

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE 2023 LABOR DAY REPORT



Letter from the Attorney General

Dear Washingtonians:

Each year, Labor Day provides an opportunity to reflect back on my work as Attorney General to protect and advocate for the rights, health, safety, and dignity of all Washingtonians. I launched the Worker Protection Initiative in 2018. The Initiative brings together nine legal divisions to enforce worker protection laws and stand up for working families. This report highlights the important work of this Initiative from the past twelve months.

In the past year, the Attorney General's Office (AGO):

- Advocated for workers in court and at the Legislature;
- Protected workers from health hazards such as extreme heat and wildfire smoke;
- Obtained back wages and restitution for farmworkers harmed by unlawful practices;
- Continued recovery of stolen unemployment money; and
- Fought for workers against illegal discrimination.

I remain committed to this critical work, and building on our success. We will continue to uphold and defend the rights of workers across the state through our work on behalf of Washingtonians and support of client agencies in their efforts to protect workers.



Bob Ferguson

Washington State Attorney General



This report highlights the Attorney General's work:

- Investigating alleged discrimination in hiring;
- Standing up for the right of workers to strike;
- Expanding benefits for Transportation Network Company drivers;
- Supporting new worker protections for Washingtonians;
- Establishing the Organized Retail Crime Unit within the AGO;
- Advocating for protections for warehouse employees;
- Advising Employment Security Department (ESD) in providing overpayment relief;
- Combatting immigration status and sex discrimination;
- Protecting outdoor workers from hazardous wildfire smoke;
- Advocating for election worker safety;
- Advocating for federal restrictions on no-poach provisions and non-compete clauses;
- Advising ESD on program to provide Washingtonians access to long-term care coverage;
- Protecting outdoor workers from extreme heat;
- Recovering back wages for farmworkers;
- Holding Amazon accountable for workplace safety violations; and
- Recovering stolen unemployment benefits.

Oct.

Investigating alleged discrimination in hiring

Result: AGO maintains authority to investigate alleged violations of anti-discrimination laws in hiring.

A federal judge dismissed Seattle Pacific University's (SPU) lawsuit seeking to stop the AGO's investigation into potential illegal discrimination by the university's administration. Earlier in 2022, SPU students protested university policies that prohibit employees from engaging in "same-sex sexual activity." The AGO received numerous civil rights complaints about these policies from SPU students and faculty and began an investigation. SPU sued to block the AGO's investigation of its hiring practices. This decision affirmed that the investigation can proceed.

Dec.

Standing up for the right of workers to strike

Attorney General Ferguson led a group of 16 attorneys general in an amicus brief to the U.S. Supreme Court defending workers' rights in the case of *Glacier Northwest Inc. v. International Brotherhood of Teamsters Local Union No. 174*. The lawsuit resulted from a labor dispute between the company, Glacier Northwest, which provides construction services and building materials, and Teamsters Local 174. In 2017, the collective bargaining agreement expired, and in the course of negotiating a new one, the local called a strike. When the strike was called, some Glacier drivers were in the process of delivering mixed concrete, but left the job to participate in the strike. The mixed concrete became unusable, and Glacier filed a lawsuit against the union, arguing that this was an intentional destruction of property not protected by the union's right to strike. On June 1, the U.S. Supreme Court ruled against the union.



Expanding benefits for Transportation Network Company drivers

Result: Expansion of benefits for rideshare drivers to include state unemployment and paid family and medical leave programs.



The AGO assisted the Employment Security Department (ESD) with review of a legislative [report](#)¹ on Transportation Network Companies (TNCs), which includes companies such as Uber and Lyft. The report examined whether and how TNC drivers should be incorporated in state unemployment, paid family and medical leave, and long-term care insurance programs. The legislative report captured recommendations from a workgroup that consisted of representatives from ESD, TNCs, Washington businesses, TNC drivers, and labor unions.

The AGO also supported the Department of Labor and Industries' (L&I) rulemaking work to implement rights and protections for TNC drivers provided by a law passed in 2022. These new rights include minimum rates for drivers, the right to paid sick time, the right to workers' compensation, and protection from retaliation for exercising rights under the law.

In the 2023 Legislative session, the Legislature passed a bill consistent with the recommendations of the ESD workgroup, Substitute House Bill 1570, effective July 23, 2023. The AGO will assist ESD with implementation of this bill. Its unique provisions include express coverage of TNC drivers for unemployment benefits and tax purposes, and a pilot program allowing TNC drivers to opt-in to Paid Family and Medical Leave (PFML) coverage, with TNCs reimbursing drivers for PFML premiums.

2023

Jan.

Supporting new worker protections for Washingtonians

New worker protections enforced by the L&I, with legal guidance from the AGO, went into effect at the beginning of 2023. These protections include: an increase in the state minimum wage and the overtime exempt salary threshold for executive, administrative, professional or computer professionals, outside salespeople, and agricultural workers; new rights and protections for TNC drivers for companies like Uber and Lyft; and increased transparency requirements, including specific wage or salary details, in job postings or advertisements. The AGO provided legal advice on L&I's implementation of these protections, and will assist with enforcement.

April

Establishing the Organized Retail Crime Unit within the AGO

Result: AG Ferguson and Legislature create additional resources dedicated to addressing organized retail crime and protecting retail workers.

In 2022, Attorney General Ferguson established a statewide Organized Retail Crime Theft Task Force to improve coordination and collaboration among law enforcement agencies to address organized multi-jurisdictional crimes that put frontline workers in harm's way and cause significant economic harm. These crimes can result in violence and intimidation for employees in retail stores. In April of 2023, the Washington State Legislature fully funded Attorney General Ferguson's request to create a centralized Organized Retail Crime Unit to coordinate, investigate, and prosecute multi-jurisdictional retail crime statewide. The Unit will consist of 10 staff, including investigators, prosecutors, and a data analyst. UFCW 3000 and the Washington Retail Association supported this request.



Advocating for protections for warehouse employees



Result: New law will improve conditions for warehouse workers and prohibit retaliation.

Legislation to protect warehouse employees, House Bill 1762, passed and was signed by the Governor. The bill requires warehouse distribution center employers to provide information to employees, including written descriptions of quotas and work speed data. The AGO advocated for strong enforcement provisions in the bill to ensure the protections are effective.

Advising ESD in providing overpayment relief

Result: Relief for certain people who received overpayments of unemployment benefits.

Approximately 136,000 Washingtonians received overpayments of unemployment benefits, totaling more than \$1.2 billion, during the COVID-19 expansion of benefits. The AGO advised on ESD's blanket waiver for repaying overpayments as authorized by the U.S. Department of Labor, including issuing automatic waivers to people who qualify for some specific types of overpayments. The AGO also advised on rules, processes, and communications for individuals' applications for waiver of other pandemic-era overpayments.

Combatting immigration status and sex discrimination

Result: Restitution for workers harmed by employment discrimination.



In August 2022, Attorney General Ferguson filed a civil rights lawsuit against Ostrom Mushroom Farm for firing more than 140 of its U.S.-based mushroom pickers, most of whom were women, while at the same time, hiring 65 predominantly male, seasonal, foreign agricultural workers under the federal H-2A program. In May 2023, Attorney General Ferguson announced that Ostrom will pay \$3.4 million to resolve a lawsuit asserting that the farm discriminated against its workers on the basis of gender, citizenship and immigration status, in violation of the Washington State Law Against Discrimination. All of the money will be used to pay more than 170 farmworkers affected by Ostrom’s illegal conduct.

Protecting outdoor workers from hazardous wildfire smoke

Result: Protections for workers from health risks of exposure to wildfire smoke.

L&I, with legal guidance from the AGO, issued proposed permanent wildfire smoke rules to protect Washingtonians who work outdoors from hazardous smoke generated by wildfires. The smoke carries tiny particles of dangerous material known as PM 2.5, which increase the risk of reduced lung function, aggravated asthma, heart failure, and even early death. L&I accepted public comment on the proposed rules through early August.



Advocating for election worker safety



Attorney General Ferguson sent a letter to the Washington State Department of Commerce urging the Department to include threats to election officials in the State of Washington Byrne Justice Assistance Grant Strategic Plan 2023-2027. A “Local Election Officials Survey” released in 2022 by the Brennan Center for Justice noted that “1 in 6 local election officials have experienced threats.”² A 2022 AGO study on domestic violent extremism³ identified the need to protect election workers from threats and harassment as a top recommendation.

June

Advocating for federal restrictions on no-poach provisions and non-compete clauses

Attorney General Ferguson sent several comment letters to the Federal Trade Commission regarding the imbalance of power between employers or franchisors and workers or franchisees, the impact of this imbalance on competition among businesses, and asserting the need for strong enforcement provisions in federal rules, including preserving state authority to enforce federal worker protections.

July

Advising ESD on program to provide Washingtonians access to long-term care coverage

The AGO advised ESD and the Department of Social and Health Services on rules and processes for exemption submitted by hundreds of thousands of Washingtonians in preparation for launch of the WA Cares program. This new program is a multi-agency collaboration and gives working Washingtonians access to long-term care coverage when needed.

Protecting outdoor workers from extreme heat



Result: Washington is at the forefront of ensuring workers are protected from extreme heat.

Permanent heat protections for outdoor workers became effective on July 17. In the summers of 2021 and 2022, temporary emergency heat rules were enacted to supplement existing worker protections. The new rules will remain in place year-round, and require shade, water, preventative cool-down periods to prevent overheating, and monitoring workers. The AGO advised L&I on the development of these rules.

Recovering back wages for farmworkers

Result: \$500,000 in back wages and interest paid to more than 400 orchard workers.

A coordinated enforcement investigation by L&I and the AGO found that workers at two Yakima orchards, G&G Orchards Inc. and RC Orchards LLC, were not paid properly for the fruit they harvested between 2018 and 2021. In 2021, the AGO filed a lawsuit after unsuccessful extensive efforts to reach an agreement to pay back wages. The case was resolved earlier this year, and the orchard owners paid back wages and interest to over 400 workers. The settlement also included funds for distributing pay owed to foreign workers.



Holding Amazon accountable for workplace safety violations

Result: First litigation to enforce Washington's ergonomics regulations in nearly 30 years.



On July 24, AAGs representing L&I began a trial before the Board of Industrial Insurance Appeals regarding Amazon's appeal of four citations for worker safety violations since 2021. The citations alleged that inspections at three Amazon warehouses, in DuPont, Kent, and Sumner, showed that workers were at a high risk of injury due to repetitive motions, and in some cases, fast paced work. Due to repeated citations for similar violations, L&I determined that Amazon "knowingly put workers at risk." Amazon appealed, and is asking the Board to dismiss the citations.

Recovering stolen unemployment benefits

Result: More than \$41 million in stolen unemployment benefits recovered.

The AGO's continued investigation and use of state asset forfeiture authority to recover unemployment benefit funds stolen by sophisticated criminals and identity theft rings during the COVID-19 pandemic has recovered more than \$41 million in funds to be returned to the state's unemployment system and federal Treasury. While multiple states suffered substantial losses, Washington is the only state to exercise its forfeiture power to recover these stolen funds. The AGO has filed cases to recover stolen funds remaining in accounts at 26 different financial institutions. In part because of these forfeiture litigation efforts and the assistance provided to the Employment Security Department by the AGO, Washington has been more successful than other states in mitigating, and securing recoveries of, unemployment fraud losses—helping to preserve funds for the benefit of unemployed workers.

Total Forfeited, as of June 2023

Bank	Forfeited Amount
TD Bank	\$597,015.41
PayPal	\$1,579,249.64
Wells Fargo	\$8,033,573.24
Citibank	\$2,777,665.72
JPMorgan Chase	\$6,775,439.16
Metropolitan Commercial	\$732,761.82
Capital One	\$2,396,661.27
BECU	\$19,952.13
Green Dot	\$735,030.97
Block	\$105,138.19
Choice Financial Group	\$238,687.36
Stride Bank	\$87,013.81
U.S. Bank	\$578,727.85
Bank of America	\$9,714,631.52
Citizens Financial Group	\$247,229.99
BBVA	\$484,724.22
PNC	\$4,477,171.78
Discover Bank	\$80,145.91
American Express	\$45,368.77
Santander Bank	\$165,633.70
Regions Bank	\$269,936.35
InComm Financial	\$244,835.74
Netspend	\$630,702.37
Navy Federal	\$199,533.90
Huntington National Bank	\$115,060.95
Total	\$41,331,891.77

Endnotes

- 1: Legislative Report: "Transportation network companies," Washington State Employment Security Department, December 2022 at <https://media.esd.wa.gov/esdwa/Default/ESDWAGOV/newsroom/Legislative-resources/esd-tnc-report-2022.pdf>.
- 2: Benson Strategy Group, Local Election Officials Survey, Brennan Center for Justice, March 2022 at <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.
- 3: "2022 Domestic Terrorism Study," Washington State Attorney General's Office, <https://agportal-s3bucket.s3.amazonaws.com/2022%20Domestic%20Terrorism%20Study.pdf>.