



The State Energy &
Environmental Impact Center
NYU School of Law



Labor and Worklife Program
HARVARD LAW SCHOOL

A Role for State Attorneys General in a Just Transition



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Executive Summary

Climate change is already causing massive harms, in the form of more intense storms, flooding, heat waves, and drought. Unchecked, it has the potential to cause even greater damage and destabilize countries worldwide. As economic, regulatory, and security needs push the United States towards cleaner technologies and away from fossil fuels, important questions arise about this transition's impact on workers. If the new sector does not promise good family-sustaining jobs and worker protections are not enforced, the shift to clean energy could exacerbate already harmful economic trends that will undermine environmental goals, as well as the economy overall.

Experts and advocates have analyzed how best to address these challenges. They have recommended policies that drive high-road working standards, including good wages and benefits; laws that promote and enable unionization; and policies safeguarding workplace safety and health in the clean energy industry as well as the fossil fuel sector, all critical at the current moment when the clean energy industry is newly developing, and practices are being established.

State attorneys general (AGs) can play an important role in driving a just transition. As the top lawyers in each state, they are charged with protecting the public through a wide range of powers, including enforcement, oversight, advocacy, representing state agencies, and conducting investigations, all of which can be brought to bear on just transition issues.

This Report catalogs numerous worker-focused recommendations by some of the organizations that are most active on these issues. It then outlines how AG action can play a role in this arena, offering a series of ideas and options for AGs to engage, from actions to help create good jobs in the clean energy economy, to enforcement and other measures to address issues in the fossil fuel sector. Many AGs have been active on these issues already and the Report often points to those activities to help illustrate the ideas. While these recommendations focus on the energy transition as an illustrative example, the ideas and options laid out in this Report should be applicable to the ongoing transition in other industries, such as the transportation sector. The Report's overall goal is to provide ideas and a framework for understanding the role of AGs in promoting a just transition.

Table of Contents

Executive Summary	3
I. Introduction	7
II. Background	11
A. Defining “Just Transition”	11
B. AG Powers	13
<i>Climate Action</i>	14
<i>Enforcing Worker Protections</i>	16
Environmental Harms Related to Workplaces	16
Enforcement in Wage Theft, Misclassification, and Related Cases.....	17
No-Poach Agreements.....	17
<i>Policy and Advocacy Beyond Enforcement</i>	18
Representing and Advising State Agencies	18
Public Education	18
Investigations and Other Soft Powers	19
Legislative Advocacy and Litigation on Policy Issues	19
III. Clean Energy and a Just Transition	21
A. Introduction	21
B. Recommendations	23
<i>Increasing Rates of Unionization in the Clean Energy Sector</i>	23
<i>Benefits of Unions</i>	23
<i>Increasing Union Density in the Clean Energy Sector</i>	24
<i>Other Tools in Addition to Unionization</i>	26
Prevailing Wage	27
Safety and Health Protections	28
Local Hire & Community Benefits Agreements	29
Preventing Misclassification of Workers	30
Federal Jobs Program.....	30

C. Equity Considerations	31
D. State Approaches	33
<i>Maine</i>	34
<i>Maryland</i>	34
<i>New York</i>	34
<i>Rhode Island</i>	35
<i>Washington</i>	35

IV. Just Transition Considerations for Workers in the Fossil Fuel Industry37

A. Introduction	37
B. Coal Industry Downturn – A Case Study.....	39
C. What Can Be Done?	40
<i>Role in Decision-Making</i>	40
<i>Training Programs & Equity</i>	41
D. State Approaches	43
<i>Colorado</i>	43
<i>Illinois</i>	44
<i>Maryland</i>	44
<i>Montana</i>	44
<i>New York</i>	45
E. Bankruptcy.....	45

V. Highlighting Opportunities for Action by AGs47

A. The Inflation Reduction Act	48
B. Improving Job Quality in the Emerging Clean Energy Sector	51
<i>Law Enforcement</i>	51
<i>Advocacy and Potential Law Enforcement</i>	54
<i>Policy Advocacy, Public Leadership, and Education and Outreach</i>	56
<i>Representing State Agencies</i>	58

C. A Just Transition away from Fossil Fuel	59
<i>Law Enforcement</i>	59
<i>Policy Advocacy, Public Leadership, and Education and Outreach</i>	60
<i>Bankruptcy-Related Advocacy: A Case Study in</i> <i>How AGs Can Protect the Environment and Workers</i>	61
D. Protecting Workers across Sectors from the Impacts of Climate Change	64
<i>Law Enforcement</i>	64
<i>Advocacy and Potential Law Enforcement</i>	64
<i>Policy Advocacy, Public Leadership, and Education and Outreach</i>	65
 VI. Conclusion: Matching Recommendations to Possible Attorney General Tools	67
 Appendix A.....	72
About the Authors.....	75
Image Credits	76
Endnotes.....	77



I. Introduction

In a recent report, the Intergovernmental Panel on Climate Change and the United Nations reconfirmed that greenhouse gas concentrations in the atmosphere continue to rise, leading in recent decades to surface temperatures that are among the warmest on record, and also to extreme weather events that have already caused catastrophic damage and unsafe working conditions.¹

Within the United States, regulators and lawmakers at the local, state, and federal levels are working to address rising temperatures by cutting greenhouse gas emissions, moving toward electrification and promoting clean transportation, and supporting new, cleaner energy generation.² The most notable recent example, the new Inflation Reduction Act, is set to drive money to clean energy development throughout the country.³ This shift will necessarily have a significant impact on jobs, as investment is moved from industry models that rely on fossil fuels (gas-powered cars, for example, or coal-power power plants) to new renewable-based models.

The coming shift raises concerns about the impact on workers. Many existing fossil fuel jobs provide employment with unionized workforces, family-sustaining wages, health

insurance, and other benefits. Meanwhile, the emerging clean energy industry is not uniformly embracing a high-road employment model, for a variety of reasons, including the general anti-union corporate bent and overall poor working conditions in the United States, as well as concerns about the cost of high-quality jobs.

But there are experts and advocates who offer a vision in which workers' rights and clean energy environmental policies are not in competition, but rather compatible. They advocate for a just transition, which would include the creation of high-quality clean energy jobs, support for workers in transitioning legacy industries, and protection for workers from already-existing devastating impacts of climate change.⁴ This approach to a transition not only helps workers, but can also benefit the government⁵ and improve efficiency in ways that help save businesses money.⁶

Accomplishing that kind of transition requires a focused approach to policy and collaboration across the environmental, labor, and environmental justice fields. Advocates and experts have emphasized the need to enforce basic labor laws and ensure high quality jobs that exceed minimal standards in the new renewable energy economy. They have also emphasized the importance of addressing the needs of workers in the fossil fuel sector as it phases out, in collaboration with those workers. In addition, advocates have highlighted the opportunity to right historic wrongs by working with communities to ensure that the benefits and jobs associated with new clean energy projects are available to historically marginalized communities that have been overburdened by pollution. Some of the specific policies proposed to achieve these objectives include increasing union density in new clean energy industries; enforcing and expanding labor standards and workplace safety and health protections; encouraging project labor agreements and prevailing wage requirements;⁷ and designing training programs that help workers shift into the new industries.⁸ In the meantime, there is the need to protect workers who are already adversely affected by rising temperatures and extreme weather.

As this varied list of priorities demonstrates, this is a critical moment for collaboration. As the Century Foundation's Amanda Novello has argued, "the strength of the climate movement is tied directly to the strength of the labor movement: without strong workers' rights and protections, it will be highly unlikely that a green transition will be as aggressive and wide-reaching as needed, in the time we have." Damon Silvers, former policy director and special counsel for the AFL-CIO, expressed a similar sentiment: "How climate advocates, governments, and working people interact will determine whether we contain a warming planet, or end up setting up an unimaginable catastrophe."⁹

From a social and economic justice perspective, a transition to clean energy that replaces family-sustaining unionized jobs with low-road, exploitative ones would be deeply

problematic. From a strategic perspective, both the labor and environmental movements stand to benefit by grappling with ways to join together in pursuit of common goals. Workers have an interest in continuing to have a habitable planet and in addressing climate change, especially as a growing number of people, including on the job, are already devastatingly impacted by rising temperatures and other climate-related events. Similarly, environmental advocates have an interest in building a broad-based and justice-oriented coalition that pushes the changes needed in an expeditious way.

State attorneys general (AGs), with a role on both environmental and labor fronts, can be key players in this arena. AGs serve as the top lawyer in each state. They have a wide range of powers and tools: they advise and represent state agencies, pursue both labor and environmental policies that are in the best interests of the state's residents, file civil lawsuits and sometimes criminal charges to bring wrongdoers to account (including sometimes in labor or environment-related cases), and advocate for their constituents at the state and federal level. With these powers, AGs have the potential to have a marked impact in relation to a just transition—addressing the climate crisis through advocacy for more protective state and federal policies, while also enforcing worker protections.

The goal of this Report is to provide a briefing about these pressing issues for AGs and the lawyers in their offices. The Report provides a basic background on the concept of a just transition and outlines the main policy recommendations. The purpose is not to be encyclopedic, but to highlight significant areas of activism for AGs who have primarily focused on environmental issues and are now engaging on matters related to the transition. The Report will also be of interest to AGs active on labor issues. And this Report can help inform the understanding of labor and environment-focused government lawyers generally (whether in local, state, or federal government) about this work, as these issues are likely to remain relevant for some time to come.

Another goal of the Report is to highlight the potential for AG action in this area for an audience of environmental or labor advocates that may be interested in seeking partnerships, support, or greater enforcement efforts on these issues. Though certain policy areas may lend themselves better to AG action than others, there is a possible role for AGs on many of the issues that matter to this economic transition.

The Report begins by addressing the term “just transition,” which has commonly been used to refer to the many policies needed to aid workers affected by a transition; the Report discusses the history of the term and its use now. The Report then summarizes the tools and powers that AGs have, with an emphasis on the ones that could be used to promote and support a just transition. The Report looks at a number of policy recommendations for achieving a just transition, both for the clean energy sector and

for the fossil fuel sector. With the energy industry as the focus, the Report analyzes the potential role that AGs can play in relation to a just transition. In that Section, the Report highlights this role by pointing to many examples of work that AGs have already undertaken in these areas. The issues and recommendations are likely similar in many other affected industries (such as automobile manufacturing plants), but focusing on the energy industry helps provide specific examples of policies and options that can be considered broadly.

Finally, climate change is already adversely affecting workers across many industries, with extreme heat harming indoor and outdoor workers,¹⁰ floods making it dangerous to go to work,¹¹ and severe tornadoes imperiling workers and even leveling warehouses.¹² The changes have also led to new worker hazards and abuses. Workers who need to stay home because of an impending hurricane can face layoffs.¹³ An industry of traveling clean-up workers has developed to address recovery and repair clean up needs after weather disasters around the country; it is staffed with vulnerable workers and is rife with worker abuse and dangers.¹⁴ While this Report focuses primarily on transition issues, it also contains some brief ideas about how AG offices can play a role in relation to already-existing worker crises caused by climate change.



II. Background

This Section begins by defining “just transition.” It then describes the roles and powers of an attorney general, in order to outline the tools available to AGs for addressing the recommendations.

A. Defining “Just Transition”

Many advocates and experts have focused on the impact on workers of climate change and the economic changes that are underway to address it. Often, these discussions have used the term “just transition” to refer to a very broad set of recommendations and issues related to an “approach to energy transition that includes protections for workers and communities.”¹⁵ For example, the Just Transition Centre, an organization that was established by the International Trade Union Confederation, explains that a “plan for just transition provides and guarantees better and decent jobs, social protection, more training opportunities and greater job security for all workers affected by global warming and climate change policies.”¹⁶

The use of the term does not guarantee that a transition will be just, however. Many prior transitions have had aspects that were distinctly unjust, leading the late AFL-CIO President Richard Trumka at one point to describe it as “just an invitation to a fancy funeral” (although he adopted the “just transition” terminology in later comments); meanwhile, some advocates choose to frame the discussion around “good climate jobs.”¹⁷ Nonetheless, the “just transition” terminology is commonly used and can be helpful for identifying the goals and challenges in this area.¹⁸ Thus, in gathering knowledge and recommendations focused on transition issues, this Report uses the term loosely to refer to recommendations that are focused on improving conditions for workers and on righting historic wrongs at a time of transition. It does this along three fronts:

FIRST, the Report looks at recommendations focused on ensuring that the new clean energy jobs are good jobs. Defining a quality job is a challenging endeavor.¹⁹ But the Families and Workers Fund along with the Aspen Institute recently released a shared definition of job quality, which is a useful guide. The definition includes economic stability (including a living wage, decent benefits, safe working conditions, and a predictable work schedule, among other things); economic mobility and potential for advancement; and respect and a voice on the job (which would most commonly be achieved through collective bargaining).²⁰ Creating such jobs would require, as a baseline, effective enforcement of existing worker protection laws. But it would also require advocating for policy choices that will strengthen workers’ rights, including those that will lead to high-road employment practices and ideally, facilitate unionization in the clean energy sector.

SECOND, the Report outlines the need for support and assistance for workers currently in the fossil fuel sector, so that “policies which are environmentally beneficial do not cause undue harm to the social or economic well-being of those who are, or have traditionally been, dependent on the fossil fuel sector.”²¹ As an example, the Just Transition Fund was set up by a coalition of funders to “create opportunity for the communities hardest hit by coal’s decline.”²²

THIRD, the term “just transition” has been used to address the need to direct new jobs and opportunities toward marginalized communities and populations that have been disproportionately burdened by pollution (although care needs to be taken to direct jobs to locations where labor standards are adequate).²³ As Peggy Shepard, co-founder and Executive Director of WE ACT for Environmental Justice explained, the clean energy transition is a time of transformative change and that change should be harnessed to right historic wrongs and build “resilient communities,” meaning it should be a change that includes consideration for frontline communities, the impact of energy costs on vulnerable communities, and worker solutions that include groups that have been excluded from the job market.²⁴ In a post, the Natural Resources Defense Council

(NRDC) took a similar position: “A just transition should also account for the well-being of community members who never worked for the plant but breathed the polluted air and saw very little benefit from the facility. To focus entirely on displaced workers and leave historically marginalized people out of the just transition picture would be, well, unjust.”²⁵

These three sets of recommendations may at times be in tension. For example, many states with low-road labor standards also contain marginalized communities in disproportionately polluted areas. But the three lenses are all important to the discussion.



B. AG Powers

When it comes to addressing the climate crisis, environmental and labor issues intersect in multiple ways. Increasing heat and other extreme weather caused by climate change are already endangering many workers.²⁶ Policies that shift the economy away from one source of energy to others mean that jobs will be shifting too. And whole segments of U.S. society have borne and will continue to bear the brunt of reliance on fossil fuels in an inequitable manner.

Attorneys general have tools to address many of these issues. AGs have enforced existing law, including anti-wage theft, prevailing wage, and other worker protection laws,²⁷ all of which could be enforced in the new clean energy economy. In addition, AGs have worked to improve worker protection standards in the face of risks exacerbated by a changing climate, by, for example, pushing for improved safety standards at chemical plants that face higher risk of accidents due to extreme weather.²⁸ As the economic transition towards clean energy intensifies, there will be more opportunities to advocate for stronger environmental protections and labor protections in new projects. To provide background on the tools that AGs possess which can come into play in relation to just transition advocacy, this Section briefly describes AG actions in the areas of climate advocacy and worker protection and in areas where environmental and worker protection overlap.



Climate Action

Attorneys general are uniquely situated to push for strong climate policies at multiple levels of government, and they have been key players since the beginning of the United States' climate response. Case in point: AGs were centrally responsible for pushing the Environmental Protection Agency (EPA) to begin regulating greenhouse gas emissions from motor vehicles. The Clean Air Act, passed in 1963, has a section that requires EPA to regulate any air pollutant emitted from a vehicle if the pollutant is found to pose a danger to public health.²⁹ In 1999, a coalition of environmental non-profit organizations and clean energy industry groups filed a rulemaking petition arguing that, since vehicles emit greenhouse gases (GHG) such as carbon dioxide, and since those emissions threaten public health by warming the climate, EPA is required by the Clean Air Act to cut greenhouse gas emissions from vehicles.³⁰ In 2003, EPA denied this petition, asserting that since Congress' intent behind the Clean Air Act was merely to regulate substances that polluted the air, not to address climate change, the agency did not have authority to regulate greenhouse gas emissions. EPA stated further that even if it did have the authority to do so, "setting GHG emission standards for motor vehicles [was] not appropriate at this time."³¹

In response to that denial, a coalition of AGs led by Massachusetts, along with cities and environmental organizations, challenged EPA's response in the D.C. Circuit Court of Appeals. After the D.C. Circuit denied the AGs' petition for review in a 2-1 decision, the AGs filed for certiorari at the Supreme Court. The Supreme Court ultimately ruled in favor of Massachusetts, deciding that the definition of "air pollutant" "embraces all airborne compounds of whatever stripe." Accordingly, the Court held that EPA not only has the authority to regulate greenhouse gas emissions, but *must* do so unless it can prove that greenhouse gas emissions are not a threat to public health: "Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do . . . EPA has refused to comply with this clear statutory command."³²

Since *Massachusetts v. EPA*, many AGs have continued to push for stronger climate action. During the Trump administration, different coalitions of AGs challenged the administration's many environmental rollbacks or joined in those challenges,³³ winning against the administration in 83% of the cases.³⁴ In addition, coalitions of AGs

successfully opposed a harmful methane rule, successfully fought off the steepest of the proposed budget cuts for EPA, and successfully advocated for legislation to address hydrofluorocarbons.³⁵ During the Biden era, as of mid-2022, AGs had filed many sets of comments on the Biden administration's federal rules related to climate, in many cases pushing federal agencies to issue rules stronger than those proposed, or with more aggressive compliance timeframes. Coalitions of AGs have also sued Biden-era agencies when those agencies make decisions that are flawed and not protective. For example, one coalition sued the U.S. Postal Service for its decision to replace its fleet with gas-guzzlers rather than even consider the benefits of a larger number of electric vehicles.³⁶ Another AG coalition sued EPA for a decision not to require aircraft manufacturers to reduce greenhouse gas emissions.³⁷

States are also beginning to implement climate statutes with aggressive goals, and AGs are on the frontlines of defending those decisions. For instance, New York Attorney General Letitia James' office "is actively engaged in assisting agencies with the implementation of [New York's Climate Leadership and Community Protection Act] to ensure it meets its goal of cutting greenhouse gas emissions and fostering a just and equitable transition to a green economy in New York."³⁸ Her office recently successfully defended a state agency's decision to deny a permit for an expanded gas facility, which was based on the state's aggressive climate goals.³⁹ And in Massachusetts, Attorney General Maura Healey has been pushing for utility regulations on gas facilities that enable the state to meet its climate goals.⁴⁰

Overall, AGs are focused on using their many varied tools to push for national action on climate.



Enforcing Worker Protections

A number of AGs have dramatically increased their involvement in protecting worker's rights in recent years.⁴¹

Environmental Harms Related to Workplaces

Attorneys general have used their enforcement and investigatory powers to pursue employers for wrongdoing that causes both environmental harm and harm to workers, as shown by several examples from the past several years. For example, after a mining company entered bankruptcy, Kentucky Attorney General Andy Beshear investigated the company to examine whether the company complied with bond requirements designed to protect the environment and the workers.⁴² Former Illinois Attorney General Lisa Madigan in 2013 filed a complaint against ExxonMobil for hydrogen sulfide emissions that endangered workers at a refinery outside of Chicago.⁴³ In April 2021, Illinois Attorney General Kwame Raoul, along with the U.S. Department of Justice and EPA, signed a consent decree (building on a 2005 consent decree) with ExxonMobil Oil Corporation to resolve violations in a different Illinois location.⁴⁴

Pennsylvania Attorney General Josh Shapiro conducted an extensive investigation into the risks to neighbors, workers, and first responders posed by the fracking boom in the state⁴⁵ and published a lengthy grand jury report with recommendations.⁴⁶ The recommendations included a call to require disclosure of the chemicals used in the industry before drilling happens, in order to protect workers and first responders from the hazards of addressing a spill or accident without knowing the chemical at issue.⁴⁷ In at least one case, the investigation also led to charges against an oil and gas company that allowed methane emissions to contaminate neighbors' wells.⁴⁸

In 2018, Washington Attorney General Bob Ferguson sued the U.S. Department of Energy over its failure to control hazardous vapors from emitting from the Hanford Nuclear Reservation, which contained over 1,500 dangerous chemical gases. AG Ferguson's lawsuit led to a settlement under which the Energy Department was required to test and implement controls to capture the chemical vapors at the source.⁴⁹ Wisconsin Attorney General Josh Kaul won a judgment against multiple construction companies for mishandling asbestos when building a new U-Haul site, although the resolution did not require notification of, or attain specific relief for, potentially exposed workers.⁵⁰ And North Carolina Attorney General Josh Stein recently sued manufacturers of firefighting foam arguing that the foam contains PFAS chemicals that are harmful to the firefighters and other first responders who use the material.⁵¹

Enforcement in Wage Theft, Misclassification, and Related Cases

A number of AGs have sued or criminally prosecuted employers for wage theft, payroll fraud, committing fraud in relation to minority- and women-owned business certifications for public projects, and more.⁵² Investigations and actions around these topics have been brought in California, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Washington, D.C.⁵³

Improperly labeling workers as independent contractors, or independent businesses, when they should be treated as employees allows companies to deprive the workers of a host of rights. Some AGs have been active in pursuing claims against companies that illegally misclassify their workers. California Attorney General Rob Bonta sued Uber and Lyft for misclassification.⁵⁴ Massachusetts AG Healey has a similar case against these two companies; her office recently defeated their motion to dismiss.⁵⁵ In October 2022, Washington, D.C. Attorney General Karl Racine and Minnesota Attorney General Keith Ellison both sued the delivery company Shipt for misclassification.⁵⁶ Attorneys general of Massachusetts, New York, Pennsylvania, and Washington, D.C. have pursued other actions against companies that misclassify their workers.⁵⁷ Some AGs have also provided workers with information about misclassification and resources for seeking help.⁵⁸

No-Poach Agreements

Some AGs have also been active in stopping anti-competitive no-poach agreements, which are agreements between employers that prevent employees from leaving a job at one company for a position at another company that is party to the no-poach agreement, making it difficult for workers to seek out higher wages and better working conditions. Washington AG Ferguson's two-year investigation into this issue led to agreements with 237 national franchise chains to end no-poach practices, which independent research has found led to increased pay rates for workers at those companies.⁵⁹ New York AG James has also taken action to protect workers from the harms of no-poach agreements, with a recent action against two title insurance companies.⁶⁰



Policy and Advocacy Beyond Enforcement

Attorneys general also have other tools in addition to enforcement. These activities fall into the broad categories of representing and advising client agencies, educating the public, issuing reports, using the bully pulpit, engaging in federal and state policy and legislative advocacy, and litigating against the federal government.

Representing and Advising State Agencies

Attorneys general have a role in advising state agencies on implementing programs and laws. As mentioned previously, New York AG James has been advising state agencies as they implement the state's Climate Leadership and Community Protection Act.⁶¹ In some states, AGs serve as general counsel for state agencies, while in others, they may have a more informal advisory role.⁶² AGs are also state agencies' litigation counsels, defending state laws and state-level regulatory policies that flow from those policies.⁶³ AGs can also issue advisories to state and municipal agencies, providing them with guidance about how to proceed in light of new legal developments. For example, several AGs issued advisories about how state and municipal agencies should proceed with regard to union member dues after the Supreme Court decided *Janus v. AFSCME, Council 31* concerning fair share fees previously paid by public employees who were not union members.⁶⁴

Public Education

Attorney general advocacy can also take the form of community outreach and awareness campaigns. For example, California AG Bonta recently issued a report highlighting ten rights that workers should be aware of, including "the right to organize and join a union" and the right to a minimum wage, along with other wage-and-hour protections.⁶⁵ There are many other examples of this public education work, including AGs who worked to bring attention to COVID-related policies and guidance,⁶⁶ and AGs that held workers' rights events.⁶⁷ In New York, AG James issued a press release supporting the efforts of the Buffalo Starbucks' employees to unionize.⁶⁸ Several AGs have released Labor Day reports highlighting their offices' action to protect workers.⁶⁹ And Washington, D.C. AG Racine testified in Congress,⁷⁰ published a report about worker misclassification, and hosted an event to highlight worker rights.⁷¹

These public education activities include work related to addressing the climate crisis. For example, in August 2021, Oregon Attorney General Ellen F. Rosenblum ordered the release of the names of people who died of hyperthermia during the heat wave that hit the

state in June 2021, several of whom suffered from unsafe exposure to heat at work.⁷² AG Rosenblum released the names to “inform the public about the impact of this historic event on affected communities, help the public assess the government’s preparedness and responsiveness, and facilitate the development of appropriate public policies that anticipate future extreme climate events.”⁷³

Investigations and Other Soft Powers

Attorneys general also have the ability to use advisories, opinion letters, or other vehicles such as investigatory letters, to influence policy and company behavior.⁷⁴ For example, in 2016, a group of AGs sent letters to over a dozen major retailers seeking information about their use of “on-call shifts” in which workers had to call in or report to work without any guarantee of being assigned actual work hours; the retailers ultimately agreed to stop using this practice.⁷⁵ Along similar lines, in 2017, after receiving complaints from workers unable to use certain job search websites because of built-in age cutoffs, Illinois AG Madi-gan sent letters to Beyond.com, CareerBuilder, Indeed Inc., Ladders Inc., Monster World-wide Inc. and Vault requesting information about their practices.⁷⁶ After receiving the letters, several of the companies fixed the issue.⁷⁷

Legislative Advocacy and Litigation on Policy Issues

Attorneys general have also played a significant role in advocating for policy goals in Congress, at agencies, and at the state level.⁷⁸ In August 2021, a coalition of 17 AGs sent a letter urging the Senate to pass the Protecting the Right to Organize (PRO) Act of 2021, which proposes to strengthen and expand employees’ union and organizing rights in the work-place.⁷⁹ And in July 2019, AGs urged Congress to “prohibit the use and storage of a fire-fighting foam containing PFAS chemicals” because of the serious risks that PFAS contamination poses to human health and the environment.⁸⁰

There are also advocacy options that involve state level legislation. For example, Minnesota AG Ellison recently convened an advisory task force on expanding the economic security of women; the resulting task force report contained many recommendations for state legislation, including, for example, urging more robust paid leave laws and measures to address gender and racial pay gaps.⁸¹ Washington AG Ferguson proposed a bill which was recently signed into law to provide stipends and reimburse some expenses so that people with lived experiences can participate in state-wide stakeholder groups, councils, commissions, boards and other similar groups set up to assess and make recommendations to address problems like those raised by the energy transition.⁸²

Sometimes AG advocacy can involve local policies. For example, in September 2022, New York AG James led a coalition of 15 AGs in filing an amicus brief to defend a New York City law that prevents employers at fast-food chains from terminating or reducing the

hours of an employee without giving a legitimate reason.⁸³ The legal questions at issue implicated not only the local law, but also the ability of states generally to set and enforce their own generally-applicable labor standards.

Attorneys general have also frequently engaged in advocacy to improve federal environmental standards and labor protections. For example, a coalition of AGs recently provided testimony to EPA urging the agency to improve its safety rules for chemical plants that deal in hazardous air pollutants, by, for example, requiring facilities to consider safer alternative technologies, conducting real-time air-monitoring, and improving emergency communications with fenceline communities bordering plants that emit hazardous waste.⁸⁴

Attorneys general have also used notice and comment procedures during the rulemaking process to advocate for stronger federal protections in areas from pesticide use to wages and benefits. Coalitions of AGs have filed comments addressing a range of work-related issues, including child labor, overtime coverage, joint employment, misclassification, and non-compete provisions in employment contracts.⁸⁵

Attorneys general have also actively litigated or filed amicus briefs with the goal of influencing federal policy. When the Trump administration finalized a rule that depressed wages for farmworkers, California Attorney General Xavier Becerra filed an amicus brief supporting a challenge to the rule, explaining that the rule harmed farmworkers, exacerbated the farmworker housing crisis, and undermined California enforcement of worker protection laws.⁸⁶ In December 2020, a federal district court in California enjoined the rule.⁸⁷ AGs also sued⁸⁸ and helped obtain an order blocking enforcement of a Trump-era rule that loosened restrictions on pesticide use and put workers at risk.⁸⁹ AGs engaged on numerous other federal rules during the Trump era, including advocating for regulations of ethylene oxide (a carcinogen emitted at commercial sterilization and fumigation operations which endangers workers),⁹⁰ and methylene chloride,⁹¹ a solvent that endangers workers and fenceline communities. And they continue to advocate with the relevant agencies since the transition to the Biden administration.⁹²

As these examples show, AGs have numerous tools at their disposal to use in pursuit of strong climate action and workers' rights, which can be applied to the task of promoting a just transition.



III. Clean Energy and a Just Transition

A. Introduction

Many labor and climate advocates have recommended approaches that would protect workers in the new clean energy sector, thereby inherently challenging the idea⁹³ that economic justice and environmental progress are at odds.⁹⁴ As a coalition of environmental justice organizations recently noted, “a healthy economy and clean environment can and should coexist.”⁹⁵ Labor experts Betony Jones (now Director of the Office of Energy Jobs at the Department of Energy⁹⁶) and Carol Zabin at the UC Berkeley Labor Center wrote that policy solutions must be chosen carefully to strike this balance: “While climate policy is not a jobs program, the particular mix of strategies and public investments that we choose to meet our greenhouse gas reduction goals do have an influence over the types of jobs that are created.”⁹⁷

One example of such crossover advocacy concerns the case of Rivian: in November 2021, a coalition of 10 prominent environmental organizations called on the company, a quickly-growing electric vehicle start-up, to engage meaningfully with unions, asserting that “labor, the environmental movement, and business can work closer together to meet the challenge of climate change and quality jobs while adding even greater value to companies.”⁹⁸ It is yet to be seen how Rivian will respond. (Concerns about Rivian working conditions appear to be valid: in December 2021, Illinois Attorney General Kwame Raoul announced a settlement requiring subcontractors building a Rivian production line to pay back wages to workers who had been underpaid, and more recently, Rivian has become the subject of complaints to the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor about alleged workplace safety and health violations at an Illinois plant.)⁹⁹

This Section highlights several recommendations made by advocates and experts to make clean energy jobs high quality ones, with fair wages, good benefits, and strong worker protections. (Appendix A of this Report lists some of the many organizations active on these issues). The below discussion focuses on the energy sector, but many of the policies and principles could apply in other affected sectors. For a more in-depth discussion of the transportation sector, a recent Economic Policy Institute report provides a good starting point.¹⁰⁰ Finally, this Section turns to equity considerations that should be considered in addressing just transition issues and then describes several approaches that have been implemented through state-level statutes.

B. Recommendations

Increasing Rates of Unionization in the Clean Energy Sector

Unions have significantly improved wages, benefits, workplace safety, and other working conditions for members and for workers broadly throughout the country.¹⁰¹ While unions have their own history of racial exclusion,¹⁰² the demographics of union membership have changed considerably in recent decades.¹⁰³ Research also shows that unions also can help reduce gender and race inequities.¹⁰⁴

At present, the growing clean energy sector has significantly lower unionization rates than legacy fossil fuel industries: union density in solar and wind industries are 6%, around half the unionization rates of the fossil fuel sector (10% and 11% for coal and natural gas, respectively).¹⁰⁵ These are very significant disparities.

The clean energy sector is varied, though, suggesting the need for a nuanced approach in analyzing the issue of unionization.¹⁰⁶ Some of the sectors projected to grow considerably in a clean energy economy are currently unionized at rates comparable to those in the fossil fuel sector,¹⁰⁷ such as transmission/distribution/storage (17% union density) and energy efficiency (10%).¹⁰⁸ And major unions have identified places where benefits to both workers and the environment overlap, and have advocated for policies on this front, such as teachers' unions advocating for union-built electric school buses.¹⁰⁹ In addition, policy decisions could increase unionization rates in green jobs.¹¹⁰ For newly emerging clean energy sectors, the current ongoing economic shift to cleaner jobs provides a unique and critical opportunity to create high-quality and unionized jobs. As writer Lee Harris observed, "if low-quality jobs are created first, it could prove hard to level up later . . . standards set now are likely to be locked in."¹¹¹

Benefits of Unions

In a recent report, the Economic Policy Institute found that union workers earn an average of 11.2% more than nonunion counterparts.¹¹² In addition, there is a substantial chasm between access to benefits for union versus nonunion workers: 94% of workers covered by a union contract have access to employer-sponsored health benefits, and 91% have access to paid sick days; those figures are 68% and 73%, respectively, for nonunion workers.¹¹³

In addition, when unions are present in an industry, they improve conditions for all workers, not just members. A 2016 report by the Economic Policy Institute explains, "Nonunion workers benefit from a strong union presence in their labor market in many ways. Strong unions set pay and benefits standards that nonunion employers follow. Those employers may raise pay for some workers to forestall an organizing drive, which

leads to an upward adjustment in wages of workers above them, to maintain relative pay differentials (similar to the effects of minimum-wage increases).”¹¹⁴

The report estimated that for male high school graduates without a college degree, weekly wages would have been 8% higher in 2013 if unionization rates were at their 1979 levels. In this way, the decline of unions has exacerbated wage inequality, explaining about one-third of the growth of wage inequality among male workers.

Also, without unions, workers have no clear avenue to effectively negotiate the conditions of their employment. During the COVID-19 pandemic, workers in unions were able to advocate for additional protections, including personal protective equipment and paid sick leave, while many nonunion workers who advocated for themselves risked retaliation or termination.¹¹⁵ That type of collective voice and leverage will likely be necessary to ensure that clean energy jobs avoid the low-road practices common in so many other industries.¹¹⁶

In the solar industry, for example, temporary solar installation workers are already experiencing poor working standards and a need more stable employment, fair wages, and safer working conditions.¹¹⁷ One solar company in California, for example, recently faced a class-action lawsuit for violating wage and other labor laws, ultimately agreeing to a \$1.8 million settlement.¹¹⁸ And in the auto industry, workers are already seeing a shift towards low-road and nonunion jobs in the rapid transition to electric vehicles.¹¹⁹

Across the board, the ability to collectively negotiate over terms and conditions of employment will likely become even more important as rising temperatures and other features of the climate crisis lead to uncertainty and hazardous working conditions in many industries.¹²⁰

Unionization can benefit employers, too. Unions can reduce turnover and increase employee retention; this union advantage has been cited as a reason for recent success of unionized UPS compared with FedEx and Amazon, which struggled to attract workers during the current labor shortage.¹²¹ Unions can also increase productivity and improve communication among workers and companies.¹²² And for a concrete example, one solar installation company struggled to find workers amid an electrician shortage, but reported that once the company became unionized, it opened up a new pool of workers from the International Brotherhood of Electrical Workers.¹²³

Increasing Union Density in the Clean Energy Sector

Many labor leaders and scholars have written extensively about ways to increase union density broadly within the United States.¹²⁴ In addition to approaches for increasing unionization generally, experts and advocates have identified certain measures to promote

unions specifically in the clean energy sector. One proposal is to place clean energy jobs directly in the public sector. Given significantly higher union density among public sector employees,¹²⁵ making such jobs public sector positions would create a higher “likelihood of climate jobs being union jobs.”¹²⁶ Another proposal includes “designating taxpayer-funded clean energy projects as public work projects,” which would require payment of the prevailing wage and would enable unionized contractors to successfully compete for such contracts, making it far more likely that the resulting jobs would be union jobs.¹²⁷

The BlueGreen Alliance argues that creation of high-quality clean energy jobs will require policies that facilitate worker organizing and increase union density.¹²⁸ The Alliance, like most U.S. labor organizations, urged passage¹²⁹ of the Protecting the Right to Organize (PRO) Act, which passed the House in 2021,¹³⁰ and which would broadly reform outdated labor laws and make it significantly easier for workers wishing to unionize to successfully do so.¹³¹ In addition, misnamed “right-to-work” laws existing in approximately half of the states make unionizing more difficult; these laws weaken unions by allowing workers in union shops to benefit from union protection without having to pay union dues.¹³² Even without passing the PRO Act, repealing right-to-work laws in states where they exist could help provide workers with more hospitable conditions for forming and joining unions.

A key tool in ensuring high-road working conditions as well as facilitating union density in clean energy jobs and jobsites is the use of project labor agreements (PLAs).¹³³ PLAs are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity. They are generally negotiated between the owner or managing entity of a construction project and a building and construction trades council (a grouping of local construction unions).¹³⁴ They operate like a job-site constitution, establishing worksite conditions, project execution and protocol to resolve labor disputes without strikes and lockouts. Many PLAs include community workforce goals that increase access to construction jobs for veterans, local residents, disadvantaged workers, and small businesses.¹³⁵ PLAs govern the terms and conditions of employment for all workers—union and nonunion—on a given project. They can be used to protect taxpayers by eliminating costly delays due to labor conflicts or shortages of skilled workers. Sometimes PLAs require exclusive use of union labor, while other times they require a set percentage of labor to be conducted by union workers. For example, the developers of Vineyard Wind—a recently-permitted utility-scale offshore wind project that will be the first of its kind in the United States—signed a PLA¹³⁶ with a coalition of Massachusetts unions and agreed to hire union workers for fifty percent of the jobs created by the project. In New York and New Jersey, a recently-announced federal offshore wind lease includes stipulations that encourage PLAs, in addition to incentivizing local employment and requiring input for affected communities.¹³⁷ A solar farm in Highland County, Ohio, has a PLA governing the construction phase; PLAs are also being used in

West Virginia in construction in the growing wind electricity industry.¹³⁸ And the Danish wind developer Ørsted signed a PLA in May 2022 with U.S. building trades unions to construct offshore wind farms with a union workforce.¹³⁹ Many states have policies promoting the use of PLAs in state-funded projects, but some states restrict their use.¹⁴⁰

In addition to these government-driven methods, support from the clean industry itself would also help boost unionization. The Environmental Working Group, a nonprofit organization that uses science to advocate for a healthy environment, argues that “the burden of finding common cause doesn’t lie only with unions. To gain labor’s support for the transition, clean energy industries must also embrace unionization . . . Labor leaders should show support for these initiatives, but clean energy leaders must also embrace unionization and commit to raising wages and benefits.”¹⁴¹ Indeed, some clean energy projects have voluntarily recognized unions, like Coalfield Development and its project partner Solar Holler, the biggest West Virginia solar installer.¹⁴²

This approach promises benefits to businesses. For example, “labor peace agreements”—agreements “which prevent union-busting by employers in exchange for workers’ pledge not to strike”—are being used to help improve working conditions and ensure workplace stability in the emerging cannabis industry.¹⁴³ In Europe, sectoral bargaining has led to greater union density and less adversarial relations; this approach may also be a helpful model.¹⁴⁴ But even if U.S. clean energy industry leaders do not affirmatively embrace unionization, it would be significant and potentially transformative if clean energy companies would approach union campaigns simply with non-opposition, or neutrality, or if they would agree to recognize a union based on “card check” (a showing of majority support based on signed union cards) rather than demanding an election.

Other Tools in Addition to Unionization

Some advocates have focused on public policy and other tools for promoting good clean energy jobs.¹⁴⁵ For example, Betony Jones and Carol Zabin proposed a number of approaches to support growth of good jobs in the mid-scale solar market: “strong enforcement of employment law, skill certification requirements and other labor standards, project labor agreements, unionization, or other changes.”¹⁴⁶ The following Section outlines some tools in addition to unionization for improving job quality for clean energy workers.

Prevailing Wage

One mechanism for ensuring good clean energy jobs is requiring payment of prevailing wages for the work.¹⁴⁷ Prevailing wage laws require government contractors to pay a wage and benefit rate based on similarly employed employees in a given geographic region.¹⁴⁸ These laws ensure that contractors cannot gain an unfair advantage in bidding

for government contracts by paying sub-par wages or using low-road employment practices.¹⁴⁹ Studies have found that prevailing wage laws have a positive economic impact.¹⁵⁰

Prevailing wages are determined by location and are set by the government. The federal prevailing wage laws (the Davis-Bacon and Service Contract Acts) cover federally-funded construction and service contracts.¹⁵¹ Roughly half of U.S. states have prevailing wage laws, generally covering public construction and sometimes extending to other kinds of work as well.¹⁵² For example, in New Jersey, “public” projects include government-funded construction projects as well as building services work in state buildings.¹⁵³

Significantly, the new Inflation Reduction Act—while not requiring payment of prevailing wages—provides increased tax credits for renewable energy projects that pay workers the local prevailing wage (defined by the federal labor department) for work on facility construction, as well as for alterations and repairs during a set time period after a facility is placed in service.¹⁵⁴ As discussed below,¹⁵⁵ methods for enforcement of these Inflation Reduction Act provisions are still under consideration.

Prevailing wages are beneficial to workers in any industry, but they may be especially crucial in the clean energy sector because of how the industry functions. Utilities have traditionally built their own coal- and gas-powered plants, but they generally obtain wind and solar energy from other companies.¹⁵⁶ As Noam Scheiber, a labor reporter for the New York Times, explains: “When utilities build their own plants, they have little incentive to drive down labor costs because their rate of return is set by regulators—around 10 percent of their initial investment a year, according to securities filings. But when a solar farm is built and owned by another company . . . that company has every incentive to hold down costs.”¹⁵⁷ As a result, wind and solar companies will be more incentivized to keep labor costs low both to maintain profit and to obtain a competitive advantage. There are reports of such companies opposing prevailing wage requirements as a result.¹⁵⁸

Research by Betony Jones, formerly of the UC Berkeley Labor Center, suggests that the fear of higher wages demolishing profits is misguided.¹⁵⁹ First, labor costs are not a large fraction of the total project costs, so even a large wage increase will only have a small impact on total costs.¹⁶⁰ And second, prevailing wage requirements lead to more highly skilled workers, which improves productivity and offsets any increase in wages.¹⁶¹

The Center for American Progress has outlined and compiled recommendations for state and local policymakers on how to implement and strengthen prevailing wage laws.¹⁶² This guidance is particularly salient at this moment for the emerging clean energy industry.

As states are playing a lead role in managing and negotiating for new clean energy resources, such as offshore wind,¹⁶³ they have also pushed for the application of prevailing wage requirements. For example, in July 2021, Connecticut passed a law requiring prevailing wage for utility-scale solar projects.¹⁶⁴ And in its 2021-2022 state budget, New York required prevailing wage for construction on all renewable energy projects that are 5 megawatts or more.¹⁶⁵

Safety and Health Protections

Another policy priority for ensuring a just transition is ensuring workplace safety in emerging jobs.¹⁶⁶ Research has suggested that jobs in renewable energy industries are generally safer for workers than those in fossil fuel industries.¹⁶⁷ But risks are still present in the renewable energy field.¹⁶⁸ As OSHA has outlined, workers in those jobs encounter hazards common to many industries, like fall risks, confined spaces, and chemical and fire hazards; also, they may face new hazards not yet identified.¹⁶⁹

Moreover, as the climate crisis accelerates, impacts such as deadly heat,¹⁷⁰ unhealthy air quality,¹⁷¹ and dangerous flooding¹⁷² will become more severe; many industries, including the clean energy industry, will have to adapt to changing conditions. Not only are these extreme conditions a workplace hazard in and of themselves, but they also exacerbate other hazards by increasing the likelihood of accidents and error.¹⁷³

As with most environmental impacts, climate-exacerbated workplace dangers are not experienced equally by all workers.¹⁷⁴ This is especially the case with extreme heat, which has become one of the most fatal workplace hazards as global temperatures rise.¹⁷⁵ One study found that, in California, the risk of injury from extreme heat was five times higher for the lowest 20% of earners than it was for the highest 20%.¹⁷⁶ This disparity is further exacerbated by the fact that lower-income people may live in the hotter areas¹⁷⁷ of cities (or lack access to air conditioning¹⁷⁸).

Several states have implemented worker protections addressing some effects of climate-related workplace hazards.¹⁷⁹ Minnesota passed a workplace safety rule, requiring employers to provide protections to indoor employees working in extreme temperatures.¹⁸⁰ Washington passed a standard for outdoor workers: employers must train employees and supervisors to recognize heat illness, provide water to employees when temperatures rise above a certain level, and implement procedures enabling an adequate response to heat-related illness.¹⁸¹ In the summer of 2021, when a vicious heat wave swept through the west, Washington and Oregon implemented emergency rules to increase workplace safety protections for employees.¹⁸² Oregon also recently proposed rules to protect workers from “health and safety hazards linked to the impacts of climate change: extreme heat and wildfire smoke.”¹⁸³

California's heat standard covers outdoor workers, and requires employers to provide them with rest, shade, and water, and also to monitor them, with different provisions depending on how high the temperatures go.¹⁸⁴ Researchers have observed that after California's standard was enacted in 2005, workplace accidents and injuries during periods of high heat decreased by approximately 30%.¹⁸⁵ A recent study of California's existing heat standard highlighted still-existing gaps in protections and potential benefits from even stronger regulations.¹⁸⁶

On the federal level, in late 2021, OSHA released an advance notice of proposed rulemaking setting a workplace standard on indoor and outdoor heat, thereby signaling its intention to promulgate a standard on the subject.¹⁸⁷ Earlier in 2021, legislation requiring OSHA to promulgate a heat standard was proposed in Congress as well.¹⁸⁸

In the absence of standards requiring workplace protection from heat, industries and employers can craft their own initiatives¹⁸⁹ and provide training¹⁹⁰ to protect workers in such situations. However, laws and regulations are the most effective way both to ensure such protection, and to provide employers with clear guidance regarding the practical steps needed to keep workers safe.

Again, unionization provides critical protection for workers, especially in the absence of laws addressing this particular risk: union workers are more likely than nonunion workers to report unsafe working conditions and are about 30% more likely to have their workplaces inspected for violations.¹⁹¹ This greater propensity to report violations likely stems from union-created procedures for raising issues, as well as reduced fear of retaliation as a result of the union contract's protection.

Local Hire & Community Benefits Agreements

Community benefits agreements are agreements between the owner of a project and representatives of community groups where the project is being developed.¹⁹² Communities can use the agreements to stipulate certain requirements for the projects, such as hiring from the local community, or guaranteed financial or social benefit from the project; in return, the developer receives the community's support for the project.¹⁹³ For instance, the lease for an offshore wind farm that is being developed off of the coast of Brooklyn in New York dedicates funding to programs that will facilitate local hiring, like training and outreach that focuses on nearby low-income communities.¹⁹⁴ Sourcing components for projects locally may be complicated by the relative lack of a supply chain for clean energy parts in the United States,¹⁹⁵ but for some clean energy materials (such as batteries for electric vehicles), federal funds are being invested to develop local supply chain production¹⁹⁶ and the Inflation Reduction Act is designed to increase incentives to develop domestic supplies for the materials needed to build renewable energy projects by providing additional

tax credits for projects that are built using domestically produced materials.¹⁹⁷

Enforcement of the promises in a community benefits agreement can present a challenge, particularly where the promises are phrased in aspirational terms and lack concrete deadlines.¹⁹⁸ Even when the agreements contain specifics such as deadlines and numbers, monitoring and enforcement may be difficult; for example, if the records needed to assess compliance are maintained by the developer it may be difficult for the community to verify the developer's claims.¹⁹⁹ To improve enforceability of the agreements, NYU School of Law Professor Vicki Been recommended that the "terms of any [community benefit agreement] be made part of the development agreement (or similar codification of promises) between the local government and the developer."²⁰⁰ Other recommendations are to include provisions that can assist in holding the developer accountable, including "clear timeframes and processes" as well as monitoring, deadlines, and benchmarks, among other options.²⁰¹ Another potential monitoring mechanism could include oversight by state AGs; for example, New York Attorney General Eric Schneiderman exercised this oversight when his office investigated a non-profit that had failed to implement a community benefits agreement as it was required to do.²⁰²

Preventing Misclassification of Workers

Sometimes companies attempt to avoid compliance with labor laws by wrongly classifying workers as independent contractors (i.e., independent businesses) when they should be treated as employees.²⁰³ By misclassifying employees as independent contractors rather than as employees, workers are "denied [access] to critical benefits and labor standards protections they are entitled to by law," such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces.²⁰⁴

To aid in a just transition, amidst their efforts to address misclassification broadly, federal and state policymakers can also focus specifically on preventing misclassification in the clean energy sector. California did just that when it recently enacted A.B. 794, a bill that ties labor standards (including proper classification of employees under California law) to an incentives program that funds vehicle purchases and is designed to reduce truck emissions.²⁰⁵

Federal Jobs Program

Advocates have recommended the creation of a federal jobs program to create clean energy jobs while also investing in and empowering communities that have been economically and environmentally marginalized.²⁰⁶ For example, Evergreen Action, a climate and jobs-focused policy group, developed recommendations on structuring a federal jobs program in a way that "ensure[s] that frontline communities and historically underserved populations are prioritized" through workforce programs that include the development of

clean energy infrastructure.²⁰⁷ The proposal envisions direct federal employment focused on retrofitting homes, building green transportation infrastructure, installing solar panels, and related projects, while also providing benefits that include health care, childcare, and networking opportunities.²⁰⁸

C. Equity Considerations

Severe racial, gender, and other disparities exist in employment in the clean energy industry, as in many sectors of the economy.²⁰⁹ The BlueGreen Alliance describes a disconnect between new clean energy jobs and communities bearing the brunt of climate impacts in its Solidarity for Climate Action Report:

Not enough of the new jobs that have been created or promised in the clean energy economy are high-quality, family-sustaining jobs, nor are these jobs in the same communities that have seen the loss of good-paying, union jobs. Wildfires, hurricanes, heat waves, droughts, and sea-level rise driven by climate change are hurting communities across the country and will only worsen if we don't take decisive action. Lower income workers and communities of color are hit the hardest and are less able to deal with these impacts as wages have fallen and their economic mobility and power in the workplace has declined.²¹⁰

Disparities like these exist in many industries, including the fossil fuel industry, which in 2020 was made up of 87.2% white and 85.5% male employees.²¹¹ Unionization can help address these disparities: although some unions have historically been male-dominated and lacked racial diversity,²¹² the labor movement is increasingly diverse and continues to evolve.²¹³ In fact, as noted above, studies show that unions can serve to decrease race and gender disparities. For example, recent Economic Policy Institute research found that unions can “help close wage gaps for Black and Hispanic workers.”²¹⁴

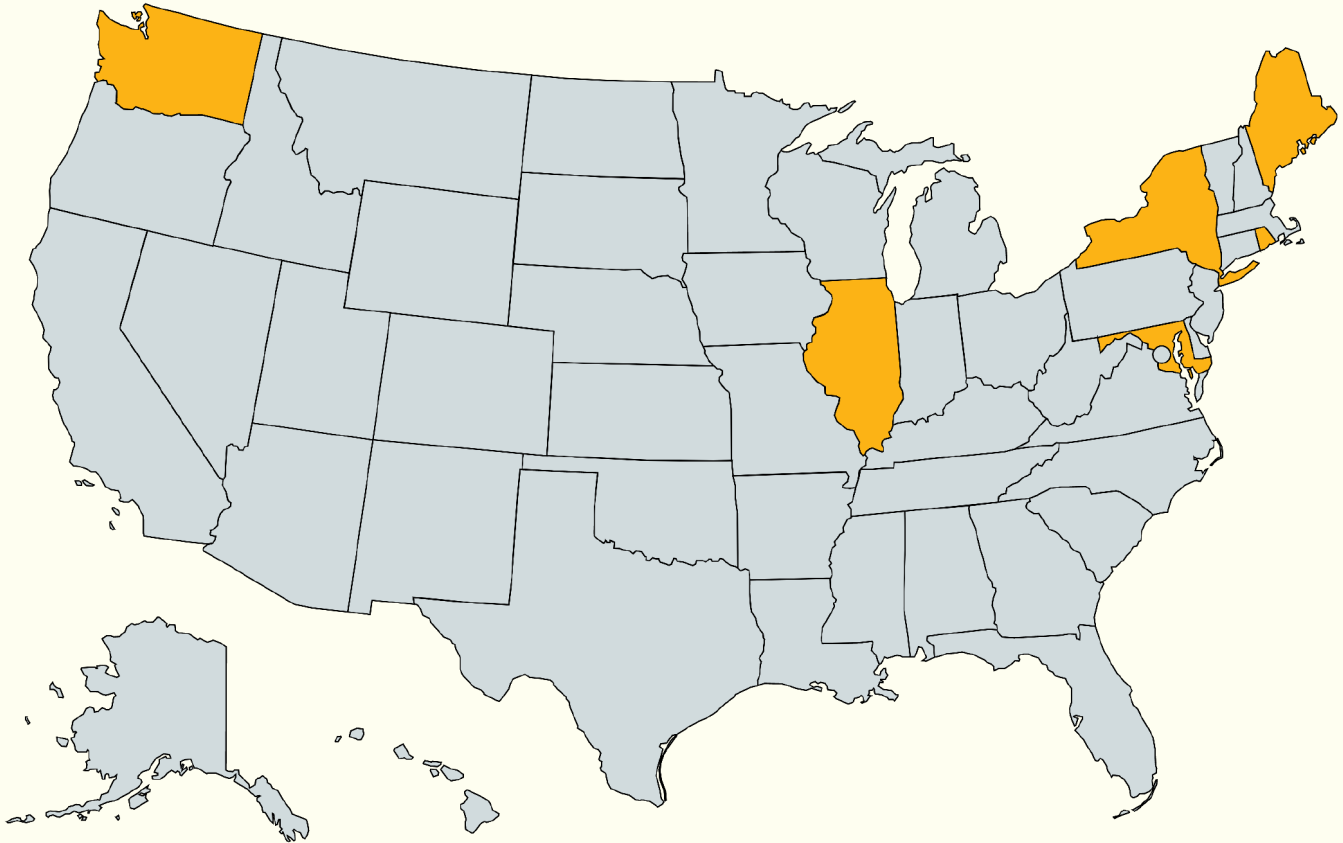
As the renewable energy industry develops, there is no reason to believe that companies will be an exception to workplace inequities merely because those companies are environmentally beneficial. For example, there have been a slew of worker complaints and reports of violations at the electric car company Tesla, including allegations ranging from racism to wage theft to unsafe working conditions.²¹⁵ But the clean energy sector is relatively new, presenting a unique opportunity to create an equitable transition and reduce these disparities. Thus, recommendations that make equity and anti-racism measures a focus should be a priority. In the Green Jobs Report, a coalition of environmental justice organizations lays out recommendations and best practices for a transition that “address[es] pressing issues of economic and environmental injustice in

marginalized communities.”²¹⁶ The report also provides recommendations for improving diversity in the clean energy economy, including building a pipeline from Historically Black Colleges and Universities, as well as increasing the exposure to and engagement with science, technology, engineering, and mathematics (STEM) programs for people of color.²¹⁷ Demographic data is another important need for boosting this work. In order to address equity issues, it will be crucial to track gender and racial statistics in relation to the use of apprentices as well as regarding apprentices’ transitions to employment. Such data is needed both in programs that support workers transitioning from the fossil fuel sector to the renewable economy, and also in new green projects. In order to support tracking and research, this data needs to be granular enough to include hours worked and hourly pay.

The Labor Network for Sustainability, a non-profit membership organization that works to build a “labor-climate movement,” published a report last year cataloging the experiences of workers during prior transitions and providing recommendations for future ones with the goal of focusing on transitions that “treat[ed] workers and communities as a whole (and not only as economic entities) while erasing any patterns of marginalization.”²¹⁸ The report recommends wage replacement, funding for localities that will lose funding they previously received from the industry that is closing down, providing a seat at the table for affected workers, and cross-sector collaboration between labor, climate, and community activists, among many other recommendations.²¹⁹ The report explained how many of these approaches—including workforce training programs, federal jobs programs, and community benefits agreements—are measures that can be used to help achieve equity or improve diversity in the industry.

D. State Approaches

In recent years, state governments have passed laws that include several of the approaches highlighted above.²²⁰ These state-level measures can prove the effectiveness of policies that can then be implemented in other states or on the federal front.²²¹ This Section provides a brief summary of some state laws relevant to the clean energy sector as illustrative examples.



Illinois

In September 2021, Illinois Governor J.B. Pritzker signed the Climate and Equitable Jobs Act.²²² Recognizing that “[s]tate investment in the clean energy economy in Illinois can be a vehicle for expanding equitable access to public health, safety, a cleaner environment, quality jobs, and economic opportunity,” the Act is expansive; among many other provisions, it aims to increase access to training and job opportunities both for communities affected by climate change and for communities disadvantaged by coal mine closures.²²³

The law creates a network of thirteen ‘hub sites’ run by community-based organizations charged with providing “training, certification preparation, job readiness, and skill development” to

participants.²²⁴ The hubs also facilitate job placement through job fairs, coordinating with and establishing formal partnerships with potential clean energy employers, and other “job matchmaking initiatives.”²²⁵ The law has been praised by the Illinois Clean Jobs Coalition, a coalition of environmental and labor groups and groups like Warehouse Workers for Justice.²²⁶ The provisions related to the fossil fuel sector are further discussed below.²²⁷

Maine

A law went into effect in 2022 requiring developers to pay prevailing wages on commercial, mid- and large-scale renewable energy projects, starting in January 2023.²²⁸ Also, on large-scale renewable energy projects, the law allows the government to give additional weight to bids including agreements with unions or employee-owned contractors.²²⁹

Maryland

In 2019, Maryland passed the Clean Energy Jobs Act.²³⁰ In addition to setting renewable energy targets, the Act establishes a workforce development program and includes requirements for project labor agreements and community benefits agreements.²³¹ Most recently, in April 2022, Maryland passed the Climate Solutions Act, which requires the state to reduce greenhouse gas emissions to 60 percent of 2006 levels by 2031 and overall achieve a net zero emission standard by 2045.²³²

New York

New York has pursued a number of initiatives that increase clean energy jobs, direct the benefits to communities disproportionately burdened by pollution, and implement strong worker protections. For example, the section of New York’s 2022-2023 budget that establishes funds for a fleet of zero-emissions school buses also defines the construction and installation of charging/fueling stations for the buses as public work and requires that these jobs comply with prevailing wage laws.²³³ In September 2021, New York Governor Kathy Hochul called for an expansion of the NY-Sun program,²³⁴ which would create 6,000 jobs in the solar industry and “deliver at least 35 percent of the benefits from the investments to disadvantaged communities and low-to moderate-income New Yorkers.”²³⁵ In addition, she announced the creation of new renewable energy transmission lines which, if approved through the New York State Energy Research Development and Authority’s process, will create approximately 10,000 new jobs.²³⁶ According to the announcement, the contracts for these projects will include prevailing wage requirements and project labor agreements, and require the developers to designate \$460 million to fund health, jobs, and capital improvements for local communities.²³⁷ In July 2022, Governor Hochul signed a new bill containing a provision that increases the use of prevailing wages for renewable energy projects.²³⁸

In 2019, New York state signed into law the Climate Leadership and Community Protection Act. The statute requires the state to reduce greenhouse gas emissions 40% by 2030 and 85% by 2050 when compared to 1990 levels.²³⁹ The law has bite: New York recently denied new permits to two gas plants after finding that they would not serve the new law's purpose.²⁴⁰ The law's legislative findings and declaration emphasize that the shift to clean energy creates an opportunity to create jobs and to support communities that bear disproportionate and inequitable environmental and socio-economic burdens.²⁴¹ To implement this, the Act creates a climate action council, which is directed to convene a just transition working group to analyze workforce development opportunities related to energy efficiency measures, renewable energy and other clean energy technologies, with specific focus on disadvantaged communities.²⁴² These issues are discussed further below, in relation to the fossil fuel sector.

Rhode Island

In June 2022, Rhode Island enacted a number of laws with climate and labor goals. Among other things, the package requires the state to source 100% of its electricity from renewable sources by 2033 and includes strong labor standards for renewable energy projects.²⁴³

Washington

In 2019, Washington SB 5116 was signed into law as the Clean Energy Transformation Act, which committed the state to a greenhouse gas emissions-free supply of electricity by 2045.²⁴⁴ In 2021, the Washington Legislature passed the Climate Commitment Act which establishes a comprehensive program to reduce carbon pollution and achieve the greenhouse gas limits set in state law.²⁴⁵ The program will consist of a cap-and-invest system to reduce carbon emissions within a market-based framework in order to work towards a net-zero emissions economy. Starting on January 1, 2023, the program will cover industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual greenhouse gas emissions above 25,000 metric tons of carbon dioxide equivalent. In March 2022, Washington passed the Move Ahead Washington transportation package, a 16-year project in which \$16.9 billion will be invested in expanding accessible and affordable transportation and reducing emissions.²⁴⁶

The Climate Commitment Act aligns with the requirements of Washington's Healthy Environment for All (HEAL) Act and includes provisions to promote environmental justice and equity.²⁴⁷ The HEAL Act requires the Washington Environmental Justice Council to make recommendations to the Legislature on projects funded by the Climate Commitment Act, and requires agencies allocating funding from Climate Commitment

Act accounts to report their progress toward environmental justice goals to the council.²⁴⁸ It also expands air quality monitoring in overburdened communities, and requires an environmental justice review every two years starting in 2023 to evaluate whether criteria pollutants and greenhouse gases are being reduced.²⁴⁹ Additionally, the Climate Commitment Act requires the state's Department of Ecology and local clean air agencies to adopt additional measures if emissions do not decrease.²⁵⁰

Many different policies and tools can be used to promote workplace justice in the emerging clean energy field, including collaboration with and support for unions, as well as advocacy for prevailing wage provisions and other worker protection requirements. To realize these goals, environmental and labor advocates and experts will need to find common cause and collaborate.²⁵¹



IV. Just Transition Considerations for Workers in the Fossil Fuel Industry

A. Introduction

In October 2021, Norman Rogers, the second vice president of United Steelworkers Local 675 wrote: “No worker or community member will ever believe that an equitable transition is possible until we see detailed, fully funded state safety net and job creation programs.”²⁵² As Rogers explains, creating a fair and sustainable clean energy sector is only one part of achieving a just transition. When clean energy jobs increase, fossil fuel

jobs, like those in the coal industry, will necessarily decrease. However, a just transition can help support communities and workers whose lives have depended on the fossil fuel economy through this transition and into a more sustainable world. Rogers explains that the transition needs to include a safety net that includes “wage replacement, income and pension guarantees, healthcare benefits, relocation and peer counseling for professional and personal support” as well as funding for communities that will experience shrinking taxes, and new “stable jobs with good pay and benefits.”²⁵³

This Section examines the coal sector to highlight some of the impacts of an economic transition to cleaner fuels. It then outlines recommendations that have been made to mitigate impacts on workers and communities. The recommendations here are again not meant to be encyclopedic, but rather to provide a brief overview of the relevant policies and considerations. While focused on the coal sector as exemplifying many of the issues that will arise during transitions, some recommendations may be relevant also for other industries now also moving to cleaner fuels, such as the manufacturing of non-electric vehicles and other industries.

B. Coal Industry Downturn – A Case Study

Coal use, exports, and production have been declining over the last decade or longer, as shown by data from the U.S. Energy Information Administration (EIA). In 2020, for example, the U.S. electric power sector used nearly half the amount of coal that it used in 2010, with a particularly sharp 22% decrease between 2019 and 2020.²⁵⁴ Coal exports also decreased significantly (26%) between 2019 and 2020.²⁵⁵ While the COVID-19 pandemic likely played a role in the marked decreased demand for coal, the downward trend in coal production has been long coming because of competition from low-cost natural gas and increasing growth in renewable sources of energy.²⁵⁶ An EIA analysis of coal production in the United States through 2019 found that overall coal mining productive capacity (i.e. how much coal a mine is able to output) hit its peak in 2009. In 2019, productive capacity was down 28% from that peak, and the actual amount of coal produced was at its lowest since 1978, when production was interrupted by a nation-wide coal-miners' strike.²⁵⁷

The drop in demand has led to the closure of coal facilities. EIA reports that fewer than half of the coal mines operating in 2008 were still open in 2019.²⁵⁸ With these closures comes the loss of jobs. Between 2011 and 2019, employment in the coal industry declined by nearly 42%.²⁵⁹ In 2011, the U.S. coal industry employed close to 90,000 people; by 2021, that number had shrunk to 42,000.²⁶⁰ Given the Biden administration's decarbonization goals,²⁶¹ and recent investments in clean energy through the Inflation Reduction Act, use of coal and other greenhouse gas emitting fossil fuels is likely to diminish further.

Transition needs are perhaps starkest in the coal mining industry.²⁶² The impact can be devastating: workers lose their jobs and their future income. In cases where coal companies go bankrupt, workers may even be deprived of pay that they have already earned.²⁶³ But the impact of a coal mine closure goes beyond individual or group job loss. In regions supported by the coal industry, a closure can negatively affect the economic and social health of an entire community. An article in *Energy News Network* describes the impact as follows:

Some [workers] move away and many become more reliant on social health services. Businesses lose customers and healthcare providers see fewer patients with adequate insurance. Charitable giving among businesses to support local nonprofit social services dries up just as the need for such services skyrockets. Locally and regionally, revenues to support government services plummet, triggering budget cuts — often to the very programs most needed to maintain a quality of life and transition to more sustainable economies.²⁶⁴

C. What Can Be Done?

Advocacy groups have long made recommendations for managing the impact on jobs, benefits, and overall economic wellbeing that can result from a transition away from fossil fuels. The Institute for Energy Economics and Financial Analysis, a non-profit organization that uses finance and economics to “accelerate the transition to a diverse, sustainable and profitable energy economy,” emphasizes the need for effective planning. Tom Sanzillo, the organization’s Director of Financial Analysis last year urged West Virginia policymakers to anticipate the changing energy economy and plan ahead for closures instead of reacting to them after the fact.²⁶⁵ “A good plan backed by local and state government, business, labor and community leaders is a powerful force,” he argues. This Section summarizes the most prominent recommendations in relation to such planning.

Role in Decision-Making

A common theme among recommendations is that affected people and communities should have a role in decision- and policy-making.²⁶⁶ The World Resources Institute, a global nonprofit organization that has been working on strategies to meet the goals of the Paris Agreement, explains that this inclusion is crucial because “it is easy for decision makers to wrongly assume who will desire which options.”²⁶⁷ The development of one recent solar project in a former coal mining town in Kentucky illustrates how failing to include affected communities in the planning process can diminish support for the transition to clean energy. One resident, who supports clean energy, reported that the lack of community input and benefit from this project threatened to turn even a renewable form of energy like solar into just “another extractive industry.”²⁶⁸

In January 2021, the Biden administration issued Executive Order 14008, establishing an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization.²⁶⁹ The Order instructs the Working Group to “seek the views of State, local, and Tribal officials; unions; environmental justice organizations; community groups; and other persons it identifies who may have perspectives on the mission of the Interagency Working Group.”²⁷⁰ While conducting extensive stakeholder outreach, the group’s initial report identifies regions of the country with urgent needs and makes recommendations for areas of investment, including infrastructure, rural broadband, funding for small businesses, and transportation funding, among other things.²⁷¹ Appalachian Voices, an advocacy group in Appalachia working to protect the environment, also emphasizes the need for people in these communities to be involved in deciding how the money is spent.²⁷²

Training Programs & Equity

While some workers transitioning away from the fossil fuel industry may be able to translate their expertise to the clean energy sector, many others may not be able to do so. Where feasible, some are likely to need new skills in order to shift over to a clean energy job;²⁷³ without adequate policies in place, such re-skilling will cost workers time and money, and involve career setbacks. Workforce training programs can help in these situations, but experts have cautioned that such programs should go beyond merely providing workers with skills needed in a new job—they should also provide pay and be integrated with actual jobs.²⁷⁴

Even if economically and politically desirable, the replacement of fossil fuel-based jobs with clean jobs may not always be geographically or logistically possible. Regions rich in fossil fuel resources may not be similarly rich in renewable resources (such as sunlight and wind). In addition, in some cases, aging workforces or those with deep community roots and ties may be less readily able to relocate or may believe it will be difficult to develop new skills. To address those circumstances, the Labor Network for Sustainability's report recommended: "income and pension maintenance, relocation benefits, healthcare, a glidepath to retirement, education, mentoring, counseling, guaranteed good employment (rather than mere opportunities)."²⁷⁵ The World Resources Institute recommends several policies, including social protections like early retirement options and planning for (and funding) "gaps in geography, timing, and skills."²⁷⁶ These gaps may be manifested as relocation needs, temporary unemployment, and training, respectively—all of which have the potential to be difficult for myriad reasons. The World Resources Institute recommends working early on with a broad set of public authorities to develop a plan that includes options such as "relocation, training, and safety nets like early retirement" and ensuring that any workers who will be affected are part of the decision-making process and are able to make their own choices about what route to take.²⁷⁷

Apprenticeships, which allow trainees to earn while they learn, can provide more financial stability than education that must be paid for through tuition. AFL-CIO President Liz Shuler has argued that the apprenticeship model is the "best model to take us into the clean energy future,"²⁷⁸ and indeed, apprenticeship training programs are now highly incentivized through the recently-enacted Inflation Reduction Act. At the same time, it is important to ensure proper program design and oversight, so that employers cannot hire apprentices for lower wages without investing in the training that is the hallmark and goal of such programs.²⁷⁹

Overall, the task of addressing workforce needs is immensely complex. The Environmental Defense Fund and Resources for the Future recently released a report analyzing more

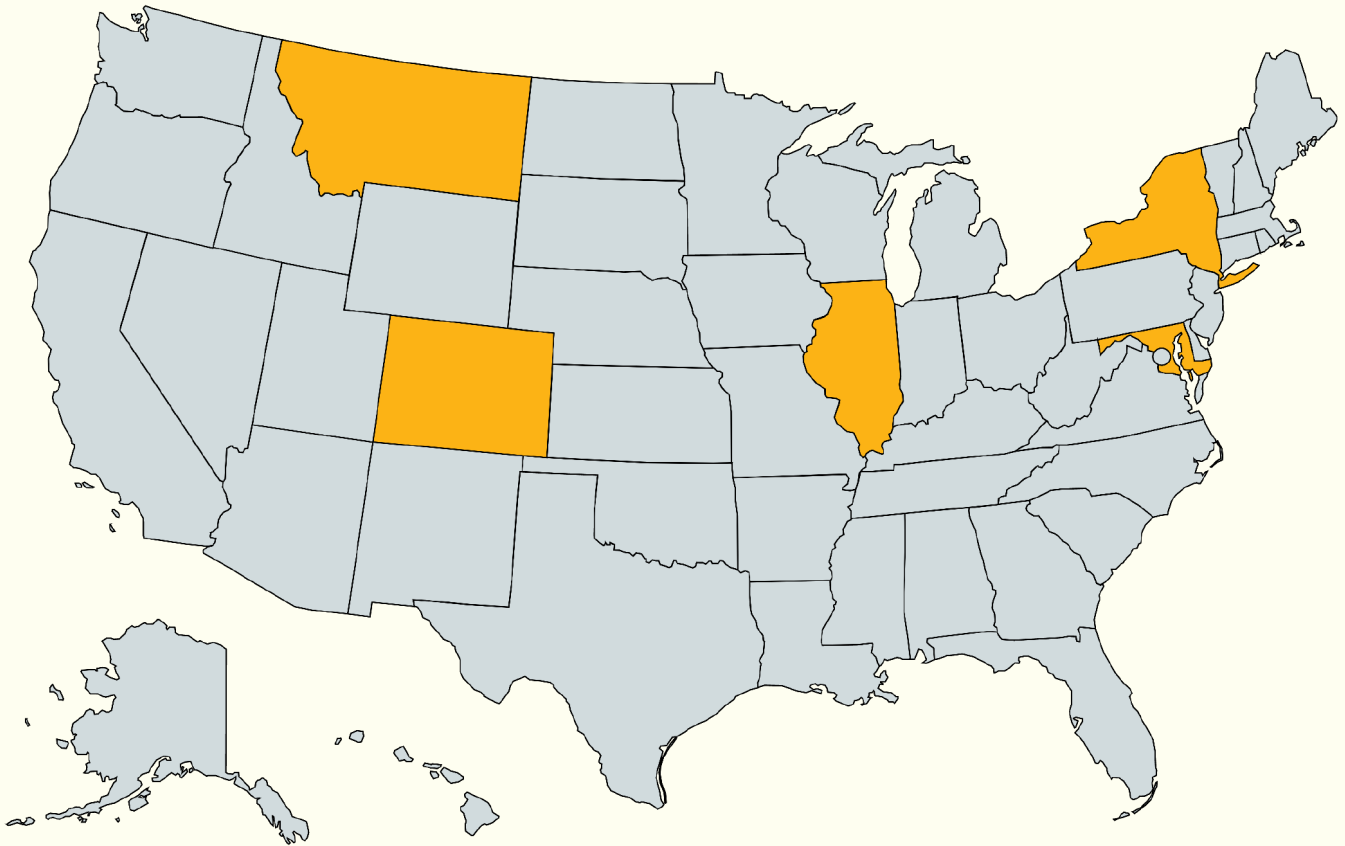
than 100 existing policies aimed at “prioritizing fairness for workers and communities that have historically depended on fossil energy economies” from across the United States and Europe.²⁸⁰ The report reviews policies in the areas of economic development, workforce development, public benefits, infrastructure, and environmental remediation.²⁸¹ After analyzing those policies, the report compiled many recommendations, highlighting the need for programs that target regional and sectoral differences, are planned and timed carefully, are coordinated carefully, and are designed in a transparent manner.²⁸²

In addition, workforce needs (such as training, relocation, and job-hunting) and equity considerations are both central to any plan for adapting to a transition²⁸³ and they can and should be considered together.²⁸⁴ The Deep South Center for Environmental Justice, Grid Alternatives, and WE ACT all have successful programs that can serve as models for this approach.²⁸⁵ For example, the Green Jobs Report lists several recommendations for ensuring that any new legislation includes “components necessary to both combat climate change and ensure economic stability and good-paying jobs,” including provisions that protect pension funds, clean up environmental harm, and include community members in the transition planning.²⁸⁶ The report also provides advice for “closing the diversity gap within the Green Jobs and renewable energy sectors,” including financial help with transportation, Occupational Safety and Health Administration training opportunities, and tutoring as well as mentoring and building connections between companies.²⁸⁷

There are some existing programs that can be analyzed as potential models. The Department of Energy’s Communities LEAP (Local Energy Action Program) is designed to support environmental justice communities by providing technical assistance funding for communities to design and develop clean energy programs.²⁸⁸ Exelon, a utility that until recently also owned a significant amount of nuclear power generation,²⁸⁹ has a workforce development program that works to address economic inequities in the communities in which it operates.²⁹⁰ Another organization, the Massachusetts Clean Energy Center, recently awarded grants to eight different training programs dedicated to helping people of color, women, and members of environmental justice communities overcome systemic barriers to joining the clean energy workforce.²⁹¹ The programs cover topics ranging from teaching technical skills to introducing how unions work to addressing logistical barriers like transportation. And pursuant to an agreement with the United Mine Workers of America, Sparkz corporation will retrain and reemploy coal miners in a cobalt-free battery plant, helping transition workers while also gaining the benefit of access to workers highly trained in workplace safety.²⁹²

D. State Approaches

Many states in the United States have already begun to consider how to include coal industry workers and communities in their just transition plans. The following state examples illustrate some approaches.



Colorado

In 2019, Colorado passed House Bill 19-1314, which not only expressed a “moral commitment” to assisting workers and communities affected by the coal industry’s decline, but also created a Just Transition Office, established a fund to implement the statute’s provisions, and charged the office with creating an action plan.²⁹³ The action plan, released in 2020, identifies communities that will be affected by coal-plant closures and sets several broad goals for addressing the impact of those closures, including training and economic diversification.²⁹⁴ The Just Transition Office also released a guidance document which explains that the \$8 million dollar fund set up to implement the action plan will be used, for example, to fund programs that attract new businesses to communities that are or will be affected by a coal plant closure through capital access programs and other tools.²⁹⁵ In 2021,

legislators passed a bill allocating an additional \$15 million in funds to the Just Transition Office; they passed another round of funding in 2022, \$10 million of which will go directly towards providing coal workers with relief and support, and \$5 million of which will go towards programs to boost community economies.²⁹⁶ In June 2022, Governor Jared Polis signed the Fund Just Transition Community and Worker Supports bill, which provides grant funds to various just transition programs for coal communities within Colorado.²⁹⁷

Illinois

Illinois' recently-passed Climate and Equitable Jobs Act creates a Displaced Energy Workers Bill of Rights. It requires the Department of Commerce and Economic Opportunity to give advance notice of a power plant closure, educate displaced workers on transition programs available to them, and make career consulting and financial planning services available to displaced workers.²⁹⁸ The Act also establishes a scholarship program for dependents of displaced energy workers. This statute's clean energy provisions are also discussed above.²⁹⁹

Maryland

Maryland's new Climate Solutions Act, passed in April 2022, created a Just Transition working group which focuses on transitioning fossil fuel workers to clean energy employment.³⁰⁰

Montana

Under former Governor Steve Bullock, Montana approached the goal of a just transition by focusing on training and innovation clusters. The Montana Climate Solutions Council, formed via an executive order, made recommendations to the state's legislature, public service commission, executive branch, and business and nonprofit partners in a comprehensive Montana Climate Solutions Plan.³⁰¹ (Though its implementation under the state's new governor may be in doubt,³⁰² the plan still provides helpful lessons.) One primary focus in the plan was preparing the state's workforce for new opportunities unrelated to coal or oil. The Council recommended that the state expand existing and develop new apprenticeship training programs, as well as training programs for public middle- and high-school students.

The Montana Climate Solutions Council also focuses on Regional Innovation Clusters, which the Brookings Institution describes as "concentrations of interconnected businesses, supply chains, and service providers located in the same geographic area with coordinating intermediaries, and public institutions like universities or community colleges in a particular field."³⁰³ The purpose of regional innovation clusters is to build networks,

incentivize strategic investment, and organize around a common goal of decarbonization. Innovation clusters can benefit regions and communities because of knowledge spillover between industry, capital and research institutions. The Council advised Montana to use funding to launch cluster initiatives to support the creation of regional innovation clusters. Other states could benefit from this type of initiative, tailored to their particular populations, economies, and physical environments.

New York

New York's 2019 Climate Leadership and Community Protection Act, also discussed above,³⁰⁴ created the Climate Action Council, which in turn convened a Just Transition Working Group as directed by the statute.³⁰⁵ In 2021, the working group, as required by the law, published a study examining employment impacts, as well as opportunities to help the state meet the law's just transition goals.³⁰⁶ In 2021, the Climate Action Council published a draft scoping plan with a number of recommendations aimed at ensuring that the state's workforce is "prepared for and stands to benefit from the State's transition to a clean economy."³⁰⁷ The scoping plan includes recommendations related to training, funding for businesses, and labor standards, including the recommendation to secure "wage support" and create "a fund for on-the-job training," as well as other job search support for workers when a plant closure is proposed.³⁰⁸ Also in 2021, former New York Governor Andrew Cuomo allocated \$5 million for the Just Transition Site Reuse planning program, a program designed to provide fossil fuel communities with resources to transition to a clean and sustainable energy source.³⁰⁹

E. Bankruptcy

When a coal or other fossil fuel company files for bankruptcy, the filing also raises important just transition considerations, including the company's ability to comply with wage, benefit, and pension obligations, as well as provide for possible future health issues related to the work. The Bankruptcy Code imposes an "automatic stay" on litigation against the debtor,³¹⁰ which cuts off the ability of environmental groups to bring citizen enforcement suits and of unions to enforce terms of collective bargaining agreements or other worker rights protections outside of the bankruptcy proceeding. Moreover, research has shown that "[c]oal companies have used the Bankruptcy Code to discharge or otherwise restructure substantial environmental, pension, and health care liabilities in a manner that has eviscerated the regulatory schemes that gave rise to those obligations."³¹¹

Preventing evasion of regulatory protections through bankruptcy is thus crucial to supporting workers in the fossil fuel sector.³¹² For that reason, groups such as the Just Transition Fund and partners have included bankruptcy-related recommendations in their

platform. They have called on federal leaders to require coal companies to have sufficient bonds to cover payroll and retiree pensions as well as ensure that the companies “do not owe back taxes or federal royalties, unpaid employee wages or pensions, or paycheck contributions before approving transfer of leases and mining permits.”³¹³

A transition plan for workers in the fossil fuel sector will need to be multi-faceted, including training programs, apprenticeship training programs, wage support, job-hunting support, career counseling, job fairs with potential clean energy companies, relocation or early retirement options, and attention to bankruptcy proceedings. Several states have begun analyzing options and funding programs designed to support industries and communities affected by closures, providing examples of policies and programs that could be useful. Across all these policies and programs, advocates consistently recommend that workers in the affected industry have a role in the decision about how to support them.



V. Highlighting Opportunities for Action by AGs

A just transition in the clean energy sector holds the promise of more and better jobs, policies and court decisions that protect the public fisc and environment, policies that begin to right the wrongs wrought by a history of racial injustice, and policies that tackle climate change forcefully and with an urgency that matches the severity of the problem. But that type of transition is not a guarantee. Instead, climate and labor policy need to coalesce around these goals and advocates need to ensure that policies are written to take into account both climate and labor priorities.³¹⁴

With their many and varied tools—including law enforcement authority, a role in advising and representing state agencies, public education opportunities, and state and

federal advocacy role—attorneys general have a potentially high-impact role to play in this area. This Section addresses several recommendations that have been made for a just transition and describes opportunities for AG involvement. Depending upon the particular issue, AGs may be able to enforce the law, provide guidance, advocate publicly, propose policy, convene players, or simply use the bully pulpit to press for just transition goals.

There may also be governmental interests at play, such as a proprietary interest in a project, which AGs may be tasked with representing. Those interests may differ across the three critical spheres associated with the transition: manufacturing (in particular, of new technologies); construction; and operations and maintenance. In addition, the legal framework governing a state's activities may vary across those spheres.

With those broad perspectives in mind, this Section provide initial ideas for AGs and the advocacy community broadly about the legal and policy tools that can be used to promote the goals of a just transition. In addition, the Section also offers possible areas for involvement in protecting workers generally from the already-existing impacts of climate change.

A. The Inflation Reduction Act

The Inflation Reduction Act (IRA) was signed into law on August 16, 2022.³¹⁵ The Act is designed to incentivize and fund clean energy and clean transportation and to supercharge these issues at the state and local level:

- Electric vehicles will become more affordable through credits.³¹⁶
- Charging stations will become much more plentiful as states, local governmental agencies, and businesses take advantage of credits to build them under both the IRA³¹⁷ and the Infrastructure Investment and Jobs Act.³¹⁸
- Billions in federal funding will go into a “Greenhouse Gas Reduction Fund” which will fund projects that reduce greenhouse gas emissions through renewable construction and other related projects.³¹⁹ The Environmental Protection Agency (EPA) must begin making grants under this program by February 2023.³²⁰
- Companies will have an incentive to cut methane emissions because they will have to either pay a fee or comply with EPA regulations requiring cuts under section 136(c).³²¹
- There are tax credits available to help fund a slew of clean energy investments.³²² Many of these projects are eligible for additional credits if they satisfy certain prevailing wage and apprenticeship requirements.³²³ Some of them are eligible for additional credits for complying with domestic content requirements³²⁴ and for investing in an “energy community,” defined generally as a community that has relied on fossil fuel production.³²⁵

There are many opportunities for AG involvement.

FIRST, besides the funding requirements, the bill contains leasing provisions that have caused significant concern, especially among environmental justice activists because they condition new offshore wind leases on oil and gas lease sales.³²⁶ Advocates, including AGs, will have an opportunity to press the federal government to keep those oil and gas lease sales to a minimum. For example, the Department of Interior recently proposed leases under those provisions and a 10-AG coalition weighed in on the plan explaining that new oil and gas leasing will get in the way of national climate goals and should be avoided.³²⁷

SECOND, there are many other federal rules that must be issued to implement the statute. The Department of the Treasury and the Internal Revenue Service (IRS) are collecting comments on the electric vehicle credits and will be issuing further guidance about the credits soon.³²⁸ EPA just announced a process for submitting comments on implementation of the Greenhouse Gas Reduction Fund.³²⁹ AGs have previously taken steps to advocate with federal agencies to protect public workers under similar federal provisions. For example, when the Department of Labor (DOL) proposed a regulatory overhaul to the regulations implementing the Davis-Bacon Act, the federal prevailing wage law, Pennsylvania Attorney General Josh Shapiro filed comments on those proposed revisions.³³⁰

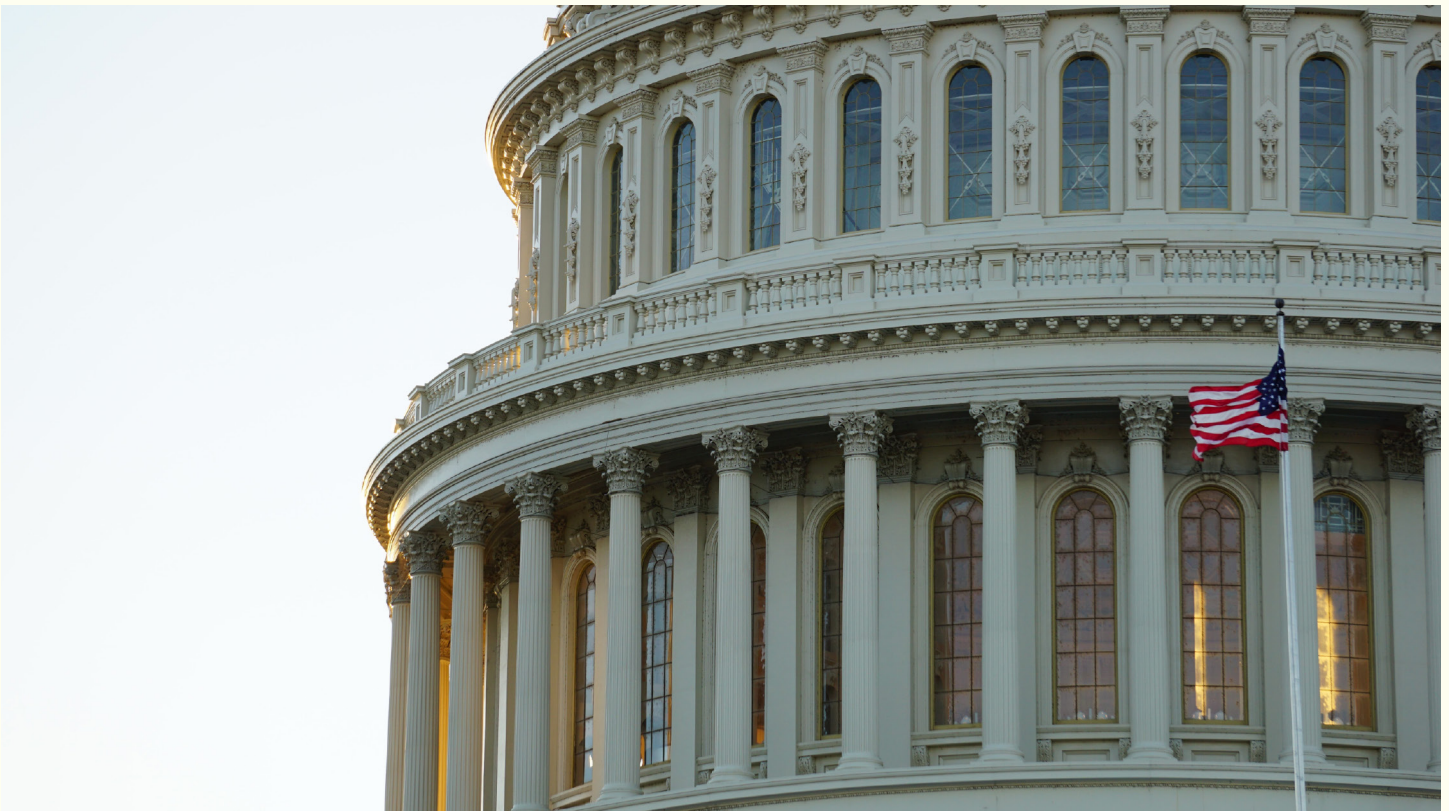
THIRD, there may potentially be an important role for AGs in relation to the labor-focused tax credits under the IRA, available for filers based on payment of prevailing wages, apprenticeship training programs, and/or use of domestically-produced materials (domestic content). AGs have considerable experience enforcing prevailing wage laws. Violations of these laws often involve complicated schemes that are not readily detected through examination of documents alone; employers may falsify records or submit certified payroll records that demonstrate strict compliance, but require kickbacks in cash from workers. New York Attorney General Eric Schneiderman, for example, brought criminal charges against a Port Authority contractor working at JFK Airport, who issued paychecks in the proper amounts to workers and submitted compliant-appearing paperwork to the authorities even while also requiring workers to cash their checks and pay him kickbacks.³³¹ As noted previously in this Report, Pennsylvania AG Shapiro recovered over \$20 million for workers in perhaps the largest prevailing wage criminal case in U.S. history. That case involved a complex scheme involving the benefits portion of the prevailing wage requirement (prevailing wage rates require payment both of a set wage and a set dollar amount for benefits.)³³²

The IRA contains penalties for filers that claim credits based on prevailing wage or apprenticeship requirements, but that do not comply with these rules.³³³ With their on-the-ground, directly relevant enforcement experience, connections with state-level stakeholders, and frequent interactions with state and local contractors and businesses, AGs are ideally situated to help ensure that companies comply with the requirements for claiming the IRA-related tax credits

for satisfying prevailing wage requirements, as well as the tax credits for apprenticeship training programs and use of domestically-produced materials.

However, the confidentiality requirements of federal tax law³³⁴ may create challenges for state AGs—or, for that matter, other state or local enforcers—that would otherwise potentially be well suited to play this urgently necessary role. Without public disclosure of which companies are claiming tax credits for which projects based on payment of prevailing wages, workers will not know if they are entitled to prevailing wage or whether their rights are being violated. It will also be difficult for state or local enforcers to know which projects call for monitoring.

The Treasury Department and the IRS are currently seeking comment on the documentation that should be required to prove compliance with prevailing wage requirements and how to correct a deficiency, as well as on the apprenticeship and domestic content requirements.³³⁵ AGs can engage on these issues, sharing their expertise regarding enforcement of prevailing wage cases, as well as advocating for boots-on-the-ground enforcement (as opposed to relying on solely technology-driven screening for violations) and data-gathering measures that track gender and racial metrics in the application of these credits and use of apprentices. AGs can also seek federal-state collaboration or a formal state role in ensuring compliance with the labor-related preconditions for receipt of IRA tax credits.



B. Improving Job Quality in the Emerging Clean Energy Sector

Attorneys general can play a role in improving the quality of clean energy jobs by supporting policies that increase union density, supporting other policies that improve labor standards in the sector, enforcing existing worker protection laws in the sector (and prioritizing this emerging industry for enforcement), defending worker protection provisions in any state-level climate statute, and promoting just transition policies through public advocacy and education. This Section surveys some of the tools relevant to the emerging clean energy sector.

Law Enforcement

AGs can prioritize civil and, where applicable, criminal enforcement of wage payment, prevailing wage, overtime, misclassification, payroll fraud, and basic labor standards laws in the green industry. AGs can use antitrust laws where applicable to protect workers. AGs can defend stronger statutes related to misclassification. AGs can partner with worker organizations and unions in these efforts.

Several AGs have been extremely active in enforcing workers' rights laws and combating misclassification in a number of industries.³³⁶ This can be made a priority in the clean energy space as well, ideally for an even larger contingent of AGs. Ensuring compliance with minimum wage, overtime, misclassification, and other basic labor standard laws could be particularly impactful in the clean energy industry, since this industry is still nascent. AGs in states with broad False Claims Acts can also use these statutes to enforce prevailing wage laws and to stop fraud in relation to clean energy-related government program. And in line with a general renewed focus among anti-trust enforcers on labor market competition,³³⁷ AG offices' anti-trust bureaus can monitor and prioritize any potential labor-related anti-trust violations in the emerging renewable energy industries, such as employer collusion regarding worker wages, mergers that lead to monopsony or otherwise adversely impact employees' working conditions, and employer abuse of no-poach or non-compete agreements.

There will also likely be opportunities to advocate for, enforce, support and defend state statutes that tighten the standards related to worker misclassification as independent contractors. For example, California in 2019 enacted AB5,³³⁸ a law adopting the ABC test,³³⁹ a more streamlined and protective test for determining employee

status. The California Trucking Association challenged the statute and California Attorney General Rob Bonta successfully defended it in the Court of Appeals.³⁴⁰ In June 2022, the Supreme Court denied a petition for certiorari.

As another example, staying alert for any misuse of apprenticeship programs (for example staffing a whole worksite with just apprentices) is another area of possible focus. The newness of the clean energy industry makes it critical to nip any and all violations in the bud and aggressively publicize such actions, to emphasize that employers in the industry must not adopt low-road practices. Enforcement in newly-emerging industries can potentially have long-lasting impact.

AGs can enforce anti-discrimination and civil rights laws in relation to renewable energy employers.

Racial equity is an important part of a just transition, including ensuring that past patterns of workplace discrimination do not persist and ensuring that communities adversely affected by climate change and past environmental injustices benefit from opportunities in the new green energy industries. Many AGs have brought cases to address employment discrimination. For example, New York Attorney General Letitia James in 2020 reached a \$1.5 million settlement involving a construction company with a pattern of “severe sexual harassment” against women, mostly women of color.³⁴¹ The settlement also required the company to hire an outside monitor for three years. Illinois Attorney General Kwame Raoul obtained consent decrees to end “a brazen pattern of discrimination” based on race by a meat processing company and a temporary staffing agency it used.³⁴² And New Jersey Attorney General Andrew Bruck in 2021 announced a set of broad initiatives to promote racial justice.³⁴³ As with wage theft, misclassification, and other abusive labor practices, it will be important to ensure racial equity in the clean energy sector. Relatedly, in order to assess the industry’s practices, another priority could be to push companies to disclose their workers’ racial and gender statistics as they take advantage of tax credits and other government programs that encourage growth in the clean energy economy.

AGs can enforce minority- and women-owned business diversity requirements for hiring of contractors and/or subcontractors on public works projects.

For instance, New York AG James investigated and reached a \$1.3 million settlement

with 10 government contractors that committed fraud in relation to state requirements for procuring supplies from minority- and women-owned businesses for the Rochester Schools Modernization Program.³⁴⁴

AGs can bring labor cases that also potentially have a positive environmental impact.

Misclassification of workers as independent contractors instead of as employees has had adverse environmental impacts in the transportation sector; reducing the incidence of misclassification could be helpful. A 2019 study showed that worker misclassification of California truck drivers leads to low rates of compliance with the state's clean vehicle rules, because underpaid misclassified workers struggle to bear the costs of complying with those rules.³⁴⁵ California Attorney General Edmund G. Brown Jr. brought numerous misclassification cases in relation to truck drivers; if employees are properly classified, the burden of compliance would fall on companies, not individual workers.³⁴⁶

Another example: multiple studies have found that transportation network companies such as Uber and Lyft have a significantly adverse impact on the environment, by increasing the number of cars without passengers circling in a given area (known as deadheading)³⁴⁷ and also ultimately by reducing use, demand, and support for public transportation.³⁴⁸ The companies' business models, in which they treat workers as independent contractors rather than as employees, has allowed them to avoid paying drivers for all hours worked and therefore obviates any incentive for companies to reduce the time that drivers spend circling in their empty cars.³⁴⁹ The environmental problems with these incentives led a large coalition of environmental and other groups³⁵⁰ to oppose a 2022 ballot initiative in Massachusetts (ultimately struck down in court before the election)³⁵¹ that would have changed commonwealth law to allow transportation network companies to treat workers as independent contractors. Reducing misclassification could also help reduce the negative environmental impacts of these companies. Both California Attorney General Xavier Becerra³⁵² and Massachusetts Attorney General Maura Healey³⁵³ have sued Uber and Lyft for worker misclassification; as of November 2022, those lawsuits are ongoing.³⁵⁴

Advocacy and Potential Law Enforcement

AGs can encourage use of project labor agreements in federal projects and in their states, and can conduct any enforcement that is appropriate under such agreements.

As described above, project labor agreements (PLAs) set up terms and conditions for a construction project, while providing stability and protections that benefit the project and workers overall.³⁵⁵ When federal projects are proposed and permits are being considered, states can provide comments to the federal government pushing for stronger labor protections, including project labor and labor peace agreements, in those projects. At the state level, some states have laws disallowing PLAs and AGs can advocate for policies that are more favorable.³⁵⁶ To the extent PLAs include an enforcement role for AGs, AGs can engage in proactive investigations or respond to any complaints about the implementation of the agreements. Overall, AGs can urge use of PLAs in relation to clean energy projects.

AGs can encourage the designation of clean energy jobs as public work subject to prevailing wage requirements. Where this occurs, AGs can prioritize civil and criminal enforcement of prevailing wage laws in these industries.

A number of AG offices, including in Illinois, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia, have brought civil and/or criminal cases enforcing prevailing wage laws.³⁵⁷ In Pennsylvania, for example, AG Shapiro recovered over \$20 million for workers in what his office described as the largest prevailing wage criminal case in U.S. history, involving violations by one of the state transportation department's largest contractors.³⁵⁸

AGs can push for strengthened labor standards in any new rebates or incentive programs, and enforce them where they exist. AGs can also enforce any just transition-oriented requirements for government contractors pursuant to procurement policy.

A recent Economic Policy Institute report recommends that to address eroding labor standards in the auto sector, policymakers should ensure that taxpayer subsidies or rebates to incentivize electric vehicles “come attached with specific requirements on labor standards in the industry, and with measures to boost investment in domestic

auto capacity of U.S. producers and suppliers.”³⁵⁹ A recent report by Good Jobs First (a policy and research organization that, among other things, advocates for more transparency in government subsidies) found that many sizeable state and local economic development subsidies (“megadeals”) for electric vehicle and battery factories did not contain sufficient or any labor standards; electric school bus construction was a notable exception.³⁶⁰ Even where rebates, incentives, or other subsidies do include labor standards, there is a need to ensure that recipients are complying with the requirements of the program. New York AG James recently recovered \$3 million for building service workers employed in buildings that received a real estate tax subsidy requiring creation of affordable housing or payment of prevailing wages; the subsidy recipients did not comply with either condition.³⁶¹ AG James and former New York AG Schneiderman pursued several similar cases involving these subsidy programs.³⁶² In addition, advocates have urged using procurement policy to drive high-road labor practices in the clean energy and transportation industries;³⁶³ AGs can investigate and take action if needed to ensure that such procurement requirements are satisfied.

AGs can encourage use of community benefits agreements, and offer guidance on how to incorporate effective enforcement to ensure compliance with companies’ community benefits commitments. To the extent there is a government enforcement role in such agreements, AGs can enforce them if their jurisdiction permits.

Enforcement of community benefits agreements can be difficult for community members. AGs could help with this challenge by weighing in on new community benefits agreements in the green economy as they are negotiated, and working to ensure that there are effective oversight and enforcement mechanisms in place from the outset.³⁶⁴ To the extent that there are allegations of fraud or other wrongdoing, AGs could also investigate those allegations. For example, New York AG Schneiderman investigated a non-profit organization set up to implement provisions of a community benefits agreement that Columbia University entered into with the West Harlem community as part of the university’s expansion and construction in that neighborhood. The non-profit was meant to disburse millions of dollars in funds for affordable housing, workforce development, and community programs,³⁶⁵ but in its first three years had only issued one very small grant and had failed to set up the infrastructure needed to implement the terms of the agreement.³⁶⁶ After investigating, the AG determined that fraud was not occurring; nonetheless, under an agreement with the AG, the non-profit agreed to be reorganized, implemented new more robust grant-making procedures, and submitted itself to the supervision of the AG’s Charities Bureau.³⁶⁷

Policy Advocacy, Public Leadership, and Education and Outreach

AGs can support efforts to help increase union density in clean energy industries.

As discussed above, the benefits of unions to workers are numerous: increasing wages and benefits and improving workplace safety and job stability for members, and even improving working conditions for non-members when there is union density in a given industry.³⁶⁸ The higher pay that comes with unionized employees helps employers hire more skilled workers, which improves the quality of work and makes it more efficient.³⁶⁹ These benefits for employers are considerable and may outweigh any potential increase in wages.³⁷⁰

Outdated labor laws, though, most notably the National Labor Relations Act (NLRA), have significantly contributed to a sharp decline in union density nationwide. Although there is strong support among workers and the public for unionization,³⁷¹ there are many obstacles to workers forming unions under current law; in addition, illegal retaliation and interference by employers are common during union campaigns.³⁷²

There are serious constraints on what AGs can do to directly enforce the laws governing unionization in the private sector because the NLRA has broad preemption, limiting what states and localities can do in this area.³⁷³

Nonetheless, there are actions that AGs can take in this area that do not fall within the restrictions created by NLRA preemption.

- AGs can conduct know-your-rights campaigns to educate workers, including those in green economy jobs, about their NLRA rights to organize and form a union. The White House Task Force on Worker Organizing and Empowerment issued its first report in February 2022, and it recommended an extensive outreach and public education campaign to make sure that workers throughout the country know about their organizing and union rights.³⁷⁴ AGs generally have a high public profile in their states; they are in close touch with constituents, and they often have effective intergovernmental, communications, and outreach teams. Even though they do not enforce the NLRA, AGs are well suited to help inform workers within their states about their rights to form a union; AGs could consider focusing such efforts on clean energy industry workforces generally.
- AGs can develop relationships with unions and other worker organizations, and

their offices can respond promptly when they refer cases involving violations of minimum wage, prevailing wage, or other provisions of state law. For example, New York AG James recently obtained restitution and reinstatement for workers unlawfully fired during the pandemic, in a case referred by a union.³⁷⁵

- AGs can use their public presence to show solidarity with workers trying to unionize, as AG James did recently in a statement supporting Starbucks employees who had successfully unionized in Buffalo and are trying to do so elsewhere in the state.³⁷⁶
- As discussed above,³⁷⁷ there is a much higher rate of unionization in public sector jobs. To the extent that there are discussions among state policymakers about creating public (government) jobs within clean energy industries or the green economy, AGs can support this position. And to the extent that a given state does not permit unionizing by public employees working for state or local government, AGs can support law reform allowing them to organize, given the benefits that collective bargaining offers public employers in addition to public employees.³⁷⁸
- AGs can advocate for labor law reform at the federal level. For example, 17 AGs urged Congress to pass the PRO Act, explaining that the new statute would have restored the “original purpose of encouraging unionization.”³⁷⁹

AGs should maintain ongoing relationships and conversations with the labor and environmental organizations to stay abreast of new developments and learn of emerging needs for AG involvement.

Collaboration and communication have consistently been flagged as crucial features of a just transition.³⁸⁰ While it seems almost cliché to urge collaboration and ongoing communication, they often do not happen without intentional planning and ongoing structures. For example, the draft scoping plan released recently by New York’s Climate Action Council highlights “collaborative State and community-based long-term planning” as a key principle of a just transition guiding implementation of the state’s climate law.³⁸¹ AGs can set up avenues for regular communication among workers and environmental advocates and their offices to monitor developments in the sector and keep a close eye on any violations of workers’ rights. One model to consider: the Fair Labor Division in the Massachusetts AG’s Office holds regularly scheduled meetings with two groups of worker organizations: a group called the Fair Wage Campaign, comprised of immigrant worker centers and legal services offices, and the AG’s Labor Advisory Council, comprised primarily of union leaders.³⁸² Such pre-established structures can help ensure ongoing routine communication with stakeholder organizations.

AGs can use their soft powers to promote just transition policies in the clean energy sector.

AGs are highly visible public leaders within their states. They can use their position to elevate the issues highlighted in this report, and to advocate for a just transition within their state and beyond. They can propose state legislation, comment on federal regulations, write amicus briefs, author op-eds, issue studies or reports, and more.

One immediate opportunity for public advocacy relates to federal procurement rules, which currently limit states and localities that want to place certain pro-worker requirements on funds contracted out through state or local agencies. The Office of Management and Budget's Uniform Guidance (2 C.F.R. pt. 200) is the federal regulation applicable to most pass-through grants from federal grant-making agencies, and many state and local agencies use federal grant money to make a wide range of necessary purchases in local contracting in their own state. The Uniform Guidance as currently written makes it difficult for state and local agencies to consider anything other than cost—such as job quality—as part of the application evaluation process.³⁸³ The February 2022 White House Task Force on Worker Organizing and Empowerment Report includes Uniform Guidance reform as one of its recommendations.³⁸⁴ AGs can play a role in any coordinated efforts to reform the Uniform Guidance by advocating to the federal government in favor of reform; commenting on proposed regulations regarding reform, when and if they are issued; supporting positive reform through filing an amicus brief if adopted rules are challenged in court; and, if reform is ultimately enacted, providing legal advisories and guidance to state agencies as well as localities within an AG's jurisdiction.

Finally, some AGs are also leaders trusted by both environmental and worker advocates; as such, they may be uniquely well positioned to convene stakeholders to explore joint goals and common ground.

Representing State Agencies

AGs will be needed to defend state laws establishing just transition policies against court challenges; they will also be needed to defend implementation of such laws once they are in effect.

As noted above, Illinois, Maryland, and New York have all recently passed legislation focused on reducing greenhouse gas emissions and on addressing the needs of

workers in the fossil fuel sector.³⁸⁵ State agencies have already started implementing these laws and AGs can play a role in advising their agencies on that implementation. New York's Department of Environmental Conservation, for example, recently denied two permits under its new climate law³⁸⁶ and has already been sued on one of those denials.³⁸⁷ New York's AG now has the job of defending the agency's decisions.³⁸⁸ When it comes to implementation of the worker protections, such as the prevailing wage and project labor agreement requirements in several projects recently announced by New York,³⁸⁹ AGs will be on the front lines to represent state agencies in relation to challenges regarding those programs as well.

C. A Just Transition away from Fossil Fuel

As explained above, to support and protect workers in fossil fuel jobs as the economy changes, there are a number of policies and recommendations that can be considered. AGs have many options for engaging on that front as well, including advocating on behalf of laid-off workers in a bankruptcy, using bully pulpit tools to push for more robust and protective state-level and federal programs, and using their supervisory powers to keep an eye on the expenditures in this area.

Law Enforcement

AGs can prioritize civil and, where applicable, criminal enforcement of basic labor standards laws in the fossil fuel industry, just like in the renewable energy industry.

Many worker protections are relevant also in relation to the fossil fuel industry including wage protection laws, laws curbing worker misclassification, environmental and workplace safety statutes, and more. AGs can enforce those laws in the fossil fuel industry, just like in the renewable energy sector.³⁹⁰

AGs can enforce additional protections for workers where there are layoffs or closures.

The federal Worker Adjustment and Retraining Notification (WARN) Act requires employers with more than 100 employees to give 60 days-notice before a plant closure or mass layoff.³⁹¹ States may have comparable laws that go further. For example,

New York's WARN Act requires employers with 50 or more employees to provide 90 days-notice before a mass layoff or closure.³⁹² AGs may have the power to enforce the federal statute, although there is some limited contrary authority.³⁹³ In addition, state WARN Acts may authorize an AG to enforce them and AGs will represent other state agencies in court defending those agencies' WARN Act decisions. For example, New York's WARN Act authorizes the state Department of Labor to enforce it³⁹⁴ and the agency has done so.³⁹⁵

AGs can educate workers in the fossil fuel industry specifically about their rights, respond to complaints from workers, and work with the state legislature and agencies to improve enforcement and worker protection standards.

Policy Advocacy, Public Leadership, and Education and Outreach

AGs can advocate for policies addressing the needs of workers and communities in industries like the coal industry.

Advocates have proposed policy recommendations to address fossil fuel industry workers' needs, as described above, and AGs can advocate for these policies in the state and federal legislatures.

AGs can educate workers, the public and business community about programs available to them.

Many policies being considered or already in place have grant programs and other benefits to fund training, workforce development, job search support, local business and economic development, and environmental remediation, among other programs. AGs can help educate affected workers and communities about the benefits or programs available to them, and can advocate to make benefits accessible and widely available. To the extent that public funds are allocated to address the needs of transitioning away from fossil fuel, AGs can ensure that these funds are properly spent and can enforce False Claims Act or other laws, where available and appropriate, to ensure proper use of government resources. AGs have a long history of enforcing the False Claims Act and can use their authority to root out any fraud in the expenditures of public money in this area.³⁹⁶

Bankruptcy-Related Advocacy: A Case Study in How AGs Can Protect the Environment and Workers

Attorneys general can play a key role in bankruptcy court if a fossil fuel company reorganizes or liquidates. This Section delves into the many opportunities for AGs to protect workers and the environment in this particular context.

In mid-2019, Blackjewel, a company with coal mines in Kentucky, Virginia, and West Virginia, filed for bankruptcy in the U.S. District Court for the Southern District of West Virginia.³⁹⁷ At the same time, the company failed to pay the wages of hundreds of coal miners, leading to a two-month standoff in which workers camped out on the train tracks to block the last shipment of coal offsite.³⁹⁸ The approved bankruptcy liquidation plan authorizes the company to abandon hundreds of mines without having to restore the landscape, remediate unsafe conditions, or set aside funding to ensure that cleanup is possible.³⁹⁹ To help avoid the devastating impacts resulting from a poorly executed bankruptcy like Blackjewel's, AGs and their client agencies can learn lessons from that bankruptcy and take steps to protect workers and the environment at multiple stages of the bankruptcy proceedings, including before the proceedings even start.


As an initial matter, states and AGs have an important and unique role to play in bankruptcy proceedings. Parties must show a pecuniary interest in order to have a say in the bankruptcy proceeding,⁴⁰⁰ and state government should be, and would almost certainly be, afforded a formal role as a party.⁴⁰¹ State government, including agencies represented by their AGs, will likely shoulder significant financial burdens as a result of the company closing. Without an adequate cleanup plan, states can be left with the liability for cleanup, which gives them a pecuniary interest in the proceeding. In addition, during bankruptcy, cases involving the company are automatically stayed⁴⁰² except in enumerated circumstances including cases where regulators are exercising their enforcement and regulatory powers.⁴⁰³ Though the regulator or enforcer will likely not be able to obtain damages in those other, non-bankruptcy proceedings, the regulator or enforcer could obtain injunctive relief, which provides another basis for allowing the government a seat at the table in the bankruptcy.

Once a company has filed for bankruptcy protection, there are several stages where an AG can advocate for workers and the environment, as follows:

- Must the company liquidate its holdings or can it reorganize? To reorganize, a company must show that it can comply with non-bankruptcy law including wage laws and environmental laws.⁴⁰⁴ An AG with concerns about such compliance could press this issue in bankruptcy court. In 2019, for example, Kentucky Attorney

General Andy Beshear and Virginia Attorney General Mark Herring urged the U.S. Trustee⁴⁰⁵ to pay Blackjewel's workers when the company went bankrupt.⁴⁰⁶ AG Beshear opened his own investigation as well.⁴⁰⁷ Eventually the federal labor department became involved and Blackjewel ultimately agreed to pay its workers over \$5 million in unpaid wages.⁴⁰⁸

- If the company must liquidate, can it abandon its properties? What must be done to ensure that any abandonment does not damage the public's health and safety?⁴⁰⁹ An AG can advocate in bankruptcy court for adequate environmental protections as a condition of abandonment, and also for protection of workers' pensions. For example, a bipartisan coalition of AGs recently filed an amicus brief in the Supreme Court in support of certiorari to address the decision by Delphi Corporation, an auto parts manufacturer and supplier, to deny pension benefits to its employees after entering bankruptcy.⁴¹⁰ They argued that the company had violated employees' rights. Ultimately, the Supreme Court denied the writ of certiorari.⁴¹¹
- What priority should various claims be accorded? In bankruptcy proceedings, secured claims are paid first; then administrative claims, and finally unsecured claims.⁴¹² A debtor's assets may be exhausted before any unsecured claims are paid. AGs may have an opportunity to argue that pension, retirement, healthcare-related, or environmental claims are administrative rather than unsecured in order to improve the priority of the claims and make it more likely that such claims would ultimately be paid.⁴¹³ To make such arguments, AGs may need to develop detailed information and legal arguments. For example, in relation to environmental concerns, an AG advocate may need to obtain an assessment of the future cleanup expenses, as well as an assessment and valuation of any health concerns related to site conditions.⁴¹⁴ During liquidation negotiations, AGs could advocate for a trust to address foreseeable future cleanup or health-related costs, retiree health benefits, or pensions that must be paid. Such advocacy is particularly crucial in an industry like coal mining, in which employees are routinely exposed to disease-causing materials.⁴¹⁵ Without strong advocacy by AGs or others, bankruptcy negotiations can end in agreements that leave workers' interests unprotected. In 2019, for example, a bankruptcy judge prioritized⁴¹⁶ a mine's restructuring plans over employee benefits, in a move criticized by experts and activists.⁴¹⁷ This example highlights how crucial worker advocacy is in bankruptcy court.
- Are there any inappropriate attempts to skirt liability through transfers? In reviewing a bankruptcy reorganization or liquidation plan, an AG can monitor any auctions in which permits are transferred to a new entity, which may itself be a polluter, and which may lack the resources to satisfy all assumed obligations. An AG can



also monitor for potential fraudulent creation of subsidiaries: a reorganization could involve placing all of the environmental, labor, and other liabilities into an underfunded new company, to the detriment of workers and the environment. For example, in 2007, Peabody Energy, already facing market pressure, transferred its pension liabilities to a spinoff named Patriot Coal.⁴¹⁸ A few years after the spin-off, Patriot Coal filed for bankruptcy protection and began shedding its pension obligations,⁴¹⁹ ultimately leading to the termination of retiree benefits.⁴²⁰

- Outside of the formal bankruptcy process, there are multiple avenues for AGs to advocate on behalf of environmental and worker concerns. While a bankruptcy proceeding is ongoing, the company is required to follow non-bankruptcy laws, including environmental and workers' rights laws, and the bankruptcy court will seek information from the AG or relevant regulator to confirm such compliance. Paying close attention to such issues could help ensure that these laws are followed. Meanwhile, an AG may have environmental or workers' rights claims against the company outside of the bankruptcy proceeding. The AG can argue that the automatic stay does not apply to those claims and continue to pursue the claims outside of the bankruptcy.
- Finally, enforcement efforts *before* a bankruptcy may also affect the bankruptcy itself. For example, a Kentucky law required coal mines to secure a bond to cover workers' wages, which would have helped the Blackjewel miners who lost their paychecks,⁴²¹ but that law had not been enforced and the company lacked the requisite bond at the time of its bankruptcy.⁴²² Similarly, when the bankruptcy court ruled on Kentucky's motion to compel Blackjewel to bring its permits into compliance with environmental laws, the court sided with the company after finding that the state had for years neglected the company's environmental violations.⁴²³

In sum, strict enforcement of existing bankruptcy laws can help protect workers' and retirees' rights to payment, pensions, and health benefits in the context of a closure or reorganization.⁴²⁴ AGs can play a unique and important role to protect those rights.

D. Protecting Workers across Sectors from the Impacts of Climate Change

Workers in both the emerging clean energy sector and the fossil fuel sector are also experiencing many of the devastating impacts from climate change. In fact, workers throughout the economy face these impacts already, including excessive heat at work, dangerous cleanup work after climate-caused disasters, financial risk that threatens workers' pensions, and more. Below are some ways AGs can help protect workers who are already adversely affected by rising temperatures and climate-induced disasters.

Law Enforcement

AGs can closely monitor cleanup operations after climate-related disasters (such as hurricanes), reach out to worker organizations, and enforce relevant workers' rights laws where needed to protect cleanup workers, who are a workforce particularly susceptible to violations.

Workers performing cleanup after hurricanes, floods, or other climate-related disasters often experience serious exploitation and workplace violations.⁴²⁵ In addition to enforcing worker protection laws in the clean energy and fossil fuel sectors, AGs can also ensure compliance in relation to any existing and new industries that arise to address the damages caused by climate-related disasters.

Advocacy and Potential Law Enforcement

AGs can push for standards, or rules to protect workers from excessive heat on the job, and can enforce the standards, where they exist.

Heat standards are rules requiring employers to take precautions to avoid worker harm when the heat becomes unsafe or dangerous.⁴²⁶ They generally include such common-sense measures like rest, shade, water, and gradual acclimatization to the heat. These protections are more and more necessary as the climate changes and heat waves intensify.⁴²⁷

Both labor and environmental advocates at AG offices can push states and the federal government to adopt and implement strong heat standards to protect workers nationally. At the federal level, Occupational Safety and Health Administration (OSHA) recently issued a request for information about the impact of climate change on occupational

heat exposure; in January 2022, a multistate coalition of AGs submitted comments in response.⁴²⁸ The coalition urged OSHA to adopt a federal heat standard, which would create specific temperature thresholds at which different limits on work are imposed, in addition to expanding reporting requirements, increasing its workplace inspection program, and requiring employers to implement measures that prevent workers from overheating. AGs can continue to monitor the development of an OSHA heat standard, including filing an amicus brief or intervening in support if the agency finalizes a standard and it is challenged in court after being adopted.

Unfortunately, however, finalizing an OSHA heat standard is likely to take several years.⁴²⁹ In the meantime, states may enact their own heat standards, as several already have, as highlighted above.⁴³⁰ In these states, AGs can monitor compliance, maintain communication with advocates and organizations reaching workers in industries vulnerable to workplace heat, and bring enforcement actions where there are violations.

Attorneys general in states without heat standards can advocate for enactment of heat standards at the state level, or issue reports that demonstrate the need for such a standard.⁴³¹ Finally, even without a heat standard, AGs with criminal jurisdiction can review the relevant facts and assess whether charges may be appropriate in readily preventable and foreseeable cases of heat-induced workplace injuries or fatalities.⁴³²

Policy Advocacy, Public Leadership, and Education and Outreach

AGs can push for stronger federal safety standards at EPA.

Under section 112 of the Clean Air Act, EPA is tasked with issuing safety rules for chemical plants that handle hazardous air pollutants.⁴³³ The Obama administration updated the safety rules after an explosion in a west Texas fertilizer plant, which demonstrated that first responders and neighboring communities needed better information about the chemicals that were being stored at the plants and that the plants needed better procedures to avoid future accidents.⁴³⁴ The Trump administration delayed and ultimately rolled those regulations back.⁴³⁵ AGs successfully challenged the delay⁴³⁶ but the challenge to the rollback remains pending as the Biden administration reconsiders the rollback. Climate change is increasing the risks to plants as they may be affected by increased risks of flooding and other weather disasters. AGs are engaged in pushing EPA to finalize a rescission of the Trump-era rollback and restore the urgently needed safety measures.⁴³⁷

AGs can push for stronger federal rules addressing climate-related financial risks.

As the White House recently explained in a report focused on climate-related financial risk, “[c]limate change poses a systemic risk to our economy and our financial system.”⁴³⁸ There are several rules currently under consideration to address this. For example, the Employee Benefits Security Administration of DOL has a proposal pending on steps it can take to “protect the life savings and pensions of U.S. workers and families from the threats of climate-related financial risk.”⁴³⁹ AGs can advocate for strong action, for example, requiring administrators of retirement plans governed by the Employee Retirement Income Security Act to disclose the steps they have taken to mitigate climate-related risks and how well those mitigation efforts worked. On a slightly different but related note, AGs commented in favor of a proposed Employee Benefits Security Administration rule to clarify that fiduciaries of private-sector employee retirement plans, such as 401(k) plans, can consider environmental factors (along with social and governance factors) when making investment decisions, without running afoul of their fiduciary duty.⁴⁴⁰ In November 2022, the agency finalized the rule in line with those AG comments.⁴⁴¹

AGs can advocate for laws to protect workers from termination if they take action to stay safe in the face of impending climate-related disasters.

A number of news stories report instances of workers being discharged or threatened with discharge or discipline for evacuating or taking other action to remain safe during an impending hurricane.⁴⁴² Similar concerns exist in relation to other climate-related disasters. For example, eight workers at a Kentucky candle factory and six workers in an Illinois Amazon warehouse were killed at work by a tornado; reports indicate that the Kentucky workers were threatened with discharge if they left, and the Amazon workers were told to remain at work.⁴⁴³ Currently, if workers do not have a union contract, there are typically limited avenues for redress regarding such terminations.⁴⁴⁴ AGs could advocate for the passage of such laws at the state level. At least one example of this kind of law exists, at the local level: in 2018, the Miami-Dade Board of County Commissioners passed an ordinance prohibiting employers from retaliating or threatening to retaliate against non-essential employees for complying with County evacuation orders during a state of emergency.⁴⁴⁵ In addition, U.S. Representative Cori Bush in September 2022, introduced legislation that would, among other things, prohibit employer retaliation against workers who seek shelter or use time off during a disaster.⁴⁴⁶



VI. Conclusion

The climate crisis threatens and harms workers through destabilized weather patterns, increased heat, more extreme storms, and many other factors. Meanwhile, poor labor protections harm workers and threaten to undermine efforts to address the climate crisis. The environmental and labor movements can make and are making common cause to address climate change and seek economic justice simultaneously, at this moment of inflection and transition. Renewable energy and good jobs can go hand in hand; labor and environmental movements are increasingly rejecting narratives to the contrary, and instead are finding reasons to work together, as cataloged throughout this Report. Policy recommendations by advocates and experts, along with focused efforts on the parts of unions, renewable energy companies, environmental justice groups, and the government, can help bring about a more just transition.

As described above, attorneys general have the potential to play an important and high-impact role in these efforts. AGs can undertake worker protection initiatives in the renewable energy space. AG staff can also play an advocacy role in supporting regulatory and legal solutions that boost this work. Throughout, it will be critical

for AGs and their teams to maintain ongoing communication and collaboration with environmental justice and labor advocates, to understand new developments and needs on the ground. As AGs look to engage on transition issues, it is important to simultaneously engage with and listen to the affected communities, avoiding a top-down approach.

Meanwhile, advocates should understand the potential benefits from AG involvement in just transition issues, and they can work to engage with AGs on these critical matters.

The following table provides an overview of the types of tools that could apply to several of the recommendations that have been made by advocates in the just transition space.

Table — Recommendations Matched to Possible AG Tools

Recommendations from Just Transition Advocates	Attorney General Tools
Clean energy: Facilitate unionization	<ul style="list-style-type: none"> ✓ Worker education about union rights; solidarity with workers when they are attempting to form unions; responding to violations promptly that are referred by unions; support for reform in favor of unionization rights. ✓ Promote the use of project labor agreements (PLAs) through advocacy with client agencies and municipal government, where appropriate. ✓ If PLAs are not legal or are restricted or limited in their jurisdiction, issue a report or study regarding the benefits of PLAs; or support their use more widely. ✓ Be aware of National Labor Relations Act preemption, which limits states’ ability to get involved in union-related matters.

Recommendations from Just Transition Advocates	Attorney General Tools
<p>Clean energy: Prevailing Wage</p>	<ul style="list-style-type: none"> ✓ Enforce prevailing wage laws when applicable to clean energy work. ✓ Encourage policymakers to designate clean energy jobs as public works jobs. ✓ Defend and advocate for the use of prevailing wage provisions for this work. ✓ Take active role in advocating about and, if possible, enforcing Inflation Reduction Act's prevailing wage provisions.
<p>Clean energy: Local hire and community benefits provisions in state and local government contracting</p>	<ul style="list-style-type: none"> ✓ Advocate for and defend state-level labor standards; defend the projects; push for provisions that allow for enforcement of community benefits agreements; investigate any allegations of malfeasance or violations in implementing the agreements.

Recommendations from Just Transition Advocates	Attorney General Tools
<p>Clean energy and fossil fuel: Safety and health protections</p>	<p>✓ Advocate for strong federal and state protections; defend and push for strong state and federal protections; enforce state-level heat, workplace safety, and environmental standards, where applicable; educate workers and employers about federal recommendations on occupational heat; enforce any worker protection measures that may be required of companies seeking government-granted permits for specific work.</p>
<p>Clean energy and fossil fuel: Defend state climate laws</p>	<p>✓ Defend just transition policies embedded or implemented under state climate laws.</p>
<p>Clean energy and fossil fuel: Prevent labor misclassification and other workers' rights abuses</p>	<p>✓ Civil and criminal enforcement of wage-related, misclassification, and other labor standards laws as well as anti-discrimination laws; public education for employers and workers; provide leadership among state and local enforcers; propose legislation where appropriate; prioritize labor standards enforcement in clean energy given that it is a nascent, emerging industry.</p>

Recommendations from Just Transition Advocates	Attorney General Tools
<p>Clean energy and fossil fuel: Collaboration, communication, coordination</p>	<p>✓ Harness AG offices' robust outreach programs to build partnerships and collaboration with outside advocates and ensure that communication and coordination occur between labor and environmental bureaus.</p>
<p>Fossil fuel: Training programs for workers transitioning out of fossil fuel industry jobs</p>	<p>✓ Public education of and consultation with worker organizations; advocacy with companies and policymakers; develop a robust understanding of the varied needs.</p>
<p>Fossil fuel: Enforcement of worker rights and environmental laws in bankruptcy court</p>	<p>✓ Respond to complaints about WARN Act violations and advise state agencies on rigorous enforcement.</p> <p>✓ Enforcement; taking stance in bankruptcy court that supports any worker claims (e.g., pensions) and any environmental cleanup claims and advocacy.</p>

Appendix A

This Appendix provides a list of some organizations specializing at least in part on the impact of the clean energy transition on workers, organized alphabetically. In some instances, we have included examples of the organizations' work. This is not a comprehensive list of all organizations doing important work in this space.

- [ALIGN](#) “is a longstanding alliance of labor and community organizations united for a just and sustainable New York.”⁴⁴⁷
- [Appalachian Voices](#) “brings people together to protect the land, air and water of Central and Southern Appalachia and advance a just transition to a generative and equitable clean energy economy.”⁴⁴⁸
- The [BlueGreen Alliance](#), a member organization comprised of a number of larger national environmental organizations and labor unions, recently published a state policy toolkit report on “crafting state policy that rebuilds a cleaner, safer, more equitable economy.”⁴⁴⁹ This organization also released an “Energy Transition Policy Framework” that recommends policies for both workers and communities that will have both “immediate and long-term benefits.”⁴⁵⁰ In 2021, the California Teamsters and California state policy office of the BlueGreen Alliance together pushed for the passage of a statute that aims to reduce truck emissions through incentives that are also tied to compliance with workplace standards.⁴⁵¹
- [Climate Jobs National Resource Center](#) (CJNRC) is a labor-focused organization working to “combat climate change, create good union jobs, and reverse racial and economic inequality by building a worker-centered renewable economy.”⁴⁵² CJNRC works collaboratively with the [Labor Leading On Climate Initiative](#) at the Worker Institute of the Cornell University School of Industrial and Labor Relations.
 - » Through this collaboration, CJNRC has helped to form state-level coalitions of labor unions in [Connecticut](#), [Illinois](#), [Maine](#), [New York](#), [Rhode Island](#), and [Texas](#). Most have produced reports outlining state- and city-specific policy recommendations for building a just transition.⁴⁵³ These reports can lead to unions signing onto recommendations for reducing emissions in the state.⁴⁵⁴

- [The Climate Justice Alliance](#) is a member alliance of 84 urban and rural frontline communities, organizations, and supporting networks in the climate justice movement. The Alliance focuses on uniting frontline communities and organizations in order to push “a just transition away from extractive systems of production, consumption and political oppression, and towards resilient, regenerative and equitable economies.”⁴⁵⁵
- [Front & Centered](#) is a coalition of community groups in Washington State that are led by people of color and that have committed themselves to working towards a just transition. During the 2022 legislative session, this coalition advocated for bills that included 5 billion dollars for public transportation and other transportation solutions such as more bike paths.⁴⁵⁶
- The [Green Workers Alliance](#) focuses on bringing together “current and future workers” in the clean energy industries, with a specific focus on organized labor at utility-scale solar and wind projects.⁴⁵⁷
- [Illinois Clean Jobs Coalition](#) brings together “environmental advocacy organizations, businesses, community leaders, consumer advocates, environmental justice groups, and faith-based and student organizations” to work on policies affecting public health, the environment, consumer rights, and workers in Illinois.⁴⁵⁸
- [Just Transition Alliance](#) unites frontline workers (specifically workers in the service, energy, farmworker, and chemical industries), and frontline communities (people of color, Indigenous Peoples and low-income communities) to shift towards a more sustainable economy. The Alliance pushes for “strategies that embody the priorities of workers and communities hit hardest by climate change.”⁴⁵⁹
- [The Just Transition Centre](#), established by the International Trade Union Confederation, is an international organization that facilitates conversations, trainings, and initiatives to “ensure that [labor] has a seat at the table when planning for a Just Transition to a low-carbon world.”⁴⁶⁰
- [Just Transition Fund](#) provides investments and assistance to communities most impacted by the transition away from coal with the goal of advancing “economic solutions that are equitable, inclusive, and low carbon.”⁴⁶¹

- The [Labor Energy Partnership](#) (LEP), a collaboration of the AFL-CIO⁴⁶² and Energy Futures Initiative, seeks to integrate the labor and climate fields and produce “timely research that provides actionable recommendations for clean energy policy.”⁴⁶³
- [Labor Network for Sustainability](#) works with unions and labor groups to address the climate crisis and builds partnerships between labor interests and the climate movement.
- [Resilience Force](#) is a national organization that advocates for solutions and better policies for people who work on responding to disasters.
- [NY Renews](#) is a coalition of over 300 environmental, justice, faith, labor, and community groups focused on implementing the New York’s Climate Leadership and Community Protection Act. The organization explains: “We fight for good jobs and climate justice, and we’re not finished yet.”⁴⁶⁴
- The [UC Berkeley Labor Center](#) has a green economy program that researches “job creation, quality, access, and training in the emergent green economy” and assists “state agencies, labor, and other stakeholders” that are developing climate policy that intersects with labor interests.
- [WE ACT for Environmental Justice](#) is an environmental justice oriented community-based organization in West Harlem. Together with the Environmental Leadership Forum (a national coalition of 54 environmental justice organizations), they issued a Green Jobs Report offering policy solutions for “closing the diversity gap within the Green Jobs and renewable energy sectors.”⁴⁶⁵
- The [Worker Institute at Cornell’s School of Industrial and Labor Relations](#) “engages in research and education on contemporary labor issues, to generate innovative thinking and solutions to problems related to work, economy and society.”⁴⁶⁶ The group “brings together researchers, educators and students with practitioners in labor, business and policymaking to confront growing economic and social inequalities, in the interests of working people and their families.”⁴⁶⁷ As noted above, the Worker Institute has a [Labor Leading On Climate Initiative](#).

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The State Energy & Environmental Impact Center is a nonpartisan academic center at NYU School of Law. The Center is dedicated to working towards a healthy and safe environment, guided by inclusive and equitable principles. The Center studies and supports the work of state attorneys general in defending, enforcing, and promoting strong laws and policies in the areas of climate, environmental justice, environmental protection, and clean energy.

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N.Y. LAB. LAW §§ 860-a(3) (defining employer) and 860-b(1) (requiring ninety days notice) (Consol. 2022); see also Workplace Rights FAQs - Job Termination, N.Y. OFF. OF ATT’Y GEN., <https://ag.ny.gov/job-termination> (<https://perma.cc/XJF4-H2KZ>) (explaining the notice requirements of the N.Y. WARN Act).

Although there is at least one case holding that Connecticut did not have standing to enforce the federal WARN Act, see *Cashman v. Dolce Intern./Hartford, Inc.*, 225 F.R.D. 73 (D.Conn. 2004), the issue has not been broadly litigated. There are reasons to believe that the court’s reasoning in *Cashman* may be flawed: there is no definition of the term “person” in the WARN Act, despite the court’s misrepresentation otherwise, and the court reads the requirement of notice to the state as though it were non-substantive and effectively unenforceable, which was likely not the intent of requiring such notice. However, to the extent AGs file WARN Act cases themselves, it may be most promising to do so in jurisdictions where AGs’ *parens patriae* authority is well-developed.

N.Y. LA. LAW § 860-f(6) (Consol. 2022).

See *In re Saint Vincent’s Catholic Medical Centers of New York et al.*, 445 B.R. 264, 267 (Bankr. S.D.N.Y. 2011) (describing claim brought by the New York Department of Labor under the NY WARN Act).

See, e.g., Press Release, N.Y. Off. of Att’y Gen., Attorney General James Recovers More Than \$1.6 Million from Government Contractor That Skimmed Funds from State Public-Works Projects (Mar. 19, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-recovers-more-16-million-government-contractor-skimmed> (<https://perma.cc/GZA8-HXUP>).

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See *In re Roman Catholic Church of Archdiocese of Santa Fe*, 2021 WL 4943473, at *3 (Bankr. D.N.M. 2021) (describing doctrine).

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11 U.S.C. § 362(a).

11 U.S.C. § 362(b)(4); see also *In re SCBA Liquidation, Inc.*, 489 B.R. 666, 681–682 (Bankr. W.D. Mich. 2013) (“Under these standards, ‘an action will only be exempt from the automatic stay’ as an exercise of police or regulatory powers ‘if the action has been instituted to effectuate the public policy goals of the governmental entity, as opposed to actions instituted to protect the entity’s pecuniary interest in the debtor’s property or to adjudicate private rights’. . . [A]n action will be regarded ‘as outside the police power exception’ when it ‘incidentally serves public interests but more substantially adjudicates private rights.’”) (quoting *Chao v. Hospital Staffing Servs., Inc.*, 270 F.3d 374, 386, 389 (6th Cir. 2001)); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (describing the doctrine); *In re Iams Funeral Home, Inc.*, 2007 WL 4358291, at *4 (Bankr. N.D. W.Va. 2007) (holding that the Attorney General of West Virginia’s claims were exempted from the automatic stay). (holding that the Attorney General of West Virginia’s claims were exempted from the automatic stay).

28 U.S.C. § 959(b).

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