



National Employment
Law Project

**FROM ANTI-IMMIGRANT TO PRO-WORKER : WHAT CAN STATES AND CITIES DO ABOUT
IMMIGRATION AND WORKERS' RIGHTS**

In the 2008 election and its aftermath, both voters and policymakers have shown that they recognize the anti-immigrant movement in the states for what it is: a [misguided distraction](#) from the very real economic problems of our country. With anxiety about jobs and the economy at peak levels in our country, and gaps between rich and poor at an all-time high, and state governments in deep financial troubles, states are seeing that drastic measures that purport to punish unauthorized workers will not solve any of our country's huge economic woes.

These policies are the wrong solution to the wrong problem.

What's the real problem? Scofflaw employers who fail to offer workers a decent wage and a safe place to work, and an enforcement regime that takes a "see no evil" approach to labor law violations. Weak enforcement affects all workplaces where U.S. citizens and immigrant workers labor side by side.

What's the real solution? Real labor standards, coupled with vigorous enforcement of those rules – a new kind of "employer sanction" against low-road employers who abuse all workers. In the weak economy leaving labor laws unenforced simply tempts even law-abiding employers to lower wages and violate laws, in order to take advantage of the glut of job-seekers.

Here's what states and municipalities can do to ensure that all jobs in our economy are good jobs:

Pass Fair Wage laws: Important jobs in our economy – retail, building services, construction, hospitality and home health care – routinely pay at or below the minimum wage. Robust enforcement of fair pay laws is key to treating workers fairly and sustaining economic growth in our communities.

- ✓ Pass state wage laws to close loopholes that have denied whole categories of workers (like household workers and farmworkers) full minimum wage protection dating back to the racial politics of the New Deal, as [Arizona](#) has done;
- ✓ Pass a local living wage law, like communities across the country have done;¹
- ✓ Award treble damages for violations of minimum wage, a feature of [Ohio](#) law;
- ✓ Revise rules to protect low-wage workers from being improperly designated as administrative, executive, or professional workers in order to skirt overtime requirements;

¹ For a good background piece with resources on local living wage laws, see http://www.brennancenter.org/subpage.asp?key=38&tier3_key=8519 and the [ACORN Living Wage Resource Center](#).



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- ✓ Create a presumption of nonpayment of wages if no records of work are kept, like [Arizona](#) did in its minimum wage initiative;
- ✓ Pass sector-specific laws covering [day laborers](#), household workers (as in [New York City](#)) or other workers in industries with pervasive labor law violations.

Crack down on Independent Contractor schemes: Employers in construction, day labor, building services, agriculture and a wide variety of other sectors routinely misclassify employees as “independent contractors” to evade labor and employment protections and taxes.

- ✓ Create a presumption that workers providing labor or services for a fee are “employees” covered by state labor and employment laws, as is done in at least ten state worker compensation statutes, ([Washington’s](#) is a good model), and [Massachusetts’](#) and Arizona’s wage act. Create “statutory” employees providing for coverage for workers in jobs with persistent independent contractor abuses, including a new [Illinois](#) law.

Protect Health and Safety: Employees in dangerous jobs have few health and safety protections, and most of the ones they do have are only enforceable by OSHA or its state analog, agencies that are under-funded and overly-reliant on worker complaints from workers who fear retaliation.

- ✓ Pass legislation to enhance state OSHA’s enforcement capacity², including earmarking more money for inspectors, requiring audits and targeted enforcement for problem sectors and employers, and permitting institutions like unions to file complaints on behalf of workers;
- ✓ Require materials to be accessible to limited English-speaking workers, as [Nebraska](#) does.

Case Study: Connecticut sanctions employers who abuse the workers’ compensation systems.

In Connecticut in 2007, a bill was introduced that would have made it a criminal offense to hire undocumented workers. What started out as an anti-immigrant piece of legislation became a state law that goes after the real problem of employers who **commit workers compensation premium fraud and cheat workers out of benefits** [and the state fund out of taxes].by not carrying compensation at all The new law, [Pub. Act. No. 07-89](#), provides that employers who misrepresent the number or type of their employers for purposes of the workers compensation system, can be issued a stop work order and ordered to pay a fine of up to \$1,000. Employers worried about unfair competition supported the bill, and both legislative houses passed it unanimously.

² Relevant in about half the states that do their own OSHA enforcement, see <http://www.osha.gov/dcsp/os/index.html>.



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Enforce, Enforce, Enforce: Give state and local agencies the tools to enforce labor standards laws, and hold accountable by requiring them to collect all allowable penalties and damages under state laws, permit workers to file complaints anonymously or via a representative, and be strategic about investigations and audits of problem sectors or employers.

- ✓ Pass “Private Attorney General” Laws permitting workers and their representatives to enforce any labor and employment laws on the books, as [California](#) has done; (also a feature of [San Francisco’s](#) Minimum Wage Ordinance);
- ✓ Raise more money for state agencies to do their job by earmarking funds collected in workplace enforcement actions to hire more inspectors, as in [San Francisco’s Minimum Wage Ordinance](#)
- ✓ Make sure laws and policies are “immigration status blind” so that immigration status remains irrelevant to an employer’s responsibility, as [California](#), [Washington](#) and [New York](#) have done.
- ✓ Create inter-agency enforcement task forces, with state departments of labor, revenue and related agencies to share data, audit results and enforcement actions, as [California](#), [New York](#), and other states have done;
- ✓ Promote enforcement against multiple “joint employers” to combat employers’ efforts to outsource or subcontract-out responsibilities for labor and employment protections.

King County Superior Court Access Order. As a corollary to an adequate enforcement scheme, access to the courts must be guaranteed to immigrants who come forward as plaintiffs or witnesses. In order to insure that all residents of the county have access to the courts to protect their Constitutional and legal rights, the Presiding Judge of the King County, Washington, Superior Court, adopted the following policy in October 2008:

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public’s safety is at immediate risk.

Collect Taxes Owed: Employers who cheat also cheat the state out of revenues, causing state enforcement efforts to be strapped and other employers to make up the difference.

- ✓ Fix employer SUTA-dumping schemes that evade unemployment insurance premiums by subcontracting their tax obligations to professional employee organizations (PEO’s), as [Washington](#) and at least 16 other states have done;



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- ✓ Mandate a state study commission to collect data and information on lost tax revenues due to independent contractor abuses, as [Illinois](#), [Maine](#), [Massachusetts](#) and other states have done.

Involve Communities: Even in the best of times, local, state and federal agencies cannot, on their own, hope to gain the trust of diverse immigrant communities. Nor can they, by themselves, find out about all violations. But communities can be their eyes and ears.

- ✓ One highly successful community collaboration is between the US Department of Labor and [Interfaith Worker Justice](#), which performs outreach in immigrant communities, trainings in workers' center and churches, and negotiates wage payments. When IWJ cannot resolve a dispute, USDOL steps in.
- ✓ A number of community-based efforts, including the [Farmworker Health and Safety Institute](#), a consortium of 3 community-based farmworker organizations, and the [Latino Occupational Safety and Health Initiative](#) (LOSHI), both based in New Jersey, rely on peer to peer education, popular education tactics and leadership development to help workers stand up for their own rights to a safe and healthy workplace.

Prosecute, Prevent and Protect: States should go after employers who use immigration status as a club against workers, by prosecuting them and by ensuring that victims have access to visas as victims of labor trafficking.

- ✓ Enact a state anti-trafficking law that will insure that unscrupulous employers are punished and their victims protected. The [Freedom Network](#) has developed a model law. In Colorado, under C.R.C. 18-13-129, it is explicitly unlawful to withhold or threaten to destroy immigration documents or to threaten to notify immigration authorities that a person is present in the U.S. in violation of immigration laws. California

NOTE: Links are embedded in this document.

To view on-line, please visit <http://www.nelp.org/fromantiimmigrant/>