a wide variety of immigrant organizations, labor unions and other worker justice groups, faith organizations, civil rights groups, and local elected officials.

Representatives from the Attorney General's Labor and Civil Rights Bureaus joined these events to answer questions and reassure New Yorkers that the AG's office will protect their rights, both on and off the job, regardless of immigration status, religion, race, ethnicity, sexual orientation, gender identity or disability.



Attorney General Schneiderman at roundtable meeting on Long Island, one of several his office held with labor leaders, immigrant rights activists, clergy, and civil rights leaders to discuss strategies for combatting hate and discrimination.

Attorney General Schneiderman’s Labor Bureau has a long-standing policy of not asking workers about their immigration status. It is illegal for an employer to retaliate against a worker for complaining about wages, safety, or other labor violations, either directly to the employer or to a government agency like the Attorney General’s office. Labor laws including minimum wage, overtime, and prevailing wage protect workers in New York State regardless of their immigration status, and the office has brought numerous cases recovering wages for immigrant workers without regard to their status.

# New Laws in Effect to Protect Workers

In the last year, thanks to the collective efforts of labor unions and other worker justice groups, community organizations, and individual New Yorkers who made their voices heard, both the State of New York and New York City enacted new laws that to protect workers and their families. Attorney General Schneiderman is proud to offer information on these new laws, including resources that New Yorkers can use to get more information, and report violations.

## New Laws for New York State

### Minimum Wage Increases

In response to the Fight for 15 campaign, the State Legislature voted in 2016 to raise the minimum wage in New York State. The Legislature scheduled the minimum wage to increase at different rates in different regions of the state to reflect differences in cost of living. In addition, the Legislature scheduled the minimum wage to increase more slowly for small businesses in New York City to give those businesses more time to adjust. Finally, in response to concerted organizing among fast food workers, the Legislature scheduled the minimum wage to increase at a faster rate for workers in the fast food industry.

The following is the schedule of minimum wage increases:

| <b>BASIC MINIMUM HOURLY RATE (per hour)</b> |          |          |          |          |          |          |
|---|----------|----------|----------|----------|----------|----------|
| ...as of                                    | 12/31/16 | 12/31/17 | 12/31/18 | 12/31/19 | 12/31/20 | 12/31/21 |
| <b>GENERAL MINIMUM WAGE</b>                 |          |          |          |          |          |          |
| NYC - Large Employers (of 11 or more)       | \$11.00  | \$13.00  | \$15.00  |          |          |          |
| NYC - Small Employers (10 or less)          | \$10.50  | \$12.00  | \$13.50  | \$15.00  |          |          |
| Long Island & Westchester                   | \$10.00  | \$11.00  | \$12.00  | \$13.00  | \$14.00  | \$15.00  |
| Remainder of New York State                 | \$9.70   | \$10.40  | \$11.10  | \$11.80  | \$12.50  | TBD      |
| <b>FAST FOOD WORKERS</b>                    |          |          |          |          |          |          |
|   |          |          |          |          |          | 07/01/21 |
| New York City                               | \$12.00  | \$13.50  | \$15.00  |          |          |          |
| Rest of State                               | \$10.75  | \$11.75  | \$12.75  | \$13.75  | \$14.50  | \$15.00  |

Courtesy of the New York State Department of Labor,  
<https://labor.ny.gov/formsdocs/wp/Part146.pdf>

Minimum wages for tipped workers are scheduled to increase as follows:

| <b>TIPPED FOOD SERVICE WORKERS (per hour)</b> |          |          |          |          |          |          |
|---|----------|----------|----------|----------|----------|----------|
| ...as of                                      | 12/31/16 | 12/31/17 | 12/31/18 | 12/31/19 | 12/31/20 | 12/31/21 |
| <b>CASH WAGE PAID BY EMPLOYER (minimum)</b>   |          |          |          |          |          |          |
| NYC - Large Employers (of 11 or more)         | \$7.50   | \$8.65   | \$10.00  | \$10.00  | \$10.00  | \$10.00  |
| NYC - Small Employers (10 or less)            | \$7.50   | \$8.00   | \$9.00   | \$10.00  | \$10.00  | \$10.00  |
| Long Island & Westchester                     | \$7.50   | \$7.50   | \$8.00   | \$8.65   | \$9.35   | \$10.00  |
| Remainder of New York State                   | \$7.50   | \$7.50   | \$7.50   | \$7.85   | \$8.35   | TBD      |
| <b>CREDIT FOR TIPS RECEIVED (maximum)</b>     |          |          |          |          |          |          |
| NYC - Large Employers (of 11 or more)         | \$3.50   | \$4.35   | \$5.00   | \$5.00   | \$5.00   | \$5.00   |
| NYC - Small Employers (10 or less)            | \$3.00   | \$4.00   | \$4.50   | \$5.00   | \$5.00   | \$5.00   |
| Long Island & Westchester                     | \$2.50   | \$3.50   | \$4.00   | \$4.35   | \$4.65   | \$5.00   |
| Remainder of New York State                   | \$2.20   | \$2.90   | \$3.60   | \$3.95   | \$4.15   | TBD      |

Courtesy of the New York State Department of Labor,  
<https://labor.ny.gov/formsdocs/wp/Part146.pdf>

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## **Paid Family Leave**

Beginning in January, 2018, New York State will begin phasing in Paid Family Leave benefits for most working New Yorkers. Paid Family Leave replaces a portion of a worker's wages while he or she takes time off to bond with a child, care for a close relative with a serious health condition, or help relieve family pressures when someone is called to active military service.

Employees are also guaranteed to be able to return to their job and continue their health insurance while on leave. Employees who contribute to the cost of their health insurance must continue to do so while on Paid Family Leave.

For more details on eligibility and benefits, please visit:

<https://www.ny.gov/programs/new-york-state-paid-family-leave>

## ***New Laws for New York City***

### **Protections for Freelancers**

On May 15, 2017, the Freelance Isn't Free Act took effect in New York City. The law provides important legal protections for freelance workers, specifically the right to: (1) a written contract; (2) timely and full payment and (3) protection from retaliation.

The law establishes penalties for violations of these rights, including statutory damages, double damages, injunctive relief, and attorney's fees. For more details, visit:

<https://www1.nyc.gov/site/dca/about/freelance-isnt-free-act.page>

### **Fair Scheduling & Other Protections for NYC Fast Food & Retail Workers**

Earlier this year the New York City Council passed a package of bills, signed by the mayor, with the aim of protecting fast food and retail workers in New York City from abusive scheduling practices. Fast food and retail workers suffer erratic schedules, insufficient hours, and back-to-back late-night and early-morning shifts. The new laws will go into effect November 26, 2017.

The following are the new rights and protections for fast food and retail workers in New York City:

- fast food employers must give written notice of schedules to their employees no less than two weeks in advance;
- fast food employers must provide written "good faith" estimates of weekly hours to new employees;
- fast food employers must regulate the practice of "clopenings," or consecutive closing, then opening, shifts;
- fast food employers must offer any new shifts to current employees before they hire anyone else;
- if a fast food employer makes changes to an employee's schedule with less than 14 days' notice, the employer must pay the employee a premium;
- upon an employee's written request, fast food employers are required to deduct and remit voluntary contributions to nonprofits, including organizations that advocate for workers' rights, if the recipient nonprofits meet certain requirements; and
- retailers with 20 or more employees in New York City are prohibited from scheduling their employees for "on call" shifts, which force employees to check in with their employers on little to no notice about whether or not they will be working on any given day.

For more information on these new city laws, visit the New York City Office of Labor Policy and Standards at:

<https://www1.nyc.gov/site/dca/about/office-of-labor-policy-standards.page>



