## About the California Commission on the Future of Work

The overarching goal of the Future of Work Commission is to develop a new social compact for California workers, based on an expansive vision for economic equity that takes work and jobs as the starting point. The Commission's primary mission is to study, understand, analyze, and make recommendations regarding:

▸ The kinds of jobs Californians could have in the decades to come.

▸ The impact of technology on work, workers, employers, jobs and society.

▸ Methods of promoting better job quality, wages and working conditions through technology.

▸ Modernizing worker safety net protections.

▸ The best way to preserve good jobs, ready the workforce for jobs of the future through lifelong learning, and ensure prosperity for all.

The key questions guiding the commission are:

▸ What is the current state of jobs and work in California?

▸ What factors have created these conditions?

▸ What is our vision for work and jobs in the future?

▸ How can we chart a path to reach that vision?

## Commissioners Attendance at Convening 5 | January 16, 2020

Visit the Commission website for more information on its members, agendas and onboarding materials.

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| Mary Kay Henry, Co-Chair | Hon. Jennifer Granholm | Stephane Kasriel* | Sen. Henry Stern* |
| James Manyika, Co-Chair | Lance Hastings | Dr. Fei-Fei Li* | Mariana Viturro |
| Roy Bahat | Carla Javits | John Marshall | Hon. Betty Yee |
| Doug Bloch | Saru Jayaraman | Art Pulaski | |
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| Lloyd Dean* | Asm. Ash Kalra | Peter Schwartz* | |

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# Introduction

Employment and labor laws in the US are broken. Developed in the 20th century, these laws have not kept up with the changes in the economy. The collection of data in the workplace poses important policy questions, as these practices are not necessarily addressed by existing employment law. As algorithmic decision-making plays a larger role in the workplace, including in hiring and employee assessment, issues of discrimination, privacy and bias are paramount.

The value of data itself in the new economy has generated new kinds of work. Social media and on-demand apps require a significant amount of human labor, to power algorithms and moderate sensitive content—work that is done by a largely invisible workforce.

As we witness these changes in how work is done, monitored and measured, some large employers are beginning to reexamine the fundamental purpose of corporations and their responsibility to employees and other stakeholders, beyond shareholders. Five experts spoke to the Commission in depth about these topics, offering their perspectives for how California can address these emergent issues in employment and labor law in the new economy.

# Worker Data

**Ifeoma Ajunwa, expert** We are seeing a growing supply of products and services that collect and use worker data, with particular emphasis on health and biometric data. There are potential issues of discrimination and privacy concerns attached to these demands.

▸ Health data implicates both the individual worker and that worker's family.

- Who should have access to, ownership of, and control of, this data?

- Should workplace wellness workers be able to sell this data? They are currently able to, without the knowledge or consent of the workers.

▸ Biometric data is data related to the body, which may be collected through workplace processes, including automated hiring assistants that make use of video interviews.

▸ Another trend in the workplace is the increasing prevalence of RFID (Radio Frequency Identification) skin-tags.

- Inserted under the skin of employees to allow them to access sensitive areas in the workplace, certain computer programs, etc., this is a bodily invasion of employee privacy, and can reveal other information about that employee, as it is a permanent tag that logs the location in the workplace of that worker at all times.

- There are no restrictions on this data, who it can be sold to, or how it can be used.

▸ Other means of collecting data in the workplace include wearable technologies like exoskeletons to help workers lift heavy objects and augmented-reality head-worn displays.

- The data being collected by these technologies could be extremely pertinent in worker compensation cases. Who has access to that data in order to prove the presence or absence of legal working conditions?

**Pauline Kim, expert** Another trend in the workplace is the emergence of sociometric badges. These wearable, always-on devices record meta-data about workers' interactions, like the identities of the parties involved, their location, time of conversation, emotional tone, etc.

▸ Employers want to use these to promote collaboration and promote leaders, but the data collected can also be used to discipline employees, raising questions about autonomy and surveillance.

▸ When the badges do work as advertised, employers boost productivity and extract more value from their workers, but that increase in value typically goes uncompensated.

▸ This wealth of data can also be used to infer information about employees. Do they have undisclosed medical conditions? Are they organizing?

While some forms of highly private information are protected under employee privacy laws, there is an expanding gap in legal coverage for data which may seem innocuous in isolation but which in the aggregate can be used to infer very sensitive information about workers.

## Worker Data (cont.)

### What frameworks could we consider for protecting worker data?

▶ A GDPR-style framework (General Data Protection Regulation), in which rules are established uniformly governing the collection and use of data across California workplace.

• This approach may present enforcement challenges, and we should learn here from the European Union's experiences implementing GDPR.

▶ Sector-specific data protection.

▶ A data-sensitivity-specific framework, which could begin by focusing on health data, the most sensitive data for workers. This is a high-impact area because of the relationship to workers' ability to obtain health insurance.

### What strategies should California consider for the protection of workers and the promotion of empowering practices in a data-intensive workplace?

▶ Creating transparency mechanisms about how employers are collecting and using data on workers is vital.

• We may also want to require certain kinds of labor market data disclosure to the government.

• It is important to empower third parties to do research. We should engage with the active Fairness, Accountability, and Transparency in Machine-Learning (FAT-ML) community on these questions.

▶ Diversifying the tech industry must be a priority.

• Improving communications between tech firms, third party hiring intermediaries, and our state engineering education programs would help channel our success in developing diverse STEM student bodies into diverse workforces.

▶ Empowering workers to participate in this discussion is essential.

• One issue is how problems are defined. If only corporate managers are included, that leads to particular kinds of solutions; if workers are involved, that leads to other solutions.

• Workers should have a say around how their data is used in relation to concerns of dignity.

• This is not just about mitigating harm and maximizing benefits: if there is a consensus that certain things should be off-limits, there may have to be a mandatory rule that cannot be contracted around.

▶ Understanding and assigning the value implicit in workers' data is another emerging priority.

• Looking forward, firms will likely be able to infer profitable insights derived from the data they collect from workers, perhaps using that data to automate tasks. What if those insights were the shared intellectual property of the workers, the use of which was subject to negotiation with worker representatives?

• How might models for governance such as data trusts allow workers to own their own data as an asset and participate in the development of new forms of value from data?

## Worker Data (cont.)
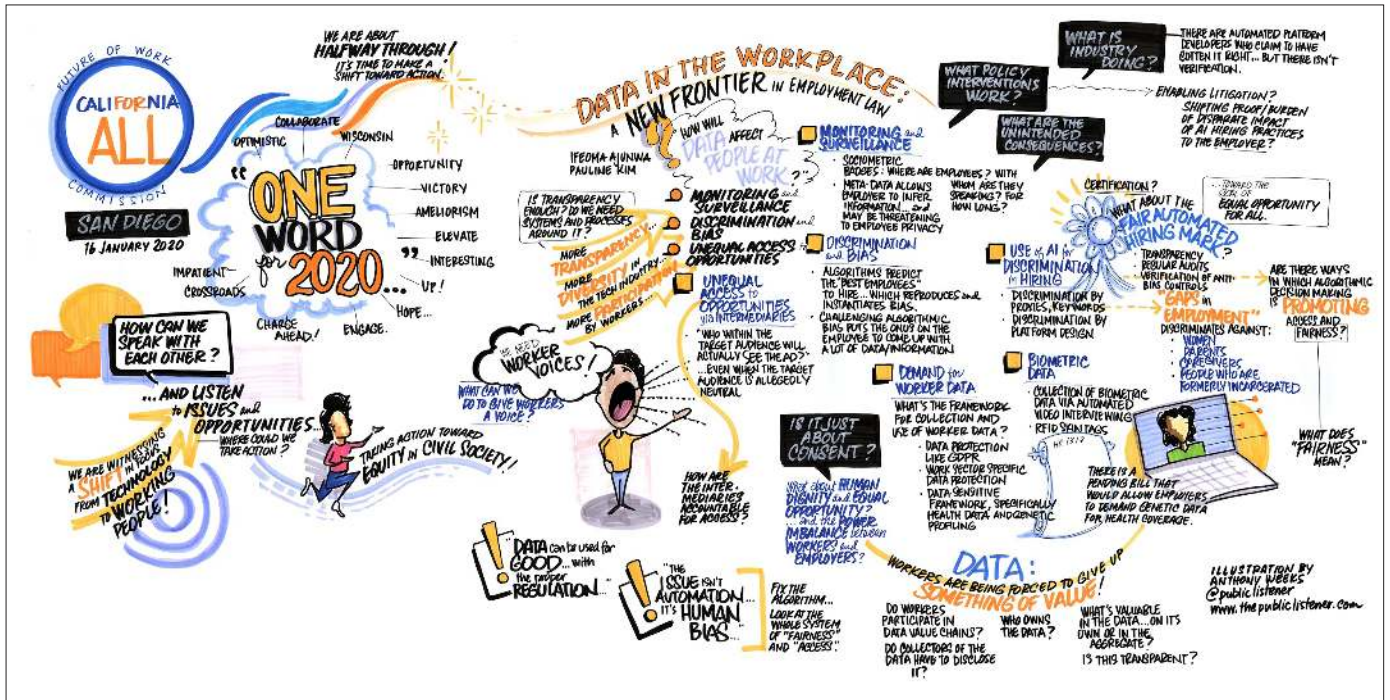
# AI and Hiring Practices

**Ifeoma Ajunwa, expert** Automated hiring systems use various criteria as proxies for the viability of job applicants; some of these may correlate to race and gender, effectively discriminating against women and non-white candidates.

▶ The use of criterion like gaps in employment adversely impacts women who may have taken time off to care for children or parents, as well as the formerly incarcerated.

▶ With no federal prohibition on discrimination against the formerly incarcerated, these individuals find themselves locked out of the workplace indefinitely; automated systems can exacerbate this.

There are currently no regulations specifically treating the development of automated hiring systems.

▶ One proposal would be for a certification system for automated hiring, somewhat like LEED certification for green building practices; this would include periodic audits to verify that the hiring systems continue to work as intended.

▶ We want to enable litigation against discriminatory automated hiring practices, but proving that these systems are discriminatory is difficult, as they are effectively black boxes.

• Even if their data are made accessible, most victims of discrimination lack the capabilities to analyze these highly technical systems.

**Pauline Kim, expert** Tech intermediaries are playing a bigger role in matching job-seekers with opportunities. Many employers advertise on Google or LinkedIn or Facebook. We have already seen job-advertisers using the targeting tools of these platforms to illegally focus on specific demographics to the exclusion of others.

Automated hiring processes clearly present challenges to our existing legal system.

▶ Discrimination laws tend to focus on intentional discrimination, but automated systems lack 'intention' as commonly understood.

▶ Disparate impact is an evaluation framework that encompasses unintentional bias, but depending on implementation may still place the burden of proving bias on plaintiffs who lack the resources to do so.

▶ The legal system is also concerned with justification for biased hiring processes, and most algorithmic systems today are not built to be able to explain the logic behind their decisions.

▶ Legislating in this space is difficult because of the fast-moving pace of this area. We run the risk of unintended consequences. For instance, if we require the creators of hiring algorithms to remove demographic identifiers altogether, this can actually make the algorithm less fair and much more difficult to audit for bias.

# Labor Law: What Can California Do?

**Sharon Block, expert**

## What is labor law meant to do?

1. Labor law governs the processes through which workers decide to organize, ensuring that workers have the freedom to make that choice without interference, making labor law the law of union organizing.

2. It governs the relationship between unions and employers. It demarcates what must or cannot be forced to be negotiated, and allows strikes. It's the law of collective bargaining.

3. Labor law governs the processes of unions and workers.

4. Protecting workers when they act in concert, even in the absence of a union. Labor law is the law of collective action.

## What is the existing labor law framework in the U.S.?

▶ The National Labor Relations Act covers workers in the private sector, but big groups are left out: agricultural workers, domestic workers, freelancers, and state and federal government workers.

▶ Private sector employees are able to exercise their rights in so far as the National Labor Relations Board governs them. The NLRB is currently composed of a partial board of only three Republican members.

Lastly, it's important to understand the relations between federal and state law. For the most part, labor rights are in the federal domain, leaving states with limited power in labor law.

## What are the shortcomings of existing labor law?

The problem: the current system is broken. The laws developed in the 20th century have not kept up with changes in the economy, so traditional organized labor is not fully equipped to take on 21st century challenges.

There is a moral failing at the heart of our labor law—racialized sectors were excluded at the outset. Because we only do collective bargaining at a company level, employers fight to prevent unionization at all costs because it would put them at a competitive disadvantage with non-unionized competitors. Sector-level bargaining could obviate this issue.

## How should we solve these issues? And what can be done at the state level?

Here are four things California could do:

1. The state can legislate collective bargaining rights for workers not covered by the NLRA; for agricultural workers, domestic workers, and independent contractors. This would be an opportunity to create a real sectoral bargaining system unencumbered by the problems we have with the NLRA.

2. Just-cause dismissal standards. At-will employment is what we have now. But in the rest of the world, and in the state of Montana, workers can only be dismissed if the employer can demonstrate a legitimate work-related reason. This is a big deal for labor organizing, because union-busting firing of workers (though illegal) is common, and the litigation process to regain the job is complex and drawn out.

3. Wage boards.

4. Require worker representation on corporate boards. This should not be implemented alone, but in concert with the above.

## Labor Law: What Can California Do?  (cont.)
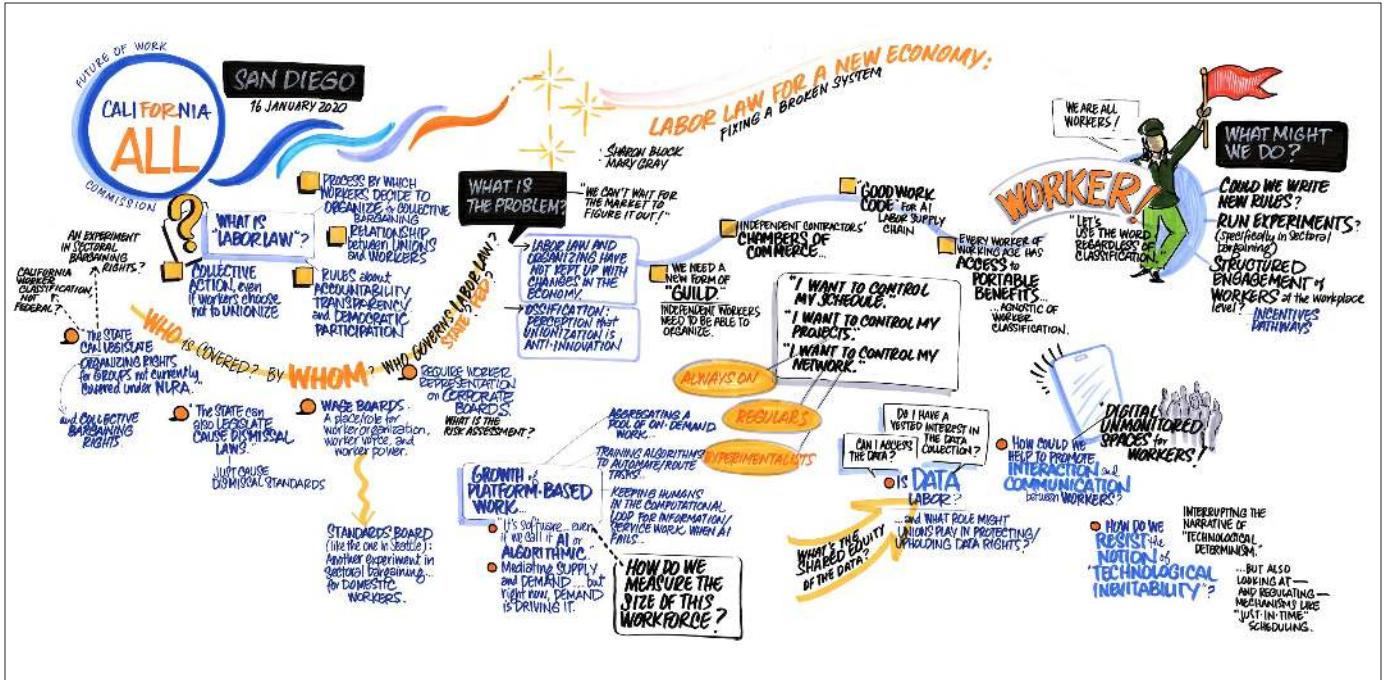
# New Forms of Work Around AI

**Mary Gray, expert** AI and its pursuit are producing two new streams of information service work.

1. The work of training algorithms, labeling data, and debugging that's done by people in order to train systems for performing tasks automatically.

2. Content moderation. This includes text-based service support as well, requiring coordination and collaboration between people.

This is building out new labor markets where people are intentionally kept in a computational loop to do human-dependent tasks. We call this 'the paradox of automation's last mile.' We see workers wherever it's necessary to input human compassion or demands. These workers fall into what my co-author and I call 'ghost work.' Those aren't specific jobs, rather they are specific working conditions.

▸ The value in these task-based markets comes from an abundance of labor, in having access to a massive on-demand group of people ready to serve a need and step in immediately when and where AI can't do the job.

▸ Information services are reliant on a transient workforce because they're constantly building out speculative projects to meet new consumer demands. A stable workforce is an impediment to this flexibility. Our structures for stabilizing unionized workers don't meet the needs of these new workers.

▸ The task-based work approach breaks workers into three groups with different levels of time commitment. These aren't different types of workers, but different ranks within the same task-portfolio.

- 10% of the workers in these labor pools are enthusiasts, always-on.

- 20% are regulars who have constraints on their availability but are reliable as a deep bench for when the core steps away.

- The remaining 70% are 'experimentalists', the bulk of the workforce. They do one or two tasks and then step away, largely because they can't figure out how to make this work economically sustainable.

Understanding this breakdown is key for organizing these workers. This is a globally distributed supply chain. They don't share a common identity, nor a single employer.

▸ All of these workers have a need to control their own schedules, but each group has different kinds of time constraints.

▸ These groups share the desire to control their projects.

▸ They also want to control their networks. They've been marginalized in formal employment, and they want to control who they work with.

▸ Taken together, these desires and constraints make platform work attractive, as it holds possibilities for addressing needs that are otherwise unmet in the labor market.

## New Forms of Work Around AI (cont.)

**Here are a selection of recommendations, suggested by workers themselves:**

▶ Recognize independent workers' rights to organize. We need a new model of guilds. These workers already form on- and off-line networks. What these workers need are more resources to aid these efforts.

- Third parties could be the keepers of worker reputations, the data about them as workers.

▶ These workers are the new small businesses. In cities, high-speed municipal broadband could help make this available to more individuals.

▶ Libraries act as de facto offices for many of these workers. We should devote more resources to libraries in order to support those uses.

▶ Create new standards for AI workplaces, with clear standards for workplaces that host workers developing AI.

▶ All workers should receive basic benefits, regardless of the number of hours spent working: healthcare, paid leave, continuing education.

- Employers should pay into portable benefits. This way employers are able to access a sustainable and prepared worker pool.

We don't have a good headcount on how many people are doing this kind of work. We need better data. We estimate that at least 20 million in the US are engaged in this kind of work. Their poor working conditions are not a market failure, they're a social failure. The only thing that improves working conditions are concerted efforts.

# Redefining the Purpose of Corporations

**Dane Linn, expert**

The Business Roundtable is going to leverage the 195 members we have, the biggest companies in the country–how do we get the leaders of these businesses to work for the whole country?

An example of how we're pursuing this purpose is the Workforce Partnership Initiative, in which a key objective is for academic institutions, particularly STEM fields, and companies to go into partnerships, to work with historically black colleges and universities, for example. The companies review curricula and give preferential treatment for internships and apprenticeships within their companies to students; there is increasing interest among companies in working with higher education.

The US Department of Education developed a college scorecard we hope to use in order to refocus our recruiting targets. We created a nonprofit called Credential Engine, a registry that 15 states contribute to. I encourage this commission to recommend that CA be more transparent and add all their credentials to this registry.

I'd also like to bring up our frustration with state policy that doesn't address the differences between regions; state-wide policy is one size fits all. Another frustration is the focus on post-secondary education and workforce inclusion/exclusion; we'd like to see progress in K-12. Additionally, workforce boards are not the best example of a government entity that is being responsive to employers needs. Workforce boards do very little training. How do we get workforce boards to bring the data to the table to influence and change behavior?

# Commissioner Discussion

The Commission has identified eleven initial categories of challenges to solve for, which will help to frame the Commission's ongoing discussions of solutions and recommendations, and will be further described in its interim report. Before January's convening, the co-chairs sent this message to the commissioners with the updated problem statement incorporating revisions from the December convening's discussion. The discussion below captures the commissioners' responses to the revised problem statement.

▶ The document did a good job of what the issues are, but not why or how these are the issues, the problem are sort of hidden; we need a stronger narrative voice that names the actors and their actions that led to the current dynamics in the labor market

- We have a unique opportunity for this Commission to be human-focused when talking about the future of work

- Include myth-busting in the narrative (i.e. the robot apocalypse)

- Focus on the story of shareholder primacy, which is rooted in the belief that the government has no role in problem-solving for society. We need to assert that the government has a clear role here.

▶ Core values must be at the center of what we do; this current draft assumes continued prosperity, we also need to focus on building resilience—we can't take anything for granted
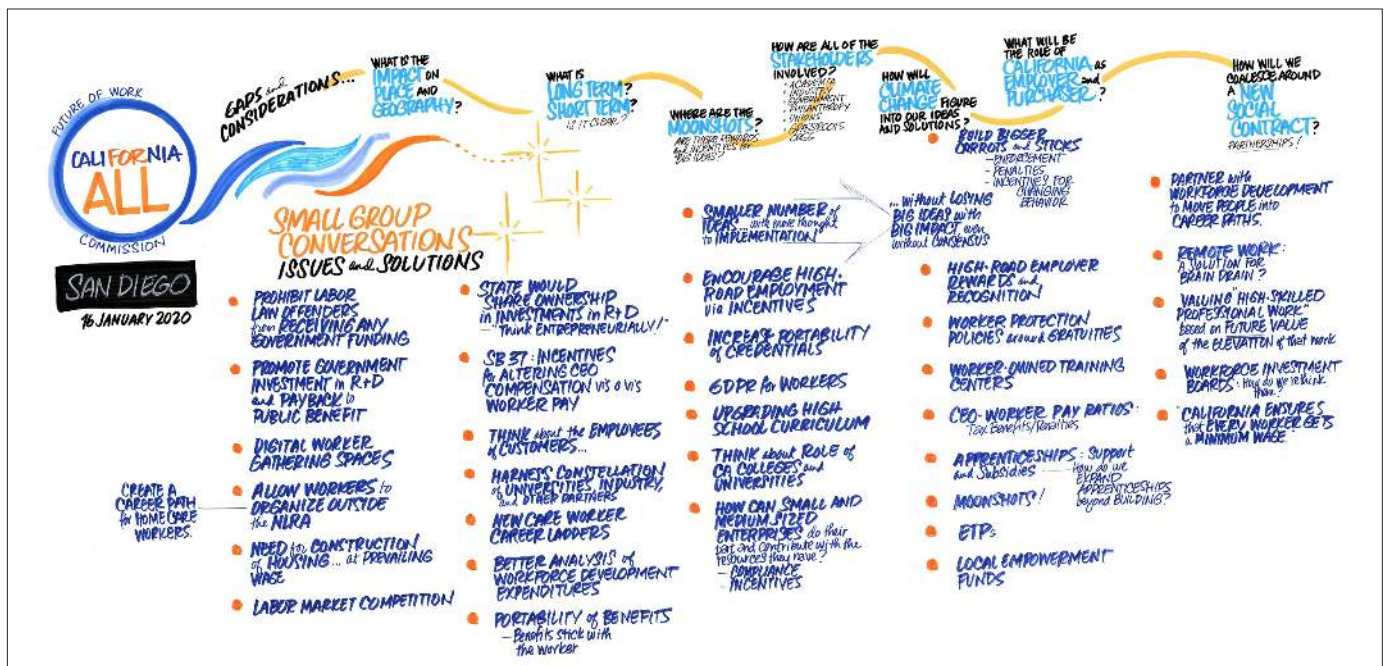
## Commissioner Discussion (cont.)

**Small Group Report-Outs**

In the last half of the day, commissioners broke into four groups of four to discuss initial thoughts on solutions as they relate to the problem categories that have been collectively generated over the past few convenings. This is a working list intended to capture the evolving and iterative nature of the Commission's work. This list does not represent final conclusions of recommendations.

### Challenges of inequity, economic mobility and low-quality work

**1. Address the unequal distribution of wages, income and wealth**

    a. Amend federal Bayh-Dole act to ensure the benefits of public investment are returned to the public

    b. Call on the Attorney General to investigate and bring antitrust suits where appropriate

    c. Protect gratuities

    d. Every single California workers should make less than minimum wage

**2. Tackle workforce inequalities across race and gender**

**3. Tackle workforce inequalities across geography**

**4. Ensure that more workers have quality jobs**

    a. Increase state's role as an actor in the economy

        i. If a company commits a labor violation, they could be prohibited from receiving any form of economic benefit from the state

    b. Include agricultural and domestic work intro Fair Labor Standards Act

    c. Significantly increase the spending on ETP

    d. Governor to use his bully pulpit to celebrate low-wage, high-skill workers (i.e. best server, best dishwasher competition)

    e. Strengthen enforcement of existing labor laws

    f. Extend labor protections in career paths excluded from the National Labor Relations Act

    g. Set standards for domestic work through wage boards, certifications (to include portable benefits)

**5. Empower worker voice and organization**

    a. Create digital worker organizing/gathering spaces

## Commissioner Discussion (cont.)

### Challenges of work-adjacent issues and broader quality of life

**6. Address work-adjacent issues that create barriers to employment and job quality**

    a. Provide a pathway from home care work to healthcare work

    b. Modernize the mathematics curriculum to make data analysis alternative to the Algebra II/Trigonometry pathway

    c. Provide broadband access to every resident in the state

    d. Increase in worker housing construction

**7. Modernize and strengthen the social safety net**

    a. Finance the long-term healthcare for low-wealth elders

    b. Carla's Local Empowerment Fund

    c. Portable benefits (benefits to be work-agnostic)

### New opportunities and challenges in the future of work

**8. Support workers in transition**

    a. Get more and better data on workforce development programs

    b. Modernize workforce investment boards by forcing them to have outcomes with metrics (i.e. each year awards a different grant recipient)

**9. Safely enable technology and protect workers in a data-driven future**

    a. Transparency: make work data accessible to workers

        i. GDPR for workers

**10. Build skills to prepare for the jobs of the future**

    a. Portable skill/job credentials by engaging employers

    b. Worker-owned training and certification company (as a social enterprise)

    c. State-funded apprenticeship programs

**11. Make the most of California's position as a global leader in innovation, to make California the place where workers thrive**

    a. Increased state-funded entrepreneurial investment in partnership with corporations to develop worker-friendly technology (tech for good i.e. safety)

        i. State would retain a share of ownership in resulting technologies

    b. Incentivize small businesses to expand apprenticeships to all sectors

    c. definition for what constitutes as a good job

        i. Provide incentives for employers to create these