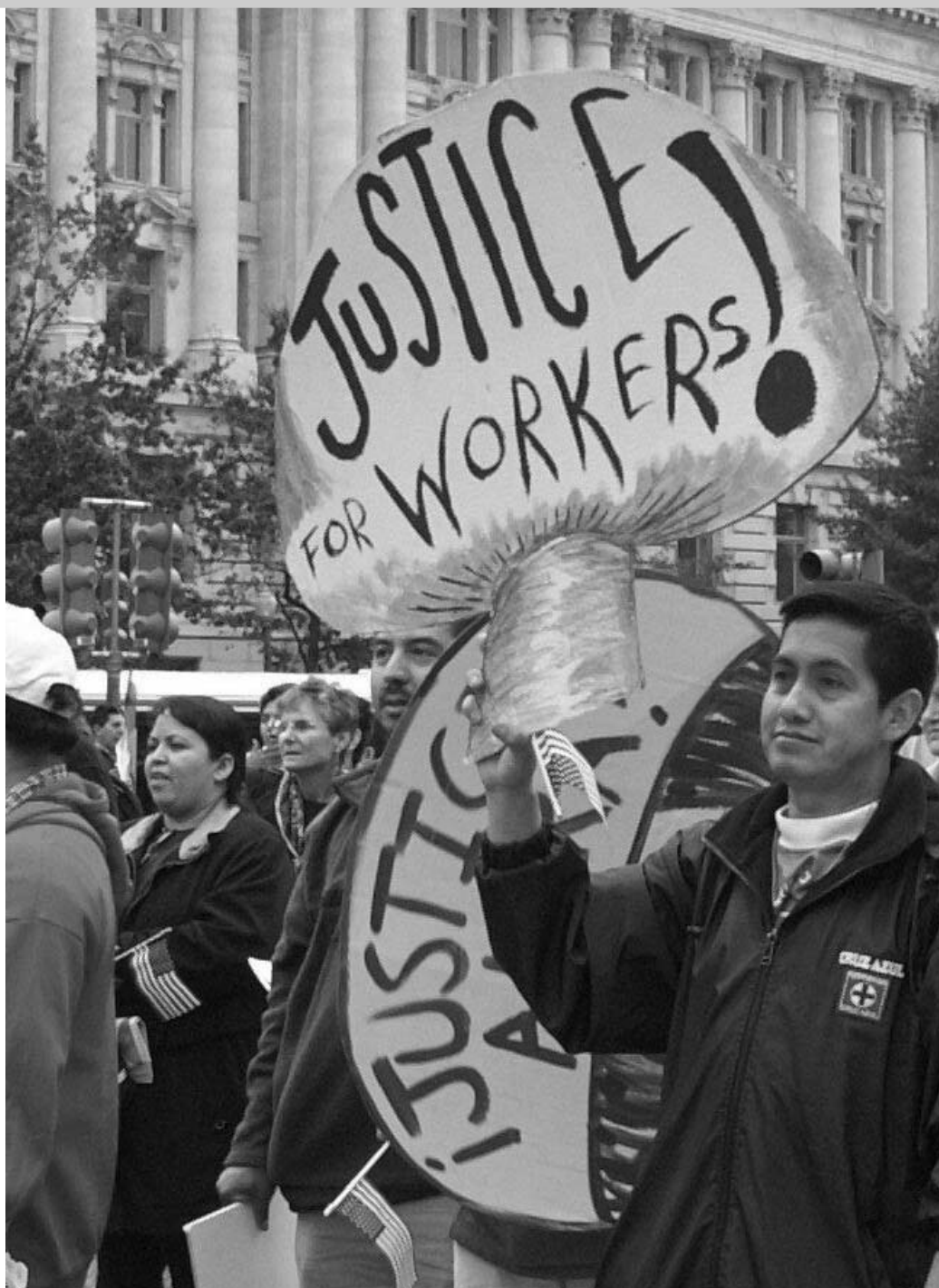


# **JUSTICE FOR WORKERS:**

## *State Agencies Can Combat Wage Theft*









**JUSTICE FOR WORKERS:**  
*State Agencies Can Combat Wage Theft*  
***A NELP Guide for Advocates***



## About NELP

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Since 1969, the National Employment Law Project (NELP) has advocated on behalf of low-wage workers and the unemployed. We advance the interests of low-wage workers with an emphasis on immigrant workers, contingent workers, the unemployed and other groups that face significant barriers to employment and government systems of support. NELP seeks to expand employment laws to meet the needs of temporary and other “nonstandard workers” and to ensure that employment laws meaningfully cover all workers, regardless of immigration status. NELP’s services include policy advocacy, support for organizing, litigation, training, research, public education and media strategies.

NELP is particularly aware that legal rights that are not meaningfully enforced lose their meaning. To that end, NELP also works to ensure that laws that currently protect workers are actually enforced.



## About This Guide

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Immigrant and low-wage workers are particularly vulnerable to violations of minimum wage and overtime laws. This is partly because such workers are unlikely to know their rights or if they do, they are hesitant to confront their employers for fear of retaliation.

Undocumented immigrant workers in particular are often wary of making a complaint because they fear that their employers will report them to immigration authorities and they will be deported. Undocumented immigrants are also reluctant to reach out directly to state enforcement agencies for fear that information about their immigration status will be reported to immigration authorities. Jobs in certain sectors are particularly bad, such as agriculture, garment industry, janitorial, home care, and day labor.

When workers do seek help to enforce their employment rights, they often find insufficient resources to do so effectively. A worker's first point of contact is likely to be a community based organization (CBO). But these organizations rarely have legal staff who can file civil claims on behalf of workers. If they do have lawyers on staff, there are generally too few of them to handle all member needs. Other legal service providers are often either prohibitively expensive or if they do provide services to indigent clients, they do not represent clients in employment disputes. Finally, CBOs and community legal service providers are chronically underfunded and lack the resources to mount extensive investigation and enforcement campaigns.

The logical solution for advocates is to look to public enforcement agencies to share the burden of enforcing low-wage and immigrant workers' employment rights. However, groups often report that they experience frustration and problems with these agencies when attempting to obtain assistance for their members.

This guide offers some suggestions for how to work with agencies to enhance public enforcement. We have also attempted to provide concrete examples of ways in which agencies have already improved and can improve their practices.

This guide is available online at: : <http://www.nelp.org/docUploads/Justice%5Ffor%5FWorkers%2Epdf>



## Acknowledgements

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This guide was inspired by suggestions and conversations with many different organizers and advocates from around the country. We hope this guide will continue to generate additional conversations and Ideas.

We would particularly like to thank our volunteer, Mika Dashman, for her work in helping to develop this guide.

October 2006  
Cathy Ruckelshaus  
Amy Sugimori  
National Employment Law Project



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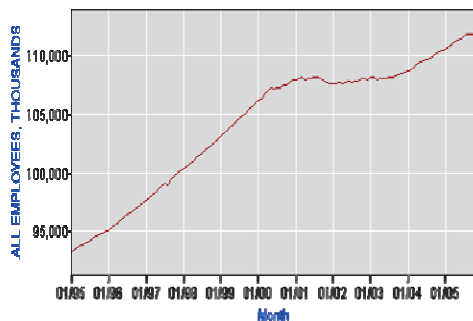


## The Problem

### Around the country, workers are denied the wages they are due.

Across the country, growing numbers of workers are routinely paid less than the minimum wage, denied overtime pay, and retaliated against for speaking up about it. The situation is particularly dire for immigrant workers. The Urban Institute has reported that 2 million immigrant workers earned less than the minimum wage in 2002.<sup>1</sup> Advocates, organizers and service providers from around the country routinely identify non-payment or underpayment of wages as a serious problem faced by low-wage and immigrant workers.

### Significantly, rates of working poverty are especially high in growth industries.



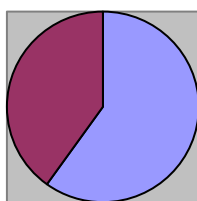
Graph: Bureau of Labor Statistics, All Employees, Service-Providing

The U.S. Bureau of Labor Statistics has reported in 2003 that 30.1% of the working poor were employed in service jobs.<sup>2</sup>

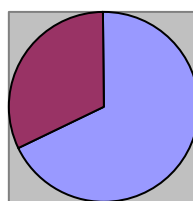
As illustrated by this graph from the Bureau of Labor Statistics, the number of workers employed in the service sector has increased dramatically in the past 10 years.

Most service jobs, where 11.2% of the working poor are employed, are not in compliance with federal wage and hour laws.<sup>3</sup>

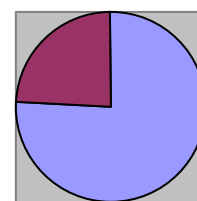
### In general, immigrant workers face higher rates of poverty than native-born workers



■ total workers  
■ low - wage



■ total workers  
■ low - wage



■ total workers  
■ low - wage

*Undocumented Workers*

*Foreign-born Workers*

*Native-born Workers*

A report by the Urban Institute reveals that in 2002, foreign-born workers made up 11.8% of the entire workforce but 20% of low-wage workers, defined as making less than 200% of the minimum wage.<sup>4</sup>



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**In many states, immigrant workers occupy a large and growing segment of the low-wage workforce.**

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Over the 1990-2001 period, new immigrant workers accounted for nearly 45% of the net increase in employment across the country.<sup>5</sup> All of the labor force growth in the Northeast region was due to new foreign immigration as was 50 percent of the growth in the West.<sup>6</sup> Researchers at Northeastern University concluded that “[a]t no time in the past 90 years was the nation so dependent on immigrant labor to meet its growing need for labor.”<sup>7</sup>

Based on the March 2004 Current Population Survey, there are an estimated 7 million undocumented immigrants in the U.S. labor force.<sup>8</sup> While the majority – 61% - of undocumented immigrants live in 6 states: California, Texas, New York, Florida, Illinois and New Jersey, the most rapid growth has been outside those states.<sup>9</sup>

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**Workers’ wage rights are violated in a variety of different ways, including:**

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- Failure to pay overtime.
  - Improper deductions from pay bringing actual wages received below the minimum wage.
  - Failure to pay for all hours worked.
  - Improperly failing to pay workers who receive tips.
  - Payment based on a below-minimum hourly wage.
  - Payment with bad checks.
  - Improperly classifying workers as “independent contractors” as a means of avoiding compliance with the law.
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**Violations of wage rights have a huge impact on low-wage workers.**

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A person working full-time for the federal minimum wage of \$5.15 an hour makes only \$10,712 annually. According the U.S. Department of Health and Human Services, the 2006 poverty threshold for a family of 2 is \$13,200.<sup>10</sup> It is incredibly difficult to get by, let alone support a family on the minimum wage. Any wage violations that chisel away at already-low take-home pay make it even harder.

***“A person working full-time for the federal minimum wage of \$5.15 an hour makes only \$10,712 annually.”***



## Minimum wage laws are not adequately enforced

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### Federal enforcement of wage and hour laws has declined.

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A recent policy brief issued by the Brennan Center for Justice reported that over the period from 1975-2004, “[t]he number of Wage and Hour investigators declined by 14%” to only 788 individuals nationwide and “[t]he number of compliance actions completed declined by 36%.<sup>11</sup>

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### Many States do not allocate sufficient resources to wage enforcement.

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- Over the past eight years, actual enforcement has declined in the New York State Department of Labor (“NYS DOL”). This leaves workers in New York State with little hope that one of the agencies charged with enforcing labor laws will take their claims. Jordan Rau, *NY Labor Law Enforcement: A Fight for Fair Pay, State Labor Agency’s Reinforcement of Rules Requiring Proper Wage for Workers Has Waned During Pataki’s Tenure*, New York Newsday, p.A.06, April 11, 2004.
- California’s Department of Labor Standards Enforcement failed to adequately enforce a new garment worker anti-sweatshop law, recovering only a fraction of damages owed to workers in the years since the law was passed, according to an advocacy report focusing on Los Angeles County in 2005. Sweatshop Watch, *Reinforcing the Seams: Guaranteeing the Promise of California’s Landmark Anti-Sweatshop Law* (September 2005). This same report found that there was less than a 1% chance that the state would sanction a garment contractor by revoking its license if it failed to turn over business records during an investigation.



## The Solution: Better State Enforcement of Wage Laws

### Enforcement of wage laws is good for states and good for the economy.

States have good reasons to be concerned about employer violations of the minimum wage and overtime laws. There are quantifiable economic costs to states associated with low-road

***There are quantifiable economic costs to states associated with low-road business practices.***

business practices. For example, a common problem encountered by advocates and state enforcement agencies is 1099 misclassification. Employers misclassify workers as independent contractors as a means to cut costs and chisel away labor rights. Employers who misclassify and/or underpay workers are not contributing to state coffers filled by tax revenues.<sup>12</sup>

Moreover strong wage and hour enforcement policies and activities are good for the economy and encourage competition. Employers who pursue low-road business practices and underpay their workers unfairly disadvantage law-abiding employers in a competitive marketplace. This has been the case in many industries including agriculture, garment manufacturing and restaurants.

### Community –Based Efforts to Enforce Fair Pay



*March 2005 National Strategy Forum to Enforce Fair Pay*

In March 2005, NELP and the Brennan Center's *National Strategy Forum to Enforce Fair Pay* brought together representatives from workers' centers, labor unions, advocacy organizations, legal services offices and state and local government to share strategies for ensuring existing laws protecting workers' right to be paid are enforced. The forum opened up new coordinated strategies to enforce workplace rights and revealed the extent to which campaigns on workplace violations can be a platform for broader organizing of low-wage workers. For examples of wage-enforcement campaigns and more on the conference, see <http://www.nelp.org/docUploads/wage%20conference%20summary.pdf>.



## Recommended Steps For a Wage Campaign

### 1) Determine what laws apply.

- o Does your state have:
  - A minimum wage law?
  - An overtime law?

The U.S. Department of Labor (DOL) has an interactive map of the states indicating which ones have minimum wage or overtime laws at <http://www.dol.gov/esa/>

- A “payday” law?

Some states that do not have minimum wage or overtime laws still have laws requiring employers to pay wages when due. The U.S. DOL has a chart of these laws at <http://www.dol.gov/esa/programs/whd/state/payday.htm>

- Criminal penalties for failure to pay wages?

Many states have a provision in their criminal code prohibiting “theft of services” or “theft of labor” and/or provisions in their labor codes that create criminal penalties for failure to pay wages in certain cases. A 50-state chart of these laws is available at, <http://www.nelp.org/docUploads/criminal%20penalties%20for%20unpaid%20wages%2Epdf>

A fact sheet on agency enforcement of criminal laws is available as **Appendix C** to this guide.

### 2) Identify the scope of the problem

- o Survey your members:
  - About their awareness of their wage rights.
  - About their experiences of being unpaid or underpaid

The Data Center in Oakland has a very useful participatory research toolkit for developing surveys at <http://www.datacenter.org/research/creatingsurveys/index.htm>

- o See if there is already research documenting workplace wage abuses for your jobs. Some examples are: U.S. DOL surveys on agriculture, poultry processing, garment industry and nursing homes; private research reports on day laborers and restaurant workers.<sup>13</sup>
- o Document stories about your members’ experiences with unpaid wages.
- o Collect newspaper clippings that cover the problem.
- o Work with the media to publish stories.

The Spin Project of the Independent Media Institute has a tutorial on Community Organizing and Strategic Communications in the Resources section of their website <https://secure.spinproject.org/>



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### 3) Identify who is empowered to enforce the state law.

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- o Does your state have a Department of Labor?
  - If so, does it enforce the minimum wage, overtime and/or payday laws?

The Interstate Labor Standards Association has a contact list of state Departments of Labor on its website at <http://www.ilsa.net/contacts/contact.htm>. You can visit your state's Department of Labor website or call them to find out what laws they enforce.

- o Does your state Attorney General (AG) enforce wage laws?  
A chart describing state AGs' powers to advance the rights of low-wage and immigrant workers, with examples is available as **Appendix B** to this guide.

Even if your state AG does not enforce wage laws, he or she may have the power to do so. NELP has developed a 50-state chart of the powers of AGs which is available at: <http://www.nelp.org/docUploads/State%20Jurisdiction%20Chart%2Epdf>

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### 3) If the state DOL or AG does enforce the wage laws, have you worked with them?

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- o If so, assess your experiences:
  - Survey members, communities about experiences attempting to enforce their wage rights with the agency
- o If not, get to know how they work:
  - Do they have complaint forms? Are they available in multiple languages?
  - What is the process for initiating a complaint with the agency?
  - Does the agency provide public education materials that are accessible to the communities with which you work?
  - Look at the chart in **Appendix A** for other ideas.
- o Is there a way to develop a positive collaboration with the agency?
- o Can you suggest practices to agency staff that would be useful?

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### 5) Has the community you serve faced problems trying to work with the state AG or DOL to enforce wage rights?

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- o Consider drafting a report outlining the challenges:
  - Use survey data gathered from members and communities.
  - Use stories to illustrate problems.
  - Propose concrete ways in which the problems can be addressed: see the attached chart at **Appendix B** for model practices and examples from other states.
  - Make the case for why wage enforcement is good for your community, for all workers, for the state, for law-abiding businesses.
- o Would the recommendations you make require legislative changes?



- Can you find allies, for example, a law school clinic or a nonprofit law office, who can do legal research and draft a report of existing agency authority and legislative changes that would be needed? NELP can help you identify such allies.

### **Enacting a Living Wage**

If your state does not have a minimum wage or overtime law, you may be interested in working on a campaign to pass such laws at the state or possibly municipal level. If your state has a low minimum wage, you may be interested in working on a campaign to raise it. ACORN has resources for these types of campaigns at <http://www.livingwagecampaign.org/>.



## **Appendix A: Suggested Practices for State Agencies Involved in Wage Enforcement**



AGENCIES SHOULD TAKE A PROACTIVE APPROACH TO INVESTIGATIONS		
Model Practice	Examples	Notes
Perform on-site investigations, not just “desk investigations” i.e., phone, mail.	<p>Investigations should be random (i.e., not the same time every month/year).</p> <p>Investigations should be surprise (i.e., agency should not give company any advanced notice—even 24 hours).</p> <p>Investigations should be thorough and should encompass every part of the worksite.</p> <p>Agencies should speak to randomly selected workers on site (not pre-designated company “spokespersons”) and ask questions about working conditions. This must be done when management is not present, in a setting where workers can feel free to talk. Agency representatives must make it clear to employers that conversations with workers are initiated by the agency and are not based on complaints by particular workers in order to safeguard against retaliation.</p>	
Initiate investigations of specific industries known for abuse & exploitation of workers. Agencies effectively impact a whole industry with this strategy better than when focusing on complaint-based interventions.	<p>A California law <a href="#">AB 633</a>; was enacted that provides for this, but a report issued several years later shows that agency enforcement has been insufficient. See <i>Reinforcing the Seams: Guaranteeing the Promise of California’s Landmark Anti-Sweatshop Law</i> at: <a href="http://www.altrue.net/site/alc/content.php?type=1&amp;id=10778">http://www.altrue.net/site/alc/content.php?type=1&amp;id=10778</a></p> <p>This is part of the strategy of the NYS Apparel Industry Task Force, see <a href="http://www.labor.state.ny.us/workerProtection/LaborStandards/workprot/garment.asp">http://www.labor.state.ny.us/workerProtection/LaborStandards/workprot/garment.asp</a></p>	<p>In the early 90s the USDOL began shifting its strategy away from complaint-driven investigations to industry-wide compliance. The agency discovered that while their previous strategy changed behaviors of some individual employers it was not making an impact throughout entire industries.</p> <p>US DOL “priority” sectors: included: salad bowl, poultry processing, reforestation, janitors, garment. See U.S. Department of Labor, Employment Standards Administration Wage and Hour Division. <i>1999-2000 Report on Initiatives</i></p> <p>(Note: the USDOL is no longer on that course to the same degree.)</p>



Model Practice	Examples	Notes
<b>RETALIATION IN GENERAL</b>		
Provide penalties for retaliatory acts	E.g., penalties provided in Fair Labor Standards Act	
<b>PROVIDE MEANINGFUL OUTREACH AND EDUCATION TO WORKERS</b>		
Increase enforcement of requirement that employers' post information about employees' rights in a the workplace.	Agencies should regularly check for compliance. With requirements that employers post up-to-date information about employee rights in visible locations on the work-site.	E.g., according to spot surveys in January 2005 conducted by the New York Based "\$5.15 is Not Enough Coalition" only 25% of 117 employers surveyed knew the state minimum wage was \$6. Of 53 restaurants surveyed, only 15% knew about the increase. Only a handful of employers surveyed had updated posters informing workers of min. wage/OT laws. 14% of 109 workers could name the current minimum wage.
Provide funding for community outreach/education grants – so CBOs can provide training, outreach		
Provide training to investigation/enforcement staff about specific industries.	California's Targeted Industries Partnership Program makes use of industry specific study guides prepared by the Department of Labor Standards Enforcement.  Connecticut created a restaurant industry rights guide w/ funds collected from civil penalties. See, <a href="http://www.ctdol.state.ct.us/wgwkstnd/posters.htm">http://www.ctdol.state.ct.us/wgwkstnd/posters.htm</a>	
Provide outreach and education to employers.	Agencies should focus on education about penalties and consequences of violation the law.	Employer outreach must not be provided to the exclusion of worker outreach & education. (This is what many state DOLs and the Fed'l DOLs do.)
Publish job classifications/categories and prevailing wage rates on the internet for easy public access.		



Model Practice	Examples	Notes
<b>TARGET MISCLASSIFICATION OF WORKERS AS INDEPENDENT CONTRACTORS</b>		
Develop joint agency partnerships to audit employers and identify misclassified employees who do not meet the criteria for independent contractors	NJ Worker Misclassification Initiative <a href="http://www.state.nj.us/labor/press/2006/0719WorkerMisclassification.htm">http://www.state.nj.us/labor/press/2006/0719WorkerMisclassification.htm</a> California Employment Development Department Assessment of misclassification by courier companies. <a href="http://www.edd.ca.gov/taxrep/taxnews.htm">http://www.edd.ca.gov/taxrep/taxnews.htm</a>	
<b>INCREASE COSTS OF VIOLATING THE LAW</b>		
Reduce DOL discretion regarding whether to seek liquidated damages, apply civil penalties, how many years of damages to seek, etc. – then provide that civil penalties go back to DOL for more enforcement.		
Create meaningful standards for agencies in settling claims – less discretion.	E.g., an agency representative may not settle with an employer for less than 50% of wages owed.	
Make strategic use of media.	Agencies can hold press conferences and publicize employer violations as a means to shame them into compliance.	Holding press conferences and publicizing lack of compliance with wage/hour laws has been an effective direct action tactic against employers. The same strategy can also be used to pressure state enforcement agencies to be more responsive & proactive.
Institute administrative liens and bank levies (see if legislation is needed)	Texas: When an order for an employer to pay money to the Commission for the use and benefit of an employee has become final, the law allows for administrative liens and bank levies. The Commission may assign the administrative lien to the claimant at the claimant's request. Texas Labor Code Section 61.081; 61.093 <a href="http://www.capitol.state.tx.us/statutes/la.toc.htm">http://www.capitol.state.tx.us/statutes/la.toc.htm</a>	



Model Practice	Examples	Notes
Review wage and hour records of the entire workplace or department after receiving a wage claim from one worker.	This is something the U.S. Department of Labor does.	This is also one way to protect individual workers' identities and to avoid employer retaliation.
Set benchmarks for amounts recovered, sites investigated by the agency.		
Establish regular (e.g., quarterly/ monthly) reporting requirements so that the public may stay informed of agencies' enforcement activities.	CT monthly reporting available on the web <a href="http://www.ctdol.state.ct.us/wgwkstnd/activities/wgrpts.htm">http://www.ctdol.state.ct.us/wgwkstnd/activities/wgrpts.htm</a>	
Establish a maximum time frame for agency investigations so that they cannot drag on for months.		
Establish policy of tolling statutes of limitations once the agency takes on an investigation.	In other words, when a statute of limitations prevents a worker from filing a lawsuit after a certain period of time has elapsed, the statutory clock will stop during the period when the agency is investigating the worker's claim. Regardless of whether such a tolling policy is in place, the agency should be required to notify workers whether their clock is ticking on their deadline to go to court.	This is an important policy because agency investigations can often take a long time and a great deal of resources. If tolling is not in effect, workers may lose access to remedies while relying on the agency to take action. If the outcome of an agency investigation is inconclusive or if no evidence is found to support the worker's claim, then the agency may not take any action at all against the employer. In such circumstances, the worker will be left without redress in court if the statute of limitations has run before the agency determination is issued.



Model Practice	Examples	Notes
<b>ENSURE ACCESS TO ENFORCEMENT FOR IMMIGRANT COMMUNITIES</b>		
Translate written materials (including “know your rights” pamphlets and complaint forms) into multiple foreign languages according to the needs of local immigrant communities.	<p>The Labor Bureau at the NY AG’s office created an information card that provides details about the minimum wage including its application to tipped employees. The card is available in ten languages (English, Spanish, French, Korean, traditional and simplified Chinese, Urdu, Bangla, Hindi, and Russian) at <a href="http://www.oag.state.ny.us">www.oag.state.ny.us</a>.</p> <p>The MA OAG “Guide to Workplace Rights and Responsibilities” is available in 8 languages. Laws may be enacted creating benchmarks for when materials should be available in certain languages. E.g., the Massachusetts unemployment compensation law requires that all notices and materials be available in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 or 5% of all residents of the commonwealth. (See: Mass. Gen. Laws Ch.151A §62A)</p>	
Provide access to multilingual agency staff-members.		
Partner with community groups who have their roots in immigrant communities.	<p>The New York Attorney General works with community groups to educate workers and to enforce the minimum wage since the state’s minimum wage increased in January 2005. See press release at <a href="http://www.oag.state.ny.us/press/2005/mar/mar03a_05.html">http://www.oag.state.ny.us/press/2005/mar/mar03a_05.html</a></p> <p>In Illinois the Chicago Area Workers Rights Initiative (CAWRI) is a coalition of state and federal law enforcement agencies, and Chicago area community labor and faith-based organizations dedicated to assisting low-wage and immigrant workers. The mission of CAWRI is to establish a strong government /non-government partnership and streamline the process for filing complaints with government agencies so that workers in the Chicago area can successfully address the injustices and abuses they face in the workplace. CAWRI partners include: USDOL, EEOC, OSHA, Illinois DOL, IL workers’ Compensation Commission, Center for Impact Research, Legal Assistance Foundation, Chicago Interfaith Committee on Worker Issues and Latino Union. <a href="http://www.iwi.org/outreach/dol.html">http://www.iwi.org/outreach/dol.html</a></p>	Caution: Agencies should not think of forming alliances with community groups as an end in itself. Agencies should work closely with community groups but should also continue to pursue aggressive investigation/enforcement strategies on their own. Agencies also should not attempt to shift the burden of investigation/enforcement onto under-resourced community groups.



Model Practice	Examples	Notes
Provide links to other advocacy groups on agency website. Provide contact information for groups in written literature.		
Provide contact information for enforcement agencies in neighboring states on agency website in small states and border regions.	MD DOL does this on their website—explaining that another enforcement agency might have jurisdiction over a worker's claim if the violation took place in another state, even if the worker resides in MD.	
Allow workers to file claims anonymously.	New Jersey California US DOL	This is linked to immigrants' legitimate fear of employer retaliation after making a wage/hour complaint.
<i>Hoffman Plastic</i> fix legislation.	After the U.S. Supreme Court decision in <i>Hoffman Plastics v. NLRB</i> , some states have clarified that the Supreme Court's decision does not impact rights under state labor and employment laws. This can be accomplished either through legislation or policy advocacy. Legislation e.g., CA: <a href="#">SB 1818</a> Policy e.g., NY AG formal opinion (See <a href="http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html">http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html</a> ), WA (See 5/21/02 letter from Gary Moore, Director of state DOL stating that all workers are covered by workers comp, regardless of immigration status (available at <a href="http://www.nelp.org/iwp/reform/state/appendixwadol.cfm">http://www.nelp.org/iwp/reform/state/appendixwadol.cfm</a> ))	NELP has model language for state agencies that wish to implement a policy fix. (See appendix D).
Enforcement efforts should be evenly distributed according to population and not favor certain regions of the state to the exclusion of others.		



Model Practice	Examples	Notes
<b>PROVIDE MEANINGFUL PROTECTIONS AGAINST EMPLOYER RETALIATION</b>		
<b>RETALIATION BASED ON IMMIGRATION STATUS</b>		
Do not combine wage/hour enforcement activities with immigration enforcement targeted at the workers.	<p>E.g. U.S. Dept of Labor. "Memorandum of Understanding [with INS]" <a href="http://www.dol.gov/esa/whatsnew/whd/mou/nov98mou.htm">http://www.dol.gov/esa/whatsnew/whd/mou/nov98mou.htm</a>—this still applies to ICE. USCIS Operation Instruction 287.3a provides a layer of bureaucratic insulation against immigration investigations initiated as retaliation where a labor dispute is in progress. See, <a href="http://uscis.gov/lpBin/lpext.dll/inserts/slb-1/slb-45320/slb-52822?f=templates&amp;fn=document-frame.htm#slb-oi2873a">http://uscis.gov/lpBin/lpext.dll/inserts/slb-1/slb-45320/slb-52822?f=templates&amp;fn=document-frame.htm#slb-oi2873a</a></p>	
Provide guarantees that immigration status will not be gathered, or if gathered it will be kept confidential. If this is official agency policy it should be well publicized and discussed explicitly by agency outreach staff.	<p><a href="http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html">NY AG opinion</a> (See, <a href="http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html">http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html</a>) CA's SB1818—See statement by Dean Fryer, spokesman for the Department of Industrial Relations qtd. in San Diego Union Tribune, Jan 28, 2004: "[immigration status] is not something we're concerned about. It's not in our jurisdiction. If you work in California you're entitled to the basic (labor) provisions provided by law."</p> <p>WA—See 5/24/02 letter from Gary Moore, Director of state DOL stating that all workers are covered by workers comp, regardless of immigration status (available at <a href="http://www.nelp.org/lwp/reform/state/appendixwadol.cfm">http://www.nelp.org/lwp/reform/state/appendixwadol.cfm</a>)</p>	<p>State agencies sometimes require complainants to provide SSNs. This is not usually necessary and acts to deter many immigrants. See, NELP: <i>Talking Points In Support of Challenges to State Agency Use of Social Security Numbers</i> <a href="http://www.nelp.org/docUploads/StateDOLSSNTalking%20Points%20Epdf">http://www.nelp.org/docUploads/StateDOLSSNTalking%20Points%20Epdf</a></p>
Allow community organizations & unions to file wage claims on behalf of workers	<p>Illinois day labor law: <a href="http://www.ilga.gov/legislation/094/0940511.htm">Public Act: 094-0511</a>, provides for a private right of action and permits any party to seek penalties.</p> <p>San Francisco living wage law permits individual workers, unions and community groups that represent workers at the worksite to file claims: SF Municipal Code, <a href="http://www.sfdph.org/dph/ceh/prevention/section12R.htm">Section 12R</a></p> <p>California Labor Code <a href="http://www.dir.ca.gov/laborcode/section2698.htm">Section 2698</a> Private Attorneys General Act of 2004.</p>	<p>Because workers are often afraid to come forward themselves, it is helpful to provide for a representative cause of action.</p>



Model Practice	Examples	Notes
<b>LEGISLATIVE STRATEGIES FOR IMPROVING ENFORCEMENT</b>		
Establish civil and criminal penalties	<p>See NELP resources: An Advocates Toolkit: Using Criminal Theft of Service Laws To Enforce Workers Right to be Paid. Prepared by former NELP intern, Rita Verga. This toolkit is intended to be an accessible guide for non-lawyer advocates assisting day laborers and other contingent workers to recover unpaid wages. It details a new tactic which uses criminal theft of service laws to hold employers accountable for failing to pay wages. (December 2004) <a href="http://www.nelp.org/docUploads/theft%20of%20services%20toolkit%20Epdf">http://www.nelp.org/docUploads/theft%20of%20services%20toolkit%20Epdf</a></p> <p>50 State Chart of State Laws Creating Criminal Liability for Failure to Pay Wages. This chart collects provisions of state labor and criminal codes providing criminal penalties for unpaid wages. (Fall 2004) <a href="http://www.nelp.org/docUploads/criminal%20penalties%20for%20unpaid%20wages%20Epdf">http://www.nelp.org/docUploads/criminal%20penalties%20for%20unpaid%20wages%20Epdf</a></p>	<p>Because criminal violations depend on the initiative of prosecutorial arms of state agencies, few criminal actions are brought and these laws don't have much of a practical impact.</p> <p>An important consideration for advocates in deciding whether to use "theft of service" laws arises in states that provide criminal penalties for non-payment of wages within their labor laws. In such states, penalties for "theft of service" in criminal codes may differ significantly from penalties available in labor codes. So, while criminal "theft of service" laws may serve as an alternative basis for prosecuting unpaid wage cases, it is essential to understand the penalties under each available law before deciding which route to follow.</p> <p>Defendants are afforded greater protections in a criminal action than in a civil action. For example, in certain criminal actions defendants have a right to appointed counsel, and the right to jury trial. Moreover, criminal prosecutions must be proven <i>beyond a reasonable doubt</i>, whereas civil claims must be proven only by a <i>preponderance of the evidence</i>.</p>



Model Practice	Examples	Notes
Enact provisions requiring that a portion of civil penalties go toward developing industry-specific, language-appropriate outreach and education. Set benchmarks for amount of education, communities, industries targeted.	CT Labor Code Sec. 31-69a provides for a civil penalty of three hundred dollars for each violation and additionally provides that “[a]ny amount recovered shall be deposited in the General Fund and credited to a separate nonlapsing appropriation to the Labor Department, for other current expenses, and may be used by the Labor Department to enforce the [law].”	Education should include rights but also how to enforce them
Where companies are dependent on states for licenses to do business, make loss of license a consequence of violating wage and hour laws.		
Establish debarment as a consequence for contractors who refuse to comply with wage/hour laws.	Many states have “prevailing wage” laws whereby companies who fail to pay a living wage are excluded from lucrative government contracts. e.g., DE, CT, AR, AK, MO, MT, TN.	
Prohibit government entities from entering into contracts with businesses with a record of wage and hour violations.		
Strengthen or create “hot goods” provisions limiting the ability of manufacturers or contractors to ship, deliver or sell goods made in violation of wage and hour laws.	The Federal Fair Labor Standards Act hot goods provision is at 29 U.S.C. § 215 (a)(1). NY State’s labor law has a “hot goods provision,” N.Y. Lab. L. § 345(10)(a) prohibiting deliver, shipping or sale of apparel made in violation of the ywage laws.	



Model Practice	Examples	Notes
<b>OTHER GOVERNMENT ENTITIES CAN BE EMPOWERED TO ENFORCE WAGE/HOUR LAWS</b>		
Enact municipal ordinances that provide for criminal penalties reflecting existing state laws.	<p>Kansas City Council supplemented a theft of service ordinance with language specifically designating an employer's failure to pay wages as a theft of service violation. (See Kansas City Ordinance 040964).</p> <p>Austin, TX—community advocates and public servants in Austin joined forces in 2002 to resuscitate an existing criminal theft of service statute (commonly known as the “dine and dash” statute) and to effectively transport its provisions to punish and deter predatory employers. Thanks to invaluable support offered by the Austin Police Department and other politicians, low-wage workers in Austin have already recovered \$54,000 in unpaid wages.</p>	
Enlist cooperation of local law enforcement agencies.	<p>Phoenix, AZ—police officers and city prosecutors announced in April 2003 that they would actively seek to criminally prosecute employers who hire temporary workers and “walk out on the bill after work is performed.”</p> <p>Kansas City, MO—police department provides the local Community Action Network with two plain clothes police officers to protect the human and labor rights of day laborers.</p>	
<b>IDEAS FOR GENERATING ALTERNATIVE SOURCES OF REVENUE</b>		
<b>Potential Sources</b>		<b>Questions</b>
Labor/management trust funds (e.g., “Maintenance Cooperation Trust Fund” created in 1999 to rid California’s janitorial industry of corrupt contractors)	Fees for business license grantees	<p>What role can they play?</p> <p>How much will be charged and to which businesses?</p>
<b>ARGUMENTS TO BOLSTER SUPPORT OF STRENGTHENED ENFORCEMENT MECHANISMS</b>		
<p>Social costs of under/unpaid workers</p> <p>Economic costs: i.e., employers who underpay workers are not contributing to state coffers filled by tax revenues. Employee misclassification on 1099 forms has a quantifiable costs. See, NELP Fact Sheet: <i>Misclassification of Employees as “Independent Contractors,”</i> available at, <a href="http://www.nelp.org/docUploads/independent%20contractor%20misclassification%20pdf">http://www.nelp.org/docUploads/independent%20contractor%20misclassification%20pdf</a></p> <p>Enforcement is good for business and encourages competition (i.e., low-road employers unfairly disadvantage law-abiding employers).</p>		



## **Appendix B: State Attorneys General: Model Practices Enforcing Worker Rights**



State	Model Practice
Arizona	<p>In AZ, the Attorney General issued an <b>official opinion limiting the negative impact of Arizona's Proposition 200</b> on AZ's immigrant population.</p> <p>The AZ AG also investigated the staffing agency Labor Ready for <b>violating check cashing fee</b> provisions, and brokered a settlement for the workers. Recently, the AG settled with another construction temporary staffing firm for illegal check cashing and for prohibiting workers from accepting permanent jobs with worksite/ client employers. <i>AP Nov. 20, 2005.</i></p> <p>The AZ AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers' rights to backpay under labor law.</p>
California	<p>In CA, the AG created an <b>Office of Immigrant Services</b> to educate immigrants about worker and other rights.</p> <p>The CA AG wrote an <b>amicus brief</b> in support of immigrant worker advocates who were sued for defamation by a company that had been accused of violating workers' rights. <i>Garment Workers Center v. the Superior Court of Los Angeles, 117 Cal. App. 4th 1156 (2004)</i></p> <p>Worker advocates in CA are urging the AG to use their three new staff positions to prosecute <b>Unfair Competition Law violations</b> (CA Bus. &amp; Prof. Code § 17200) against businesses that violate CA labor and employment laws. <b>Many other states have these unfair business and professions code laws.</b></p> <p>The CA AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers' rights to backpay under labor law.</p>
Connecticut	<p>CT's AG accepts complaints from unions about construction contractors' failure to pay prevailing wages and is aggressive about <b>debarring contractors</b> from bidding on public projects.</p>
Florida	<p>FL's AG issued an <b>opinion letter</b> in 2005 regarding the new state minimum wage's applicability to state employers. See <a href="http://myfloridalegal.com/ago.nsf/printview/9C862F43CF6B97D7852570C20057767B">http://myfloridalegal.com/ago.nsf/printview/9C862F43CF6B97D7852570C20057767B</a></p>
Hawaii	<p>The HI AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers' rights to backpay under labor law.</p>
Illinois	<p>The IL AG wrote an <b>amicus brief</b> on behalf of workers and patients at a large public hospital in Chicago.</p> <p><b>New law in Illinois</b> permits state AG explicitly to investigate employment discrimination complaints. <a href="http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=093-1017&amp;GA=093">http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=093-1017&amp;GA=093</a></p>



Maryland	<p>The MD AG is encouraging county prosecutors to enforce the state “<b>theft of services</b>” <b>crimes</b> to recover unpaid wages for day laborers and other low-wage workers. Many states have laws prohibiting theft of services in the employment context. For a listing of those states, see, <a href="http://www.nelp.org/docUploads/criminal%20penalties%20for%20unpaid%20wages%2Epdf">http://www.nelp.org/docUploads/criminal%20penalties%20for%20unpaid%20wages%2Epdf</a>.</p> <p>The MD AG issued an official opinion stating that the state Department of Motor Vehicles could not deny an individual a <b>drivers’ license</b> based on that person’s immigration status.</p> <p>The MD AG, along with its state DOL, <b>audited home health care temp agencies that misclassified workers as “independent contractors”</b> under the state unemployment insurance (UI) law, and brought a case to stop the misclassification so that the workers received UI benefits.</p>
Massachusetts	<p>The MA AG is directly charged with enforcing state wage and hour and other employment laws, so it has more responsibility and more direct power than many state AG’s in the labor and employment field. Mass. Gen. Laws Ch. 149 §§ 2-3.</p> <p>The MA AG filed an <b>amicus brief</b> urging coverage under <b>workers’ compensation for an undocumented worker</b> under MA state law. <i>Medellin v. Cashman KPA</i>, No. 2004-J-0017 (Mass. App. Ct.).</p> <p>The MA AG <b>brought suit against temporary agencies for workers’ compensation fraud</b> and for misclassifying employees as “independent contractors.”</p> <p>The MA AG filed an <b>amicus brief</b> on behalf of <b>immigrant janitors who were denied unemployment insurance benefits</b> because their employer called them “franchisees” instead of “employees.” <i>Coverall North America v. Comm’r Unemployment Assistance</i>, No. SJC-0982.</p> <p>The MA AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers’ rights to back-pay under labor law.</p>
Nebraska	<p>The Nebraska Appleseed-led coalition of union and community groups worked closely with the NB AG to combat <b>misclassification of employees as independent contractors</b>, primarily in the construction industry. The community groups investigated and developed the facts of targeted misclassification, and the AG responded with some enforcement actions.</p>
New York	<p>The NY AG is one of a handful of state AG’s with a <b>dedicated labor bureau</b>, with a staff that handles complaints and investigates workplace abuses under NY’s Executive law. The NY AG has <b>investigated, assisted in the settlement of, and prosecuted</b> numerous sweatshop cases, usually in tandem with <b>community organizing groups and unions</b>.</p> <p>Some highlights include brokering a community-backed green grocer’s <b>Code of Conduct</b> for the small green grocers in NYC, requiring the signatories to comply with wage and hour laws and to permit future monitoring by the AG <a href="http://www.oag.state.ny.us/press/2002/sep/sep17a_02.html">http://www.oag.state.ny.us/press/2002/sep/sep17a_02.html</a>, and netting over six million dollars in unpaid minimum wage and overtime pay for West African immigrant delivery workers with the National Employment Law Project. See, e.g., <i>Ansoumana et al v. Gristedes et al</i>, 255 F. Supp.2d 184 (SDNY 2003).</p>



<b>New York (cont)</b>	<p>NY AG used the state <b>“hot goods”</b> provision to get a preliminary injunction enjoining garment companies from “shipping, delivering, selling or purchasing ‘hot goods’ produced unlawfully,” <i>Spitzer v. 14 West Garment Factory Corp.</i>, 182 Misc. 2d 146 (S.Ct. N.Y. County 1999).</p> <p>The NY AG also brought <b>investigations against numerous employment agencies</b> that were charging finders’ fees and requiring deposits from immigrant workers looking for jobs.</p> <p>The NY AG established a <b>day labor task force</b> to stem wage payment and other abuses against day laborers.</p> <p>The NY AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers’ rights to back-pay under labor law. The AG also <b>wrote an opinion letter</b> stating that undocumented worker rights under NY state law were not preempted by <i>Hoffman Plastic</i>. Formal Opinion No. 2003-F3, N.Y. Op. Atty. Gen. No. F3, 2003 W 22522840 (N.Y.A.G. October 21, 2003).</p>
<b>Oregon</b>	OR’s AG works with farmworker and other advocates in its <b>Immigration Fraud Task Force</b> to fight unfair charges by fake immigration agencies that prey on low-wage earners.
<b>Puerto Rico</b>	The PR AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers’ rights to back-pay under labor law.
<b>West Virginia</b>	The WV AG signed on to the <b>amicus brief</b> urging the U.S. Supreme court to overturn the <b>Hoffman Plastic Compounds</b> decision, which limited undocumented workers’ rights to back-pay under labor law.

#### Notes

The listed practices are illustrative only, and are not a comprehensive catalog of state AG activities in labor and employment law enforcement.



## Appendix C : Agency Enforcement of Criminal Laws

### Criminal Laws Compared To Civil Wage And Hour Laws

Criminal “theft of services” laws do not provide the same level of remedies to workers as state and federal civil wage and hour laws. Civil wage and hour laws generally establish a minimum wage and provide, in addition to recovery of unpaid wages and overtime pay, for additional damages and protection against retaliation. Criminal “theft of services” laws may have large criminal penalties, but they do not go to the worker. Additionally, the standard for proving that an employer has violated a criminal law is much higher than the standard under civil wage and hour laws.

While an individual can bring an action in court to enforce her rights under civil wage and hour laws, only law enforcement agents – for example, the police and prosecutors – can enforce criminal laws.

### Criminal Laws And Campaigns

While criminal laws may not be a perfect solution to the widespread problem of employers’ failure to pay workers the wages they are due, organizers and advocates may want to consider whether they might be useful in campaigns to highlight the problem and to demonstrate to employers the consequences of breaking the law. A toolkit for advocates on using these laws in campaigns is available at: <http://www.nelp.org/docUploads/theft%20of%20services%20toolkit%2Epdf>

In deciding whether to engage in a campaign to enforce criminal laws for employers’ failure to pay wages, it is important to carefully weigh the pros and cons of the various approaches. Ultimately, law enforcement agents alone have the power to enforce these laws, and organizing groups may not be able to control the direction a campaign takes. If the choice is made to pursue this type of campaign, it is important to develop good relationships with the law enforcement agencies, seek guarantees that the agencies will not be enforcing immigration laws and ensure that workers are aware of the costs and benefits of taking this approach.

### Possible Campaign: Partnering With Police To Enforce “Theft Of Services” Laws

One approach that advocates have taken is to develop a partnership with the police to enforce theft of services provisions. Experience has shown that it is important to develop a relationship with the police department and to engage in education about how the laws will be enforced rather than to rely on individual officers to enforce them.

Low wage workers are very likely to have legitimate concerns about partnering with the police. As community members, they may have had previous bad experiences with the police. Moreover, they may be concerned that the police will ask them questions about their or their co-workers’ immigration status.



It is extremely important, if partnering with the police to have a guarantee that they will not engage in immigration enforcement. The National Immigration Law Center (NILC) has gathered a list of state and local non-cooperation ordinances and policies which is available at <http://www.nilc.org/immlawpolicy/LocalLaw/>. If your city does not already have one, getting one adopted should be the first step in your campaign. If your city does have one, you should ensure that it is being followed.

Similarly, it is essential that there is a clear police procedure for dealing with theft of services complaints and that workers and organizers know what to expect from the police.

### **Possible Campaign: Enacting A Theft Of Services Law At The Local Level**

In states that do not have such criminal laws, advocates may consider the possibility of a municipal ordinance criminalizing failure to pay wages. This can have the effect of drawing attention to the problem of non payment of wages and stigmatizing bad employers. Advocates in Kansas City, Mo took this approach and in 2004, the city passed [Ordinance No. 040964](#).

### **Possible Campaign: Partnering With State Attorney General To Enforce Criminal Violations Of Labor Code**

In some states, the Attorney General (AG) is empowered to enforce criminal provisions of the state labor code. This may also be within their inherent authority. NELP has developed a 50-state chart of the powers of AGs which is available at: <http://www.nelp.org/docUploads/State%20Jurisdiction%20Chart%2Epdf>.

Groups organizing to combat severe employer violations of wage and hour laws may consider developing a relationship with their state AG to ensure that bad employers are prosecuted under the criminal provisions of the state labor code.

As when partnering with the police, it is important to get a clear commitment from the Attorney General's office that it will not be enquiring into immigration status or enforcing immigration law. The New York State Attorney General has issued a formal opinion that immigration status is not relevant to enforcement of state wage and hour laws. This opinion is available at: [http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003\\_f3.html](http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html). It may be useful to see if your state Attorney General would be interested in issuing a similar opinion.



**NELP**

**Immigrant & Nonstandard Worker Project**

**Model Legislation**

Advocating for the working poor and the unemployed

July 2006

### ***Better Enforcement of State Labor and Employment Laws Across the Board***

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**Goal: reduce illegal employer behavior.** Workers themselves are in the best position to report employer abuse – but only if they are not afraid of immigration consequences.

**Increase enforcement of state labor laws.** Economic incentives that an employer might gain from hiring undocumented workers should be eliminated by targeted enforcement of labor laws in favor of all workers, especially those in low-wage industries.

States should ensure that their workers' compensation, health and safety, wage and hour and discrimination laws protect all workers no matter what their immigration status, that they target investigations to the industries known for violation of labor laws, and that their agency procedures ensure access to state enforcement mechanisms for all workers.

States should ensure that they provide access to bilingual employees, that they do not interrogate workers about their immigration status, and that they do not create other artificial barriers to enforcement of immigrant workers' rights.

#### **MODEL STATE LABOR AGENCY POLICIES REGARDING ENFORCEMENT OF LABOR AND EMPLOYMENT LAWS ACROSS THE BOARD**

**Anti-discrimination laws:** State agencies responsible for enforcing anti-discrimination laws may adopt the following policy:

All workers, regardless of immigration status, are covered by state anti-discrimination employment laws, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

The [Agency Name] will:

Investigate complaints of violations of the anti-discrimination in employment laws and file court actions to seek and collect back pay, compensatory and punitive damages, and all other appropriate remedies, including equitable relief. This shall be done without regard to the worker's immigration status, unless explicitly prohibited by federal law.

Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unlawful discrimination, without regard to the worker's immigration status, unless explicitly prohibited by federal law.

The [Agency Name] will not ask a complainant or witness for their social security number (SSN) or other information that might lead to disclosing an individual's immigration status, will not ask workers about their immigration status and will not maintain information regarding workers' immigration status in their files.

During the course of court proceedings, the [Agency Name] will oppose efforts of any party to discover a complainant's or witnesses' immigration status by seeking a protective order or other similar relief.

In the rare occasion that [Agency Name] must know the complainant's immigration status, it will



keep that status confidential, and will have a policy of nondisclosure to third parties (including to other state or If a party raises the issue of an injured worker's or witnesses' immigration status in the course of proceedings, the party must show that the evidence is more probative than prejudicial, and that it obtained such evidence in compliance to 8 CFR § 274a.2(b)(1)(vii).

[Agency Name] will train its staff (including intake officers, investigators, attorneys, and other relevant staff) on this policy and will work closely with community-based organizations to conduct this training.

[Agency Name] will make reasonable efforts to work closely with community-based organizations to conduct outreach and education to the immigrant community on this policy.

#### **PRO-WORKER POLICIES FOR ENFORCING LABOR AND EMPLOYMENT LAWS.**

##### **State outreach programs and community partnerships with interfaith, day labor, legal services, consulates and other groups to educate and refer workers.**

A highly successful partnership between USDOL and the National Interfaith Committee for Worker Justice performs outreach in immigrant communities, trainings in workers' centers and churches, and negotiates wage payments. When NICWJ cannot resolve a dispute, USDOL takes over. <http://www.nicwj.org/pages/outreach.DOL.html>

A partnership between the Washington State Department of Labor and Industries, CASA Latina Day Labor Center, and the King County Bar Association recruits and trains lawyers and law students who volunteer their time to collect wages owed to day laborers, relying on the state agency when negotiations fail.

**Enforcement strategies that focus on misclassification of workers.** Misclassification of workers as "independent contractors" is a large and growing problem that denies low-wage workers the protection of labor laws. In the past year alone, state audits of unemployment insurance systems found an increase of 42% in the number of workers misclassified as independent contractors.

California was the first state to create a "Joint Enforcement Strike Force" to focus on misclassification of workers as "independent contractors." Through this, tax and labor agencies created an "Employment Enforcement Task Force to perform onsite inspections and audits of suspect small companies based on reasonable belief of violations of tax and employment laws. In 2002, the Task Force collected \$74 million in unpaid wages and \$10 million in payroll tax assessments. <http://www.edd.ca.gov/taxrep/txueoindtx.htm#EETF>

Labor agency investigators are in a position to refer important "joint employer" cases to state Attorneys General and to the private bar. Establishment of "joint employer" liability is a powerful tool to protect low-wage workers. The New York Attorney General's office has aggressively pursued wage claims against joint employers, participating in the first modern use of the joint employment theory under New York law against large supermarket and drugstore chains for unpaid wages due to delivery workers misclassified as independent contractors. <http://www.oag.state.ny.us/2000AnnualReport.pdf>

**State enforcement policies that are targeted to low-wage work and abusive industries, and that emphasize recovery for the entire workforce (rather than just the complainant).** Some state agencies view themselves as the first line of defense against wage abuses for low-wage workers who cannot afford attorneys. Some have targeted industries known for low-wages and high levels of wage violations, such as janitorial, garment, day labor, temporary agencies.

The New York State Attorney General's Office targeted greengrocers for violations of the labor law



and ultimately developed an industry code of conduct [http://www.oag.state.ny.us/press/2002/sep/sep17a\\_02.html](http://www.oag.state.ny.us/press/2002/sep/sep17a_02.html).

The California Targeted Industries Partnership Program focuses on the apparel, agriculture, restaurant and janitorial services industries. The Construction Enforcement Project focuses on the construction industry. The Janitorial Enforcement Project focuses on the janitorial and building maintenance industry. <http://www.dir.ca.gov/dlse/tipp4.htm>

### **State or local legislation that authorizes complaints “on behalf of others.**

San Francisco’s city minimum wage ordinance, authorizes community groups and unions to file complaints, without having to show that the workers not being paid are their members. [http://www.ci.sf.ca.us/site/uploadedfiles/oca/living\\_wage/nw/ordinance.pdf](http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf).

### **State living wage or minimum wage laws that earmark fines recovered from violators to fund new enforcement.**

The San Francisco minimum wage ordinance provides for employer fines to be provided to the city in order to offset the costs of investigating and remedying the violation. [http://www.ci.sf.ca.us/site/uploadedfiles/oca/living\\_wage/nw/ordinance.pdf](http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf)

### **POLICIES AFFIRMING A COMMITMENT TO PERFORMING ITS DUTIES WITHOUT REGARD TO THE IMMIGRATION STATUS OF WORKERS WHO COME BEFORE IT.**

### **DRAFT LAW OR EXECUTIVE ORDER PREVENTING LOCAL ENFORCEMENT OF IMMIGRATION LAW**

#### **PURPOSE AND POLICY STATEMENT**

WHEREAS, immigrants, who live and work in **[insert location]** contribute to our community. Over **X%** of the residents of **[insert location]** were classified as foreign-born in the 2000 census.

WHEREAS, immigrants work in some of the lowest-paid and highest risk jobs in the community and are frequently subject to abuse.

WHEREAS, all too often, low-road contractors rely on employees fear about the immigration consequences of dealing with government agents to prevent them from speaking out about abuses on the job.

WHEREAS, the cooperation of all members of the community, regardless of immigration status, is essential to law enforcement.

WHEREAS there is a need for a clear statement of policy to provide guidance to county employees and to promote the safety and health of all community members.

WHEREAS preserving the confidentiality of certain information is integral to the operation of County government.

This order/ ordinance supercedes all conflicting policies, ordinances, rules, procedures and practices.

#### **DEFINITIONS**

**“Citizenship, immigration, or residency status”**: All matters regarding questions of citizenship of the United States or any other country, questions of authority from the Department of Homeland Security to reside or otherwise be present in the United States, and the time or manner of a person’s entry into the United States. The use in this order of the term “residency” shall not mean street address or location of residence in county or elsewhere.

**“[geographic unit] agency”**: Any and each entity directly controlled by the **[geographic unit]**.

**“[geographic unit] agents”**: Any and each employee, including those who work in public safety, employed directly by the **[geographic unit]**.

**“Confidential information”**: Any information obtained and maintained by a **[geographic unit]** agency relating to an individual’s sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or



immigration status, and shall include all information contained in any individual's income tax records.

**"General [geographic unit] services":** All services except those specifically listed as public safety services.

**"Illegal activity":** Unlawful, criminal activity but shall not include mere status as an undocumented immigrant.

**"Immigrant":** Any person who is not a citizen or a national of the United States.

**"Law enforcement entities":** Police, probation, sheriff's office, **OTHER?**

**"Public safety services":** Police and fire departments, Emergency Medical Service (EMS) authorities, [geographic unit] Attorney's office.

**"Undocumented immigrant":** A noncitizen who does not have lawful immigration status, in violation of federal civil immigration laws.

## **Section 1. [geographic unit] SERVICES**

- (A) **[geographic unit]** agents shall not inquire into the immigration status of any individual, nor shall **[geographic unit]** agents enforce federal civil immigration laws.
- (B) **[geographic unit]** agents shall follow general county, state, and federal guidelines to assess eligibility for services. A **[geographic unit]** agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.
- (C) The presentation of a photo identity document issued by the person's country of origin, such as a foreign driver's license, passport, or *matricula consular* (consulate-issued document) shall be accepted and shall not subject the individual to a higher level of scrutiny or different treatment than if the person had provided a **X** State *driver's license*. *This paragraph does not apply to I-9 forms.*

## **Section 2. LAW ENFORCEMENT**

- (A) Unless otherwise required by law or court order, **[geographic unit]** agents shall refrain from the enforcement of federal immigration laws. No county agents, including agents of law enforcement entities, shall use county monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.
- (B) Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.
- (C) County agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status.

## **Section 3. VICTIM AND WITNESS PROTECTION**

- (A) It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach county agents seeking assistance.
- (B) A **[geographic unit]** agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

## **Section 4. CONFIDENTIALITY OF INFORMATION**

- (A) No **[geographic unit]** officer or employee shall disclose confidential information, unless:
  - Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
  - Such disclosure is required by law; or
  - Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve



the mission of any **[geographic unit]** agency; or

In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any **[geographic unit]** agency; or

In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.



## Endnotes

1. Urban Institute, *A Profile Of The Low-Wage Immigrant Workforce* (Nov. 2003), available at, [http://www.urban.org/UploadedPDF/310880\\_lowwage\\_immig\\_wkfc.pdf](http://www.urban.org/UploadedPDF/310880_lowwage_immig_wkfc.pdf).
2. United States Department of Labor, Bureau of Labor Statistics, *A Profile of the Working Poor, 2003*, (March 2005), available at, <http://www.bls.gov/cps/cpswp2003.pdf>.
3. U.S. Department of Labor, Bureau of Labor Statistics, *A Profile of the Working Poor, 2004* (May 2006); David Weil, *Compliance With the Minimum Wage: Can Government Make a Difference?*, at 10-11, 30 (May 2004).
4. Urban Institute, *A Profile Of The Low-Wage Immigrant Workforce* (Nov. 2003). In the report, the authors note that “In 2001, the federal minimum wage was \$5.15. Alaska, California, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, Oregon, Rhode Island, Vermont, and Washington set their minimum wages above the federal standard.” *Id.*, at 2, n.7.
5. Andrew Sum, Neeta Fogg, Paul Harrington, et al., *Immigrant Workers and the Great American Job Machine: The Contributions of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s*, Center for Labor Market Studies, Northeastern University (Aug. 2002) at 27, table 14. [http://www.nupr.neu.edu/12-02/immigration\\_BRT.PDF](http://www.nupr.neu.edu/12-02/immigration_BRT.PDF).
6. *Id.*, at 20, table 8.
7. *Id.*, at 41.
8. Jeffrey S. Passel, *Estimates of the Size and Characteristics of the Undocumented Population*, Pew Hispanic Center (March 2005), at 4, available at, <http://pewhispanic.org/files/reports/44.pdf>.
9. *Id.*, at 3.
10. U.S. Department of Health and Human Services, 2006 Poverty Guidelines, available at <http://aspe.hhs.gov/poverty/06poverty.shtml>.
11. Annete Bernhardt and Siobhan McGrath, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004*, available at <http://www.brennancenter.org/programs/downloads/trendswageshours.pdf>.
12. For more information about the harms to workers and the economy that stem from independent contractor abuses, see, NELP Fact Sheet: *1099'd: Misclassification of Employees as Independent Contractors*, available at <http://www.nelp.org/docUploads/independent%20contractor%20misclassification%2Epdf>.
13. See, Siobhan McGrath, *A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the US*. (2005) (on file with NELP); U.S. Department of Labor, Employment Standards Administration, *FY 2000 Annual Performance Report Summary*



(March 2001); Deborah Thompson Eisenberg, *The Feudal Lord in the Kingdom of Big Chicken: Contracting and Worker Exploitation by the Poultry Industry* (2002); Restaurant Opportunities Center of New York and NY City Restaurant Industry Coalition, *Behind the Kitchen Door: Pervasive Inequality in New York City's Thriving Restaurant Industry* (Jan. 2005); U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Only One-Third of Southern California Garment Shops in Compliance with Federal Labor Laws*, New Release—USDOL– 112/August 25, 2000; U.S. Department of Labor, *Nursing Home 2000 Compliance Fact Sheet* (2000).



