CL JE CENTER FOR LABOR & A JUST ECONOMY AT HARVARD LAW SCHOOL

State and Local Labor Policy Working Paper Series

Model Sectoral Law User Guide & FAQs

The National Labor Relations Act (NLRA) declared collective bargaining – a mechanism for promoting industrial peace, worker welfare, and the equitable distribution of economic gains – the policy of the United States. That promise has gone largely unfulfilled. Union density and bargaining coverage have fallen to historic lows, leaving the vast majority of America's workers without a collective voice over their wages, benefits, or working conditions. The consequences are visible in decades of wage stagnation, widening inequality, and the erosion of the middle class. Collective bargaining at the worksite level remains the bedrock of worker power—the mechanism through which workers exercise genuine democratic voice in the terms of their employment. No policy innovation has replaced it, nor should it be our goal.

Sectoral strategies—systems in which wages and working conditions are set across an entire industry in a geographic area rather than at the worksite level—have long been recognized as powerful tools for raising labor standards. They are not replacements for worksite collective bargaining agreements, but they can provide important complements to the same. While these models have typically focused on improving baseline employment conditions and pay, they also hold significant potential to empower workers, promote democratic participation, and strengthen organizing. Where worksite bargaining is weak, sectoral floors can leverage organizing strength across businesses. Where it is strong, sectoral coordination can extend its gains more broadly.

The Center for Labor and a Just Economy is proud to release a **Model State Sectoral Bargaining Law**. The model law offers lawmakers a framework for legislating groundbreaking sectoral bargaining systems that would allow multiple employers and workers to create sector-specific agreements. States should tailor this model to apply to the sectors that make sense in their local economies, in consultation with impacted workers and their representatives who want the option and opportunity for sectoral bargaining.

If enacted, this model law would lower the barriers to initiating the collective bargaining process, expand the options for how workers can express their voice, and ensure that bargaining leads to a fair collective bargaining agreement. Under certain conditions, including the creation and involvement of a state labor standards board, this law would also create tripartite mechanisms for ensuring that basic labor standards are consistent across a sector, ending the race-to-the-bottom in hard-to-organize sectors.

The model law comes in two versions reflecting different judgments about the appropriate scope of the State Labor Standards Board's authority. The Expansive Board version gives the Board a broader and more active role in overseeing the sectoral bargaining process, while the Limited Board Version relies more heavily on the parties to structure their own relationships and resolve disputes, with the Board stepping in under a narrower set of circumstances.

In consultation with workers and their representatives, states could tailor these proposals and make them law today, applying to industries that are exempt from the NLRA, if they choose, like the public sector, agriculture, domestic service, and gig workers who are bona fide independent contractors. And each could also be passed as a "trigger law" that will take effect more broadly where the NLRA doesn't apply -- which is possible given that the law's enforcement infrastructure is currently being challenged on constitutional grounds in federal courts. Lawmakers in California and New York have already passed trigger laws that would largely replicate the NLRA at the state level under certain scenarios where the NLRB fails to or can no longer act– though both have been *preliminarily* enjoined by federal district courts, with courts preserving only some exceptions allowing state actions. Sectoral bargaining frameworks of the kind proposed here offer a complement to state-level NLRA-based models that could chart a new course for building worker power and protecting worker rights.

Frequently Asked Questions

1. **What does the State Sectoral Bargaining Act do?**

The State Sectoral Bargaining Act provides an innovative legislative option for states to provide collective bargaining rights for workers left out of the outdated National Labor Relations Act or to establish a new way for workers to have input into setting terms and conditions in sectors where there has been little or no history of unionizing. In the event the conservative activists on the Supreme Court invalidate the NLRA, the State Sectoral Bargaining Act would provide a legislative option that states could quickly adopt to fill in the void. States should work in consultation with impacted workers and their representatives to adapt this model to apply broadly or to more targeted sectors of the economy.

2. **Why should states consider sectoral bargaining laws?**

Sectoral strategies—systems in which wages and working conditions are set across an entire industry in a geographic area rather than at the individual worksite level—have long been recognized as powerful tools for raising labor standards. They are not replacements for workplace-specific collective bargaining agreements, but they can provide an important complement to the same. While these models have typically focused on improving pay and baseline employment conditions, they also hold significant potential to empower workers, promote democratic participation, and strengthen organizing. Where workplace-specific (or "enterprise-based") bargaining is weak, sectoral floors can leverage organizing strength across businesses. Where it is strong, sectoral coordination extends its gains more broadly – covering more workers than workplace-by-workplace bargaining.

3. How does the State Sectoral Bargaining Act work? What are the key features?

- Creates a State Labor Standards Board to oversee sectoral bargaining.
- Covers all workers whose performance is not completely free from employer control, regardless of how they are classified.
- Allows unions and worker organizations to petition the Board to establish a bargaining sector covering an entire industry or occupation.
- Grants organizing and access rights to worker representatives once they demonstrate a minimum level of worker support.
- Requires parties to bargain over wages, benefits, technology use and job displacement, union security and dues checkoff and other working conditions.
- Sets a floor: all employers in a covered sector must meet the sectoral minimum standards, whether or not they are party to any agreement, assessed on the overall compensation package rather than component by component.
- Allows workplace-level bargaining agreements and individual contracts to exceed — but not fall below — the sectoral floor.
- Does not replace or diminish workplace-level collective bargaining rights under the NLRA.

4. What other provisions does the Act include?

- Allows employers to form associations to bargain collectively at the sectoral level; if no employer representative comes forward, the Board may designate one. (Expansive Board Version only)
- Requires employer associations to comply with explicit antitrust guardrails, and authorizes the Board to investigate and refer anticompetitive conduct to the Attorney General. (Expansive Board Version only)
- Provides for mediation, arbitration, and as a last resort Board-imposed terms if parties cannot reach agreement. (In the Limited Board Version, Board-imposed terms are available only upon a finding of deliberate, serious, and sustained bad faith bargaining.)
- Requires ratification by a majority vote of all workers in the sector before an agreement takes effect.

- Provides an alternative pathway allowing the Board to extend an existing union agreement's wage and benefit rates as a floor across an entire sector where that agreement covers at least 30% of workers, or the largest number of workers, in the sector.
- Provides for enforcement through arbitration, the Board, and the courts, with per-worker, per-day penalties for violations.
- Includes a broad severability provision so that if any individual provision is invalidated, the remainder of the Act continues in full force — and if the Act is held invalid as to any category of workers, it remains operative as to all others.
- Funds the Board through an annual assessment on employers registered to do business in the state.

5. What is the difference between the two versions?

The Expansive Board Version gives the Board broader oversight authority, including explicit antitrust oversight of joint actions that displace competition, detailed governance requirements for employer associations, broader impasse resolution tools including the ability to fix terms after exhausting dispute resolution options or upon a finding of bad faith bargaining, and a catch-all allowing parties to bargain over any additional terms either party raises during the process.

The Limited Board Version omits the explicit antitrust oversight provision and the detailed employer association governance requirements, limits the Board's ability to fix terms solely to situations where it finds deliberate, serious, and sustained bad faith bargaining, and restricts permissive subjects of bargaining to those specifically enumerated in the Act rather than allowing a broader catch-all.

6. Aren’t these laws preempted?

No. The National Labor Relations Act (NLRA) blocks state or local labor laws that are “arguably protected or prohibited” under the NLRA, as well as any state or local regulations that interfere with the free play of economic forces between labor and management that Congress intentionally left unregulated. But the NLRA only covers workers employed by private sector employers and excludes coverage for farm workers, domestic workers, and those whom employers classify as independent contractors, such as ride share drivers. Most states could pass sectoral bargaining laws that apply to these NLRA-exempt employees today.

In addition, a stunning variety of employers—including some who have been lauded for their employment practices—have mounted unprecedented attacks on the NLRA. If successful, this assault could fundamentally reshape the labor law landscape that protects workers and communities.

In response, states could pass so-called “trigger laws” that would take effect if the NLRA’s protections don’t apply, like California, New York, and Washington have done. Even under current law, some categories of workers are exempt from the NLRA, allowing states to regulate their labor law protections today. Most states could deploy the Model State Sectoral Bargaining Law to create a framework to cover farmworkers, domestic workers, or even public sector workers today without running afoul of NLRA preemption.

States should work in consultation with impacted workers and their representatives to adapt this model to apply broadly or to more targeted sectors of the economy.

7. **What trigger or “effect” provision should accompany this legislation?**

Several states have enacted or proposed trigger laws that could inform the drafting of this provision, each reflecting a different judgment about how broadly to activate state jurisdiction and how much legal risk to accept in doing so.

> **New York** enacted a trigger law in September 2025 authorizing its Public Employment Relations Board to assert jurisdiction when the NLRB fails to "successfully assert" jurisdiction — a standard that does not require a formal finding of non-jurisdiction. It covers a wide range of circumstances in which the NLRB is not effectively functioning. The NLRB sued New York shortly after enactment, and a federal district court issued a preliminary injunction in November 2025 blocking enforcement, finding the NLRB likely to succeed on its preemption claims. That litigation remains pending.
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> **California** enacted AB 288 in September 2025, authorizing its Public Employment Relations Board to exercise jurisdiction where the NLRB has "expressly or impliedly ceded jurisdiction" — including loss of quorum, loss of independence due to unconstitutional removal of members, or processing delays beyond six months. The NLRB sued California in October 2025, and a federal district court issued a preliminary injunction in December 2025. That litigation is also pending.
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> **Washington** enacted ESHB 2471 in March 2026, taking a deliberately narrower approach. Its trigger activates only if federal law ceases to preempt state regulation of private sector labor relations, or if the NLRB determines it lacks jurisdiction, declines jurisdiction, or is deprived of jurisdiction over employers or industries within its previously existing jurisdiction. The law is far less likely to be enjoined but also less likely to activate under current circumstances, offering no protection in scenarios where the NLRB remains formally operational but functionally ineffective.
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> **Massachusetts** has pending legislation — S. 1327, the Protect Labor Act — that takes an approach closer to Washington's, activating if federal preemption ceases to apply or if the NLRB determines that a particular employer, industry, or trade falls outside the NLRA's scope or declines jurisdiction over the same. It has not yet been enacted.

Regardless of how a state chooses to address the trigger question, there is an independent and compelling reason to enact this legislation promptly. This Act covers any worker whose performance is not completely free from employer control, regardless of how they are classified — meaning it can provide immediate protection to many workers who are currently classified as independent contractors and excluded from NLRA coverage on that basis. The Act can also offer immediate protection to other workers currently excluded from the NLRA, including farm workers, domestic workers, and any workers who lose NLRA coverage in the future. The legislation does not need to wait for a federal crisis to be useful. It can begin improving wages and working conditions today for the millions of workers the NLRA has never reached, while also standing ready to serve as a broader backstop if federal protections erode further.

8. What happens to workplace collective bargaining under the model law – is that still allowed?

Yes. Sectoral bargaining and workplace-specific collective bargaining are complementary. Workers could bargain for workplace collective bargaining agreements that go above the floor of wages and benefits set at the sectoral level. This is most likely to happen in sectors where workers have significant bargaining power or mature collective bargaining relationships. Sectoral bargaining, however, sets minimum standards that can make bargaining for higher workplace-specific standards easier. It also provides an option well suited particularly for workers in sectors with no or low union density.

9. If the NLRA were invalidated, would this proposed legislation fully replace the rights covered by the NLRA, or would additional legislation be needed?

This legislation does not replace the rights covered by the NLRA. Sectoral bargaining and workplace-specific collective bargaining are complementary. The model law would give workers the right to bargain collectively on a sectoral basis. To complement the sectoral bargaining system established by the model law in the event of the invalidation of the NLRA with workplace specific collective bargaining rights, states would either have to revive, dormant little Wagner Acts (which may already be on the books) or adopt new state-level NLRAs. States may want to review whether they have legislation that would go into effect if the NLRA falls.

10. What do we know about the likely economic impact of adopting sectoral collective bargaining?

The Center for American Progress has released a report suggesting that sectoral bargaining could more than double collective bargaining coverage in the United States, raising the number of covered workers from 16.5 million to an estimated 42.4 million workers. Beyond that, the CAP report outlines previous research showing “that sectoral bargaining increases collective bargaining coverage, boosts union membership, and leads to improvements in workers’ lives and the economy," including a more equal distribution of wages, lower poverty, a narrowed gender pay gap, and even increased productivity.

11. What if my state only wants to address a subset of issues or industries through sectoral collective bargaining – can this model be adapted to bargaining over just AI or just for the fast food sector?

Yes, states should adapt this model legislation in coordination with impacted workers and their representatives so that it applies to the right sectors of the economy or to authorize bargaining only on a limited set of topics, like AI adoption. States should consult impacted workers and their representatives to ensure that nothing in the model legislation inadvertently undermines other workplace protections like prevailing wage requirements.

12. How much should we tax businesses to fund this?

We propose establishing a per-employee tax sufficient to fund administration and program enforcement in line with other important workplace programs. For example, employers pay an annual tax of up to $42 per employee to help administer the unemployment insurance system.