

# Whistleblower Enforcement

## Holding Corporations Accountable for Breaking the Law

### The Problem: Rampant Violations, Inadequate Enforcement

Our state agencies have talented, hardworking staff, but not enough resources to prosecute every lawbreaking company. That's why lawsuits by victims of wage theft or consumer fraud are an important tool to hold bad actors accountable. But now powerful corporations are burying **forced arbitration** provisions deep in the fine print of contracts, denying our constitutional right to go to court.<sup>1</sup> And the Supreme Court just ruled that we have no right to join with our coworkers to fight workplace abuses – we have to go it alone against huge companies. This decision makes it almost impossible to sue our employers.

**Every day, companies steal workers' wages, discriminate against women and people of color, and defraud consumers because they know they can get away with it.** Rampant lawbreaking hurts working families and puts law-abiding companies at a competitive disadvantage.

**Working families have won important victories on a range of workplace rights and consumer protections, including a higher minimum wage, paid leave, and protections against predatory loans – but they are meaningless unless they're enforced.**

### How We Fight Back: Empowering Workers and Consumers for Smart Enforcement

We can protect our legal rights and hold corporate wrongdoers accountable by **deputizing whistleblowers to bring cases on behalf of the state.** By passing a law to allow public enforcement suits, we can:



**Expose company-wide violations** through whistleblower suits on behalf of all affected consumers or workers.



**Collect millions in civil penalties** from scofflaws to invest in increased enforcement capacity.



**Preserve access to courts.** Courts have ruled that the right to bring a collective public enforcement action can't be waived in arbitration.<sup>2</sup>

## How Does it Work?

- 1 A worker or consumer files a complaint with the state enforcement agency. Whistleblowers who fear retaliation can authorize a nonprofit to represent them.
- 2 The agency decides whether to prosecute, or let the whistleblower manage the lawsuit on the state's behalf while the state oversees the litigation.
- 3 If a judge finds that the company broke the law, the company has to pay penalties based on the number of injured consumers or workers – so small businesses will pay small fines and huge corporations will pay large ones.
- 4 Most of the penalty revenue goes to the state, with a portion rewarding the whistleblowers. The state can use the revenue to hire more investigators, or partner with community organizations to educate consumers and workers about their rights.

## Is it effective?

- Governments have delegated enforcement authority to whistleblowers for centuries. Known as *qui tam*, this practice is the primary way that the federal government and most states investigate and punish fraud on the government via the **False Claims Act**.
- California has used the **Private Attorney Generals Act (PAGA)** since 2004 to dramatically improve compliance with labor laws. For example, before PAGA, employers ignored their obligation to provide “suitable seating,” while low-wage cashiers and bank tellers were forced to stand throughout their shifts. Then workers used PAGA to win high-profile settlements that spurred the retail and banking industries to comply.



### Victory for low-wage immigrant workers

Four landscape workers in Stockton, California decided to speak up about their working conditions. Their employer refused to permit rest breaks, cheated them of pay, and required them to work in extreme heat without safety precautions.

**Through a PAGA suit, these workers won a settlement with recoveries of up to \$8,200 for themselves and each of their 58 coworkers.**

## Whistleblower enforcement is budget friendly.

This policy **generates new revenue** by catching more lawbreaking companies that owe penalties to the state:

- PAGA generates approximately **\$5 million** in revenue for the State of California each year.
- In 2017, whistleblower cases allowed the U.S. Department of Justice to collect \$3.4 billion against companies and individuals who had defrauded the government – **92% of the total recovery**.

For more information or model policy, contact **Rachel Deutsch**, CPD's Supervising Attorney for Worker Justice  
rdeutsch@populardemocracy.org.

1. See Jessica Silver-Greenberg and Robert Gebeloff, “Arbitration Everywhere, Stacking the Deck of Justice,” *New York Times*, Oct. 31, 2015; Jessica Silver-Greenberg and Michael Corkery, “In Arbitration, a Privatization of the Justice System,” *New York Times*, Nov. 1, 2015.  
2. *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015), *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 (Cal. 2015).