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## Make N.Y. a labor leader again: It's time for Albany to usher in 21st-century employment protections

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# Make N.Y. a labor leader again: It's time for Albany to usher in 21st-century employment protections

By William A. Herbert  
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In this Jan. 29 photo, New York Gov. Andrew Cuomo is pictured at the state Capitol in Albany. Gov. Cuomo and the State Assembly are already on record supporting farmworker collective bargaining rights. (Hans Pennink / AP)

The current state legislative session provides a real opportunity for New York to regain its place as the leading innovative public policy laboratory in the nation when it comes to workplace

rights. With vision and determination, New York can match the legacies of Al Smith, FDR, Frances Perkins and Sen. Robert Wagner.

As a first step, New York should eliminate the discriminatory legacy of the last century by granting collective bargaining rights to domestic workers and farmworkers. Such legislation would fulfill the state Constitution's unequivocal mandate that workers "shall have the right to organize and to bargaining collectively" and would end a legal barrier that disparately impacts workers of color and immigrants.

Alfonso Cuarón's 2019 Oscar-nominated film "Roma" is a timely reminder of the grueling work and hard lives of domestic workers. Over eight years ago, our Legislature sought and received a [report](#) on the feasibility of granting collective bargaining rights to domestic workers. It is time for lawmakers to finally act on that report.

It is also time for farmworkers to be granted collective bargaining rights. For decades, farmworkers, along with their religious, labor and human rights allies, have advocated for such rights. Gov. Cuomo and the State Assembly are already on record supporting farmworker collective bargaining rights. With a new Senate majority, there is no longer a legislative obstacle to enactment of those rights. A bill to do that was recently reintroduced by Senator Jessica Ramos.

There should also be active consideration for New York to become the first state to explicitly grant collective rights for a growing segment of our working population: independent contractors. Unlike employees, individuals classified as independent contractors do not have federally protected rights to engage in collective action to improve their working conditions. Last Friday's NLRB [ruling](#) that SuperShuttle airport drivers are not employees with federal protections highlights the need for timely action. To correct the deficiency in the law, New York should consider letting people like Uber and Lyft drivers form and participate in organizations without fear of employer reprisals.

It is also essential that legislators thoughtfully examine further regulating pre-employment mandatory arbitration agreements that ban workplace legal claims from being pursued in federal or state court. These agreements are hardly voluntary; employers draft them and compel workers to accept them as a condition of employment. New York took an important first regulatory step forward last year by prohibiting arbitration provisions applicable to sexual harassment claims.

A total state ban on employer mandated arbitration would run afoul of current federal law. To avoid that pitfall but still correct the inequities, New York should consider requiring all employer-mandated arbitration agreements to permit an employee to arbitrate whether the employer had just cause to terminate or discipline. Just cause requires workplace due process, a concept introduced by Republican President William McKinley which has never been added to New York private sector labor law.

Infusing just cause into mandated private arbitration would level the playing field between employer and employee by requiring arbitrators to determine fairness along with statutory issues.

Finally, New York should strengthen our whistleblower laws. History has demonstrated that whistleblowers are critically important for exposing unlawful and unethical conduct in business and in government. The scope of current whistleblower protections in private and public employment is very narrow. We should ensure that New York's protections become the strongest in the country.

The last fix is procedural: For many decades, we had a State Joint Legislative Committee on Labor and Industrial Conditions that conducted hearings and drafted legislation. An important means for the state to tackle contemporary workplace issues is the reestablishment of a State Joint Legislative Committee.

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