

The Local Harms of Amazon and What State Lawmakers Can Do About Them

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On September 23, 2023, the Federal Trade Commission and 17 state attorneys general filed a major antitrust suit against Amazon, the corporate conglomerate that owns everything from a dominant e-retail platform to a major web services provider to a film and television production studio. The suit alleged that Amazon illegally maintains its monopoly power over e-commerce, hiking prices across the economy.¹ In particular, the suit alleged that Amazon retaliates against merchants who sell their products for cheaper on other platforms, preventing price competition and discounts. The suit also alleged that Amazon illegally conditions Prime eligibility for merchants on the use of Amazon’s expensive logistics service, which can take as much as a 50% cut of sales. This followed several other actions the FTC has taken to rein in Amazon’s power, including a June 19, 2023 settlement for violating children’s privacy laws.²

This wasn’t the first antitrust suit filed against Amazon on similar grounds. In May 2021, the attorney general of the District of Columbia alleged that Amazon was using a form of “most favored nation” clause to lift prices across the internet — meaning Amazon stopped third-party sellers from selling their products for cheaper on any other platform — harming consumers and local business owners who sell on its platform.³ Those same claims

1 Press Release, “FTC Sues Amazon for Illegally Maintaining Monopoly Power,” Federal Trade Commission, September 26, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.

2 Press Release, Amazon Agrees to Injunctive Relief and \$25 Million Civil Penalty for Alleged Violations of Children’s Privacy Law Relating to Alexa,” Department of Justice, July 19, 2023, <https://www.justice.gov/opa/pr/amazon-agrees-injunctive-relief-and-25-million-civil-penalty-alleged-violations-childrens>.

3 District of Columbia v. Amazon, Superior Court of the District of Columbia, Civil Division, May 25, 2021, <https://oag.dc.gov/sites/default/files/2021-05/Amazon-Complaint-.pdf>.

were the basis of a suit filed by the attorney general of California in September 2022, as well as a private class action suit filed in Washington State district court.⁴

Amazon built its economic and political power by circumventing antitrust, tax, and regulatory law, making a spree of acquisitions, using anti-competitive tactics to drive other businesses under, hoovering up public resources, and exploiting gaps in labor law to harm workers.⁵ As shown by these and many other instances documented by workers, local business owners, and journalists, Amazon’s harms aren’t limited to national concerns. They often reach into local communities, leaving consumers, local businesses, and workers worse off.

While some solutions to these issues will require action by federal lawmakers, there are several steps elected officials at the state level can take to mitigate these harms and equip state antitrust enforcers, local officials, workers, and consumers with the tools they need to stand up to Amazon’s abuses.

This policy brief will break down the harms Amazon inflicts on local communities, including businesses and workers, and lay out proactive policy solutions state lawmakers can adopt to deal with them. Where appropriate, model legislation has been suggested.

AMAZON’S ANTITRUST HARMS TO LOCAL BUSINESSES AND WORKERS

Federal Trade Commission Chair Lina Khan once wrote that it seemed as if Amazon founder Jeff Bezos “charted the company’s growth by first drawing a map of antitrust laws, and then devising routes to smoothly bypass them.”⁶ Indeed, Amazon has abused its dominant position in ways that should allow antitrust enforcers at the federal or state level to intervene.

4 The People of the State of California v. Amazon.com, Inc., Superior Court of the State of California, County of San Francisco, Sept. 14, 2022, <https://oag.ca.gov/system/files/attachments/press-docs/2022-09-14%20Redacted-California%20v.%20Amazon%20Complaint.pdf>; Chitkara, Hirsh, “Amazon may face antitrust court battle over fair pricing,” Protocol, March 15, 2022, <https://www.protocol.com/bulletins/amazon-pricing-antitrust>.

5 For a deeper explanation of how Amazon amassed its concentrated economic and political power, see: “Understanding Amazon: Making the 21st-Century Gatekeeper Safe for Democracy,” by Pat Garofalo, Matt Stoller, and Olivia Webb, American Economic Liberties Project, July 2020, http://www.economicliberties.us/wp-content/uploads/2020/07/Working-Paper-Series-on-Corporate-Power_5-FINAL.pdf.

6 Khan, Lina M., “Amazon Antitrust Paradox,” The Yale Law Journal, 2017, https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyeh.pdf.

But what’s known as the “consumer welfare standard,” which has been accepted by courts despite having little basis in the antitrust laws passed by Congress or state legislatures, constrains such action. This consumer welfare standard excessively focuses on consumer prices and assumes that large businesses like Amazon are more “efficient” than their smaller counterparts, ignoring antitrust law’s traditional role of protecting workers and small businesses from abusive or anticompetitive tactics by powerful firms.⁷

For example, multiple analyses have found that Amazon’s entrance into a labor market harms workers. One study found that the entrance of an Amazon warehouse into a community drops retail worker pay by 2.4%, lowering retail workers’ pay up to 100 miles away from the warehouse. The local retail sector also loses jobs, which aren’t offset by job creation from within the warehouse itself.⁸ An analysis from New Yorkers for a Fair Economy, of which the American Economic Liberties Project is a member, found that Amazon’s presence in the New York labor market between 2010 and 2020 lowered wages for warehouse workers by more than \$6,000 per year, even as employment in the industry doubled. The drop for delivery drivers was nearly \$5,000.⁹

This power of employers over their workers in the labor market — referred to as “monopsony” power — is technically illegal under current antitrust law, but such violations rarely see enforcement. Antitrust has often ignored the effects of economic power over workers, and precedent sets too high of a bar for determining whether an employer is monopolizing a labor market.

Amazon also uses its power to harm small businesses in ways that should be, but are currently not, reined in by antitrust law. For example, as outlined in the introduction, it prevents small retailers from offering lower prices anywhere else on the internet, including on their own websites, than they offer on Amazon’s platform, access to which is a necessity for retailers who want to sell online. It also rewards retailers who pay more money to Amazon itself with better placement, by tying the use of its logistics network to small retailers’ placement in Amazon search results. It has stolen ideas for products from sellers on its platform, recreating them and selling them under its own Amazon Basics brand. And

7 For a longer discussion on the rise of the consumer welfare standard, see: “The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New Structuralist Approach,” American Economic Liberties Project, Jan. 12, 2021, http://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn_12.12.pdf.

8 Chava, Sudheer, Alexander Oettl, Manpreet Singh, and Linghang Zeng, “Creative Destruction? Impact of E-Commerce on the Retail Sector,” NBER Working Paper No. w30077, May 2022, <https://ssrn.com/abstract=4122806> or <http://dx.doi.org/10.2139/ssrn.4122806>.

9 “Why the 21st Century Antitrust Act is Critical for New York Workers,” New Yorkers for a Fair Economy, April 21, 2022, <https://www.economicliberties.us/wp-content/uploads/2022/05/NYFE-Paper-5.pdf>.

it levies ever-increasing fees from sellers who participate on its platform, leveraging its power as an internet gatekeeper to extract growing rents from smaller competitors.¹⁰

State lawmakers can take two steps to reform antitrust law and prevent these harms:

- 1. Adopt an “Abuse of Dominance” Standard for Antitrust:** State lawmakers should adopt an “abuse of dominance” standard for state antitrust or unfair competition laws, eliminating the statutes and case law associated with the narrower consumer welfare standard. State lawmakers should do two things with this standard. First, they should set forth an objective and quantifiable definition of “dominance” that lowers the high threshold under current law for showing a firm has monopoly power. Second, they should per se outlaw certain practices used by dominant corporations to harm their smaller competitors and codify that those practices are sufficient as evidence of a dominant position. Examples of such legislation are the 21st Century Antitrust Act in New York, the Open Markets Act in Pennsylvania, HF 1563 (2023) in Minnesota, and S 3778 (2023) in New Jersey.¹¹
- 2. Strengthen Antitrust Law Protections Against Monopsony Power:** Any abuse-of-dominance legislation should have explicit protections against monopsony power, and thresholds and other factors that can be used to designate dominance in labor markets. Short of that, state lawmakers can also bulk up protections for workers by adding explicit definitions of monopsony and buyer power to existing state antitrust or unfair competition laws. HF 398 (2023) in Minnesota is an example.

AMAZON’S HARM TO PUBLIC RESOURCES

Amazon also uses its power and political influence to extract resources from the public through subsidies for both its data centers and its warehouse and distribution network. It also received a massive subsidy package for its so-called “HQ2” in Virginia, for which it paused construction in March 2023.¹²

¹⁰ For a detailed breakdown of these harms, see: “How Amazon Exploits and Undermines Small Businesses, and Why Breaking It Up Would Revive American Entrepreneurship,” Institute for Local Self-Reliance, June 2021, <https://cdn.ilsr.org/wp-content/uploads/2021/06/ILSRAmazonSmallBusinessFactSheet.pdf>.

¹¹ For more detail and best practices for state abuse-of-dominance legislation, see: “Reforming Antitrust Policy to Challenge Corporate Power: A Guide for State Lawmakers,” American Economic Liberties Project, Sept. 2022, http://www.economicliberties.us/wp-content/uploads/2022/09/State-Antitrust-Toolkit_FINAL.pdf.

¹² Garofalo, Pat, “Amazon HQ-1 Told You So,” Boondoggle, March 3, 2023, <https://boondoggle.substack.com/p/amazon-hq-i-told-you-so>.

Amazon receives these funds despite significant evidence that its facilities, and so-called economic development spending writ large, do not provide wider benefits to local communities that would justify the cost, and in fact often harm the local labor and retail markets, lowering wages and driving small retailers out of business.¹³

These deals also harm local businesses by giving Amazon an unfair advantage. Amazon receives public-funded infrastructure those businesses don't, and thus smaller local businesses face higher costs to build out their own infrastructure, forcing them to resort to higher prices, lower wages, or lower levels of job creation.

The negotiations over these deals and subsidies are often not public, with public officials frequently bound by nondisclosure agreements with Amazon, leaving local residents and businesses both uninformed about how their public resources are spent and unable to organize political efforts to have a say in that process.¹⁴ Local officials and residents have also criticized Amazon's data centers for putting a strain on natural resources, such as electricity and water.¹⁵

Over the past two decades, Amazon has received more than \$6.3 billion in tax breaks and subsidies from state and local governments.¹⁶ Lawmakers can take several steps to eliminate this flow of public dollars.

- 1. Ban Subsidies for Retail Warehouses:** State lawmakers can block any state or local economic development dollars from subsidizing warehouse or distribution centers for retailers, which would shut down the main flow of public money to Amazon. Oregon approved such a ban in June 2023, and New York legislators have proposed one for several years.
- 2. Ban Subsidies for Data Centers:** State lawmakers can also block any state or local economic development dollars from subsidizing the construction of data centers.

13 Chava, Sudheer, Alexander Oettl, Manpreet Singh, and Linghang Zeng, "Creative Destruction? Impact of E-Commerce on the Retail Sector," NBER Working Paper No. w30077, May 2022, <https://ssrn.com/abstract=4122806> or <http://dx.doi.org/10.2139/ssrn.4122806>.

14 Garofalo, Pat, "How Amazon, Google and Other Companies Exploit NDAs," The New York Times, June 29, 2021, <https://www.nytimes.com/2021/06/29/opinion/nda-amazon-google-facebook.html>.

15 Solon, Olivia, "Drought-stricken communities push back against data centers," NBC News, June 19, 2021, <https://www.nbcnews.com/tech/internet/drought-stricken-communities-push-back-against-data-centers-n1271344>; Selsky, Andrew and Manuel Valdes, "Big tech data centers in Oregon spark worry over water scarcity," Associated Press, Oct. 25, 2021, <https://www.registerguard.com/story/news/2021/10/25/big-tech-data-centers-spark-worry-over-scarce-water-the-dalles-oregon-google-amazon/6142726001/>.

16 Amazon Tracker, Good Jobs First, accessed July 13, 2023, <https://goodjobsfirst.org/amazon-tracker/>.

3. Ban Nondisclosure Agreements in Corporate Subsidy Deals: Amazon is one of the most prominent abusers of nondisclosure agreements in local economic development deals, which it uses to hide its actions from the public, preventing public opposition to its resource extraction until it's too late. Lawmakers in at least six states have proposed banning these corrupt agreements. A ban has unanimously passed the New York State Senate twice.

AMAZON'S HARMS TO WAREHOUSE WORKERS AND DELIVERY DRIVERS

In December 2021, six workers died in an Edwardsville, Illinois, Amazon warehouse that was hit by a tornado. The warehouse was open despite impending extreme weather. With the storm closing in, one worker who died reportedly texted his girlfriend that “Amazon won't let us leave.”¹⁷

This is merely the most tragic example of Amazon's history of negligence when it comes to worker safety in its warehouses. Amazon's workers are injured at more than twice the rate of employees in other warehouses.¹⁸ In 2021, Amazon's warehouse workers made up a third of the industry's total employment, but about half of its total injuries.¹⁹ The corporation has forced warehouse workers and delivery drivers — many of whom are contractors, which allows Amazon to evade a whole host of safety requirements and employer obligations — onto the job during hurricanes and heat waves too.²⁰

Amazon is also notorious for blocking workers from collectively bargaining, retaliating against workers who attempt to unionize warehouses and refusing to bargain with those who ultimately do form a union.²¹ Lawmakers can take several steps to address this power imbalance between Amazon and its employees.

17 Gault, Matthew, “Amazon Won't Let Us Leave,” *Vice*, Dec. 17, 2021, <https://www.vice.com/en/article/93bkke/amazon-wont-let-us-leave>.

18 “IN DENIAL: Amazon's Continuing Failure to Fix Its Injury Crisis,” Strategic Organizing Center, April 2023, https://thesoc.org/wp-content/uploads/2023/04/SOC_In-Denial_Amazon-Injury-Report-April-2023.pdf.

19 Clark, Mitchell, “Amazon workers made up almost half of all warehouse injuries last year,” *The Verge*, April 12, 2022, <https://www.theverge.com/2022/4/12/23022107/amazon-warehouse-injuries-us-half>.

20 Osberg, Molly, “Amazon's Worker Burnout Makes Disaster Preparation Impossible,” *The New Republic*, Dec. 16, 2021, <https://newrepublic.com/article/164769/amazon-turnover-disaster-tornado>.

21 Sherer, Jennifer, “The future of work depends on stopping Amazon's union busting,” *Economic Policy Institute*, May 23, 2022, <https://www.epi.org/blog/the-future-of-work-depends-on-stopping-amazons-union-busting-shareholders-and-policy-makers-must-all-play-a-role-in-protecting-amazon-workers-rights/>.

- 1. Implement a “Just Cause” Standard for Employment:** As opposed to America’s usual “at-will” style of employment, in which workers can be terminated at any time for any reason, “just cause” requires employers to provide a documented, work-related reason for firing an employee, giving them the ability to protest unsafe work conditions without fear of retaliation. “Just cause” has been adopted in Montana, New York City, and Philadelphia.
- 2. Implement Warehouse Worker Protection Standards:** State lawmakers can implement standards for the pace of work that Amazon can expect from workers. This includes restrictions on the quotas Amazon and its contractors can demand from workers, as well as more transparency regarding what workers can realistically be expected to produce during their shifts. Such laws have been adopted in California and New York.
- 3. Strengthen Whistleblower and Anti-Retaliation Laws:** To protect workers who want to unionize from intimidation and retaliation, states can enact or strengthen laws that protect whistleblowers; these should include strong protections for workers who raise issues about health and safety standards. Such laws should have a private right of action, so workers are empowered to take action themselves to protect their rights.
- 4. Protect Workers From Misclassification:** Amazon frequently misclassifies employees, such as delivery drivers, as independent contractors. This prevents Amazon from being held accountable for labor abuses and puts the burden of taxes and employee benefits on the worker. Additionally, it gives Amazon a leg up over other businesses that pay the costs associated with having workers on their full-time payroll. State lawmakers can adopt rules, such as California’s AB 47, providing for stricter tests regarding worker classification, which prevent employers from misclassifying workers as independent contractors.

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