Confronting the Gloves-Off Economy

America's Broken Labor Standards and How to Fix Them

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About this Report

This report is based on the Labor and Employment Relations Association Research Volume, *The Gloves-Off Economy: Labor Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. (c) Copyright 2008 Labor and Employment Relations Association, Champaign, IL. Each section of the report is adapted, in much shorter form (and omitting documentation and sources) from a chapter in that book. The editors would like to thank Scott Martelle for writing this report based on the chapters in the original volume. The full book is available for purchase by contacting the distributor, Cornell University Press, at: http://www.cornellpress.cornell.edu/cup_detail.taf?ti_id=5301. We thank the Labor and Employment Relations Association and the chapter authors for their willingness to facilitate the publication of this more streamlined, policy-oriented version of the material. The authors would also like to thank the Ford Foundation for its support of this project, and in particular, the guidance and input of Héctor Cordero-Guzmán during the writing of both the full volume and this report. The volume and report represent the views of the authors, and do not necessarily correspond to those of the Ford Foundation.

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The Gloves Come Off: The Increasingly Unfair Fight in America's Jobs

Dawn has yet to break as a woman leaves the breakfast she's making in a Manhattan kitchen to wake up sleeping children—not hers, but those of the family that employs her. A few hours later in Chicago, scores of day laborers start a 10-hour shift—minimum wage, no overtime—packing toys into boxes at a wholesale distribution center. Outside Atlanta, poultry workers break for lunch, their unprotected hands raw from chemicals.

ACROSS THE COUNTRY IT CONTINUES, this day of labor. Health-care aides in Dallas struggle through an under-staffed shift. Minneapolis gas station attendants hustle for tips, their only wage. In New Orleans, a dishwasher works late into the night several hours after his boss has clocked him out. And in Los Angeles—an international symbol of dreams and ambitions—a midnight janitor buffs the floor in a high-end retail shop for $8 an hour, no benefits, no guarantee he will get his full pay, and no recourse.

This is what it's like to work in the new America.

Over the last three decades the lowest rungs of American labor have endured a quantum shift in working and living conditions as many employers, aided by lax enforcement, have made a lucrative game of flouting labor and employment laws. But the erosion of protections hasn't been limited to the working poor. Well before the current economic downturn, the sweatshop ethic expanded broadly throughout the economy, with a wide range of business owners and managers adopting a "gloves-off" approach to their own employees. In the best cases they have simply turned a blind eye to the shenanigans of subcontractors, in effect outsourcing their moral and legal responsibility. In the worst cases employers have directly engaged in inhumane acts, cheating their staff out of hard-earned pay and blithely ignoring codes meant to ensure their health and safety.

When headlines tell us of sweatshops busted or workers complaining of being cheated out of overtime, the natural inclination is to dismiss them as isolated cases. But new research is documenting that this gloves-off management approach has had a corrosive

This chapter is based on "An Introduction to the 'Gloves-Off' Economy," by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

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effect across entire industries, as opportunistic employers operate in a cultural and regulatory environment conducive to cheating. Their behavior forces responsible employers to either follow suit or be undercut on contracts, effectively lowering the floor of working standards. And when that floor is lowered (or dismantled altogether), everyone is affected.

We do not suggest that all employers have shed the gloves of workplace protection, or that every strategy to cut labor costs is inherently gloves-off. But unregulated work has become pervasive enough to create new and significant challenges. Short-staffed government regulators can't keep up with fast-evolving forms of violations. Responsible employers who obey the laws suffer competitive disadvantages while the rule-flouters go unpunished. Unions and other worker advocates scramble to keep up with changing employer tactics.

This report, which is a distillation of *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market* (Labor and Employment Relations Association, 2008), seeks to spell out exactly how this new hard-nosed and sometimes illicit approach has played out across industries and affected the broader labor marketplace. It is primarily a diagnosis of what has gone wrong, but also starts the process of identifying solutions. Righting these wrongs will take some intense political will. We hope the Obama Administration has the courage to add the gloves-off economy to its already full plate.

So what do we mean by the gloves-off economy? Simply put, it is the decision by employers to evade or break the core laws and standards that govern working conditions in America. And we believe the practice has been spreading from classic sweatshop operations to core sectors of the economy, running the gamut from construction sites to industrial laundry plants to restaurants to home health care and domestic work.

There is more to the gloves-off economy than breaking laws, which one could reasonably expect to fix through enforcement (more on that later). Just as significant has been the wholesale change in expectations—the norms of the workplace. What were once considered basic elements of having a job—access to predictable and regular hours, employer-subsidized health care, pensions, vacation and sick-day accrual—have become, in effect, workplace luxuries as employers have focused more on the bottom line than social responsibility. Employees' costs have gone up as the financial burden for health coverage and retirement plans (gains won in part through post-war unionization) has shifted from owner to worker.

There are many reasons that the gloves have come off. Businesses strive for new ways to cut costs at the same time that the federal government has largely abandoned its mandate to regulate the labor market. Watchdogs, particularly unions, have weakened. And federal policies aimed at other objectives have generated large populations of extra-vulnerable workers, such as undocumented immigrants or ex-prisoners. At the same time, entire industries have been excluded from labor law protections under deals cut in the legislative process. Thus certain domestic workers, home care workers and agricultural workers aren't covered by laws most of us take for granted.

The specifics vary. One example: The residential construction industry now relies on a system of cash payment and labor brokers, making it likely that workers don't get their full pay or are forced to

endure unsafe and hazardous conditions. Workers are intentionally misclassified as independent contractors, which allows employers to evade workplace laws and forces competitors to follow suit or lose contracts—ultimately eroding long-established workplace norms.

Given the hidden nature of these practices, they can be hard to quantify. The best available evidence comes from "employer compliance surveys" conducted by the U.S. Department of Labor in the late 1990s, focusing on minimum wage and overtime violations. The department found that in 1999, only 35% of apparel plants in New York City were in compliance with minimum wage and overtime laws; in Chicago, only 42% of restaurants were in compliance; in Los Angeles, only 43% of grocery stores were in compliance; and nationally, only 43% of residential care establishments were in compliance.

Other evidence confirms this picture. A 2006 national survey found about half of day laborers reported being stiffed out of their pay at least once in the previous two months. A 2005 survey of New York City restaurant workers reported that 13% were paid less than the minimum wage and roughly six out of 10 worked without overtime pay or through legally prescribed rest breaks. Other studies record broad abuse of classifications, with employers listing full-time workers as contractors, thus skirting workers' compensation and employee safeguards.

And slavery is not dead. Experts estimate that upwards of 20,000 workers are trafficked into the country every year, and that the average amount of time spent in forced labor is between two and five years. In one of the most extreme examples, in 1995 more than 70 Thai garment workers were discovered inside a small El Monte, California, apartment building—under armed guard and surrounded by barbed wire—where they were forced to work 18-hour shifts without pay.

Employers can take the gloves off without violating labor laws—especially by shifting responsibility for worker protections to subcontractors. They can hire labor suppliers to perform work on-site (as with subcontracted janitorial workers) or off-site (as with industrial laundry workers cleaning linens for hotels and hospitals). Of course, greater use of subcontracting in and of itself does not necessarily imply an attempt to evade workplace laws. But it can facilitate such evasions by creating greater legal distance between the ultimate employer and the worker. When a fly-by-night cleaning subcontractor pays less than the minimum wage, the business manager whose building is getting cleaned can deny responsibility. And in the event regulators catch up with the subcontractor, he simply disappears, leaving the workers in the lurch.

Current trends suggest that conditions are only getting worse. In Massachusetts, the misclassification of workers as independent contractors climbed from 8% in 1995 to 19% in 2003. Nationwide, employment in temporary help services increased twentyfold between the early 1960s and mid-1990s. As the traditional employment relationship has disintegrated, so has the number of workers covered by health care plans and pension programs. While in the 1970s employers typically paid for all employee health insurance premiums, by 2005 three out of four workers were paying portions of their coverage, a shift that has sharply reduced effective wage rates. Similarly, the proportion of workers covered by a retirement plan

Drives to put the gloves back on are varied, but all involve reactivating government regulation and reviving unions or other elements of civil society to restore worker protections.

dropped from 91% of full-time employees in 1985 to 65% in 2003.

It wasn't always thus. In the late 1970s, federal and state workplace laws regulated wages and hours worked, set standards for overtime rates and health and safety conditions, and, in some states, mandated rest and meal breaks. Workers were also protected by laws that barred discrimination, recognized the right to organize, and mandated employer contributions to Social Security, unemployment insurance, and workers' compensation.

Those laws were augmented by workplace norms that helped shape employers' decisions about wages and working conditions, including assigning predictable work schedules, accrual of vacation and sick leave, annual raises, full-time hours, and, in some industries, living wages and employer-provided health insurance and pensions. Though it may seem utopian to focus on standards at a time when even legally-guaranteed rights are frequently abrogated, both are being eroded as employers seek to reduce labor costs.

So how did the gloves come off?

Part of the shift arose from regulators hostile to the idea of regulations. Beginning with President Reagan in 1981, Republican presidents began salting the National Labor Relations Board with people opposed to unions. At the same time, industries such as restaurants and retail, which employ the bulk of low-wage workers, led the drive to reduce the real value of the minimum wage.

Another factor is the spread of new forms of business organization, such as subcontracting. While the construction and apparel industries have used subcontractors for decades, the practice has now become so broadly prevalent that entire new industries have arisen—from security services to food preparation, janitorial services to call centers. Radio ads often air offering accountants and other office "temps"—one ad even playing on the fears of full-time employees being replaced by the more efficient temporary worker.

Elsewhere, strong-arm approaches by employers to fight off union drives took a toll. For example, employers threaten to close all or part of their business in more than half of all union organizing campaigns. Unions win only 38% of representation elections when such threats are made, compared to 51% when there are no such threats. Research also found that gloves-off workplace practices rose with the deunionization in the construction, trucking, and garment industries.

With unions on the defensive and reduced to a small corner of the private sector, employers have had a relatively free hand. The gap between union and non-union compensation yawns wide. Full-time workers who are union members earn 30% more per week than their non-union counterparts. While 70% of union workers have defined-benefit pension plans; only 15% of non-union workers do. Perhaps most important, the decline in union strength has meant more relaxed observance of labor and safety codes, fueling downward spirals in wage standards and working conditions that ultimately make life harder—and more dangerous—for workers.

Federal enforcement? Don't count on it. The Brennan Center for Justice reports that between 1975 and 2004, the number of federal workplace investigators declined by 14% and compliance-actions completed dropped by

36%. At the same time, the number of workers covered by federal workplace protections increased 55% and the number of covered workplaces grew by 112%. The Occupational Safety and Health Administration's budget has been cut by $14.5 million since 2001, and the department's focus under the Bush Administration shifted from enforcement and deterrence to "compliance assistance." At its current staffing and inspection levels, it would take OSHA 133 years to inspect each workplace under its jurisdiction just once.

In fact, federal and state policy makers have exacerbated the problem. U.S. immigration policy has effectively increased the number of workers vulnerable to gloves-off strategies because undocumented workers are largely unable to access core rights in the workplace. And the "welfare reform" of 1996 pushed millions of single mothers into the labor pool, often trapping them in low-wage jobs and leaving them vulnerable to abuse. Skyrocketing incarceration rates have saddled an increasing number of workers, once they're released, with yet another impediment to landing a decent job.

Fortunately, advocates, organizers, and policy makers are developing new strategies to enforce employment and labor laws and reestablish standards in the workplace, sometimes with the cooperation of well-intentioned employers. These drives to put the gloves back on are varied, but all involve reactivating government regulation and reviving unions or other elements of civil society to restore worker protections. For instance, the living wage movement has grown from local fights to the national stage and is looking to expand internationally—a globalization, if you will, of labor's fight for its own well-being. And new immigrant worker centers are giving low-wage workers a new means to organize outside of the traditional union framework.

This report is intended to give a brief tour of the gloves-off economy, with citations to the much more detailed book chapters upon which we have drawn. Our goal is to provide advocates and policy makers a window onto one of the key trends in the American labor market, and a resource to help them fix an economic system that rewards employers who break the law and punishes those who try to play by the rules.

This is a moment for potentially great change in the way our society operates. Workers, government, unions, and responsible employers all have a stake in finding ways to put the gloves of worker protections back on. Under the historic presidency of Barack Obama—himself a former community organizer—America may finally be ready to improve the lives of its workers.

The Offenders

PHOTO: Steve McAlister

What Good are Labor Laws That Don't Cover Everyone Equally?

Americans like to think that if someone breaks a law, or abuses the rights of others, the legal system will right the wrong. But that's not so easy when it comes to our system of labor laws and regulations, under which entire groups of workers are exempt and lax enforcement can make legal protections irrelevant.

LAWS SPELL OUT what most employers must do for their workers, such as pay an established minimum wage, grant family leave time, and not punish those who would unionize. But minimum wage provisions do little for a home health aide classified as an independent contractor or a "companion," rather than an employee. Family and medical leave doesn't apply to subcontractors—possibly the janitor in your office building. Get fired for talking union at work? Be prepared for a years-long legal fight to get your job back.

Employment law generally focuses on contractual employment relationships, taking as its starting point a labor market organized through bargaining between workers and firms. But because not all workers are employees, not all workers have rights under the employment laws.

Workers may be classified as nonemployees in three basic ways. The two most familiar are "independent contractors" (a category often applied to construction workers, street vendors, and taxi drivers) and white-collar workers who are often considered too powerful within an organization to merit protection. Additionally, nonemployees can be people working outside traditional labor markets—such as people enrolled in welfare-to-work programs, prison laborers, trainees and students, and those enrolled in programs for people with severe disabilities.

Such problems are compounded when it's hard to figure out who the employer is under splintered organizational models. The hiring of subcontractors, the use of temporary office workers, and changes in business ownership can all muddy the waters when trying to identify the employer responsible for wages and working conditions.

But even when the lines of responsibility are clear, enforcement failures let substandard conditions persist, depriving workers of employment law protections. Some employers know this and make a calculated gamble, maintaining fraudulent records or intentionally misclassifying employees with the expectation that enforcement doesn't come. And if it does, the limited remedies are wrapped into the basic

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Minimum wage provisions do little for a home health aide classified as an independent contractor, rather than an employee. Family and medical leave doesn't apply to subcontractors—possibly the janitor in your office building. Get fired for talking union at work? Be prepared for a years-long legal fight to get your job back.

cost of doing business. What's more, smaller, less stable firms in the informal economy—such as in the garment industry—can simply disappear if ordered to compensate workers for their injuries.

There are ways to attack these conditions. Expanding employment law to cover all workers—even those in subcontractor relationships—is the most obvious, recognizing the workers' economic dependence on the employer even if there is an insulating layer of a subcontractor. And for in-home health care and childcare workers, public intermediaries already have been established that convert independent contracting into employment relationships. For example, several states have created public employers-of-record that receive state funds, pay compensation to care-giving workers, and become entities with which employees can bargain collectively through public sector unions. And under California's janitorial contractor worker retention law, when a property owner switches to a new contractor, the cleaning staff must be retained for 60 days, providing job security, and giving unions time to work on a new contract using the same already-organized workers.

But key to any improvement is strengthening enforcement. Already private attorneys and nonprofit workers' rights organizations have pressed large-scale lawsuits over minimum wage and overtime violations in low-wage industries like garment production, building services, and delivery. Often these cases have been coordinated with union organizing campaigns or immigrant worker centers. And consumers can be brought into the mix, exerting economic pressure on recalcitrant employers, as in the high-profile anti-sweatshop campaigns aimed at U.S. consumers of products manufactured abroad. Similarly, campaigns can identify responsible businesses, as the Greengrocer Code of Conduct in New York City sought to do by providing labels to participating stores.

Some states make the purchasing business the guarantor of a subcontractor's wages to workers. For example, California makes garment manufacturers guarantors of their subcontractors' wage-and-hour practices, and in some industries, holds the contracting firm responsible for subcontractors' violations when the risk of violations is reasonably apparent from the contract.

The breadth of available responses should provide cause for some optimism by suggesting new avenues of attack. But those of us concerned about how workers fare in a gloves-off economy cannot simply focus on the unjust outcomes and try to sue, organize, or lobby for laws. We also need to contemplate roles and responsibilities. At what point should society—through government action—shoulder the responsibility when employers fall short? Do consumers themselves bear some responsibility? In a world of shifting organizational forms and imperfect enforcement, issues of institutional design must be front and center. It must be made clear which workers receive benefits or protections, and who bears responsibility to pay for that. And it must also be made clear who will force compliance.

These questions get at the core foundations of labor and employment law. As America moves forward into the 21st century and as employers continue to change the organization of work and production, we will need to engage in an ongoing assessment of what constitutes an employment relationship and which protections and benefits should be delivered through it.

How Employers Destroyed Their Workers' Unions

For decades, unions have been one of workers' strongest defenses against abuse by employers. Even in the era of globalization and off-shoring, unions have still been able to offer protections in specific occupations—especially jobs that can't be done elsewhere. So to take the gloves off, employers first had to weaken unions, or get rid of them entirely. Three industries—construction, building services, and trucking—in trend-setting southern California offer a clear example of how employers did just that.

A LITTLE HISTORY: During the postwar years, all three industries were extensively unionized, delivering high wages and good benefits to workers with little or no postsecondary education. But by the 1980s, employers following a concerted strategy managed to undercut the unions, sharply reduce their labor costs, and force workers to accept working conditions they otherwise would have rejected.

This is how it happened.

The first stage involved new types of non-union subcontracting. In the 1970s, builders in residential construction turned to newly created non-union subcontractors for jobs once done by unionized workers. A decade later, as the nation emerged from a sharp recession, only the non-union subcontractors survived. The building services industry took a similar approach, as building owners increasingly turned to non-union cleaning contractors to replace their own janitors, or to replace higher-cost union subcontractors. In the short-haul trucking industry, employers used a different version of this tactic. Amid the deregulation orgy of the 1970s and 1980s, they started hiring truck-owning drivers as independent contractors, and firms that put truckers on their own payroll went out of business.

Labor costs make up a large proportion of total costs in all these industries. The collapse of the union-based (and in the case of trucking, regulation-based) system, which put a floor under wages, opened up cutthroat competition among subcontractors. Intensive labor exploitation rapidly emerged. Fringe benefits and job security disappeared along with the union wage premium, and once-stable jobs soon were replaced by increasingly precarious employment arrangements. Under the newly fashionable banner of "flexibility," labor practices of questionable legality began to

This chapter is based on "Putting Wages Back into Competition: Deunionization and Degradation in Place-Bound Industries," by Ruth Milkman. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

Unionized janitorial companies were replaced by non-union subcontractors and the union effectively crumbled. That left thousands more workers open to gloves-off abuses.

flourish. Reports of all-cash wages, lack of overtime compensation, substandard pay for "training periods," and other such practices became commonplace.

Unions in these industries were destroyed as part of an intentional strategy used by employers. This was different from what happened in manufacturing, where unions declined with the off-shoring of production and the shuttering of steel mills and auto plants, especially in the Rust Belt. But in southern California, unions declined even as employment grew in the construction, short-haul trucking, and building services industries.

At the time, many observers, and even some union leaders, blamed immigrant workers for the decline of organized labor's influence. But deunionization *preceded* the influx of foreign-born workers into these industries; it was caused by employers restructuring their businesses to drive down labor costs. What changed was the power balance between labor and capital, with non-union subcontractors as the driving wedge. As the established workforce disintegrated—many left for other, more protected occupations—immigrants hungry for work filled the void.

The transformation began in the construction sector. The national corporate anti-union assault generally associated with the 1980s was foreshadowed by developments in the construction industry during the Vietnam War years. Wage demands from building trades unions escalated in the late 1960s, stimulated by low unemployment. In response, the nation's major construction firms, along with their largest industrial customers, launched a full-scale anti-union offensive in the early 1970s. Non-union "merit shop" contractors began aggressively bidding on jobs, not only in suburban and southern markets where unions were weak, but also in highly unionized areas. They benefited from new construction technologies that facilitated employment of fewer skilled workers, as well as a key National Labor Relations Board decision in 1973 that sanctioned the use of "double-breasted" firms with both union and non-union subsidiaries. As the mid-1970s recession further eroded labor's bargaining power, such firms began to boldly underbid their unionized competitors, and they increasingly put the building trades on the defensive. The unions responded by reopening contracts and "giving back" past gains, paving the way for the wave of concession bargaining that rippled across the nation in industry after industry in the 1980s.

Not surprisingly, that led to a rapid deterioration in wages, working conditions, and benefits in the residential sector. Unscrupulous and illegal practices that had been rare in the union era emerged as competition among contractors spun out of control. There were reports of workers being paid on an all-cash basis, and even accounts of payment in drugs.

Under those conditions, union workers began to leave the residential construction industry, moving into commercial construction or leaving the building trades altogether. To fill the gap, contractors turned to Latino "labor barons" who recruited immigrant workers. Limited English skills and undocumented status now paved the way to even more workplace abuses. In an industry where labor accounts for more than half of total production costs, the potential savings to employers were enormous. And the workforce paid a heavy price.

The deunionization of building services echoed what happened in residential construction. Unionized

janitorial companies were replaced by non-union subcontractors, who brought in low-wage immigrant workers, and the union effectively crumbled. That left thousands more workers open to gloves-off abuses.

Under the subcontractor system, newly hired janitors were often forced to turn over their first month's pay to their supervisor to keep their jobs. Some supervisors reportedly extracted sexual favors from female janitors. Health and safety protections disappeared for janitors working with dangerous chemicals and heavy machinery, and unpaid overtime was common.

In the short-haul trucking industry, deregulation drove union decline, and radically restructured the industry from one with conventional hourly employment to one dependent on independent contractors paid by the truckload. This shift not only undermined the union but also dramatically affected wages, benefits, and working conditions. In the early 1980s, the industry went from a high-wage, extensively unionized industry to a largely non-union one with low wages, long hours, and unsafe conditions: "sweatshops on wheels."

Perhaps most important for current policy debates, the emergence of immigrant labor in these industries happened *after* the decimation of unions had already occurred. Employers, working in concert, turned to subcontractors to circumvent union protections. Faced with these circumstances, native-born workers abandoned the industries and immigrants filled the void. Upper-level managers looked the other way while the "labor barons" and supervisors to whom they had transferred responsibility for labor recruitment and management engaged in a variety of unsavory and often illegal labor practices.

Virtually no one expected immigrant workers to mount an organized response. But starting in the late 1980s, they would surprise everyone by doing precisely that, as we will see later in this report.

The Tenuous Life of Day Laborers

One of the most visible manifestations of the changing U.S. workforce has been the startling growth of day labor, in which largely immigrant job seekers congregate in informal hiring spots and wait for employers to pick them up. Once limited to major cities, day labor pools are now found throughout the United States. Employers are drawn to day labor to avoid the responsibilities of maintaining a stable workforce, and paying unemployment and workers' compensation insurance. For these reasons, day laborers are routinely hired as construction helpers, movers, demolition haulers, painters, cleaners, gardeners, and other manual jobs.

IN MANY RESPECTS, day labor epitomizes the type of flexible labor that employers favor. The construction sector is the leading employer of day laborers, and the growth in precarious work has occurred in tandem with changes in the industry. Over the past three decades, the construction sector has been transformed, with one segment offering stable, high-wage unionized work primarily on government and industrial projects, and a second segment offering low-wage, inconsistent, and unprotected jobs with non-union residential builders. This split has been driven by deunionization drives in residential construction, as well as by increasing cost pressures in this highly competitive industry.

Day labor pools offer a ready supply of casual labor that confers major advantages to employers. Let's look at how that plays out in the Washington, D.C., area, where on a typical day an estimated 8,900 laborers are employed or searching for work as day laborers. These workers gather at 16 hiring sites throughout the region. The overwhelming majority of the workers are from Latin America or Africa. One in four have lived in the U.S. for less than a year, while 30% have lived here more than five years. Nearly seven in ten report that they are usually hired by a contractor or company, the rest primarily by private households. And they are hired most often to work on construction sites, move materials, or do landscaping.

For the overwhelming majority of workers, day labor is the sole source of employment and more than half look for jobs seven days a week. The hourly wage is around $10, but the erratic nature of the jobs reduces

This chapter is based on "Day Labor and Workplace Abuses in the Residential Construction Industry: Conditions in the Washington, DC, Region," by Nik Theodore, Edwin Meléndez, Abel Valenzuela, Jr., and Ana Luz Gonzalez. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

By any measure, day labor has developed into an exploitative and hazardous labor market niche where substandard conditions are reinforced by the willingness of unscrupulous employers to take advantage of workers' pressing need for work.

overall earnings, and a job does not necessarily mean eight hours of pay. Employer violations of labor and employment laws are common, from reneging on pay to denial of water at work sites.

Day laborers also endure a high incidence of workplace injury and exposure to hazards. Nearly one-quarter of day laborers in the Washington, D.C., area have suffered one or more injuries on the job that required medical attention—and they usually are not covered by workers' comp. Lost time from work as a result of workplace injuries further reduces earnings.

By any measure, day labor has developed into an exploitative and hazardous labor market niche where substandard conditions are reinforced by the willingness of unscrupulous employers to take advantage of workers' pressing need for work. But changes are being made to improve the working conditions of day laborers. In some cases, workers have self-organized systems to set wage standards and counter abusive employers. For example, workers at a given day labor site may agree on hourly or daily wage rates. Where worker solidarity is strong, they set their own effective minimum wage for the site (this likely explains why reported hourly wages in the Washington, D.C., area are around $10 to $12). And in other instances, workers share information about abusive employers to try to freeze out the most unscrupulous. But fresh arrivals desperate for work make this an inconsistent system, and violations of basic labor standards persist.

Community organizers and day laborers themselves have stepped in and created formal day labor sites—worker centers—which are de facto hiring halls that coordinate workers' rights activities and create a mechanism to monitor employer practices. They also help workers move into regular, permanent jobs. In their most developed form they are full-service community organizations that advance workers' rights, as well as provide support to families and a means to better integrate them into civic life.

Data for Washington, D.C., show such sites make a difference. Day laborers employed through worker centers reported an extra $68 in weekly income—about $3 an hour—compared to those operating outside the sites.

Still, these efforts to hold employers accountable and help day laborers join the formal economy collide with a national immigration policy that criminalizes undocumented workers—driving them and their employers back into the informal economy where workplace abuses go largely unchecked.

Workplace Violations in Your Home?

Exploitation of workers isn't just the purview of sweatshops and day labor sites—it can affect the hundreds of thousands of workers who clean our homes, care for our elderly and infirm, and watch and nurture our children. In these home-based settings, the gloves of labor and job quality standards were never really put on.

IN-HOME WORKERS—95% are women, mostly black or Latino—cover three categories of jobs: childcare, home health care and domestic work. While "childcare worker" conjures images of teachers in pre-school settings, nearly half of the national workforce is home-based. Similarly, nearly one-third of hands-on or frontline health care workers tend to the elderly or disabled in their own homes (the rest work in hospitals or other institutional settings). And then there are domestic workers and maids, who also account for about one-third of the national cleaning workforce (the rest work in the hotel industry, or hospitals and related facilities).

Clear estimates of the size of the workforce are elusive. The American Community Survey estimates 1.8 million in the labor pool, likely an undercount. And the pool is growing. The U.S. Bureau of Labor Statistics projects personal and home care aide jobs to increase 41% by 2014, and home health aides to increase 56%—the fastest-growing occupation in the economy.

Despite the long history of low wages and bad hours, over the last decade home-based cleaning and caring jobs have generated significant and inspiring innovations to improve job quality. Union organizing drives have helped improve wages and working conditions for some 300,000 new members who provide home health care; worker-owned co-ops have demonstrated that better wages and working conditions are possible; and advocacy campaigns have heightened awareness and led to policy changes.

Still, it's a fragmented, isolated workforce and highly susceptible to abuse. Job duties are subject to constant revision and renegotiation, and there are no pay guarantees. In-home workers earn some of the lowest wages in the economy. In 2005, their median wage was $7.60, about half the national median. Of the three main types of in-home jobs, self-employed childcare workers are the worst off, reporting a median wage of just $5.68 per hour. Very few in-home workers receive health care coverage through work. The pension picture is even grimmer. Paid vacation, holiday time, and sick leave are practically non-existent, and labor protections for these workers are often weak.

This chapter is based on "Cleaning and Caring in the Home: Shared Problems? Shared Possibilities?," by Laura Dresser. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

For in-home workers, the lesson is clear. Their jobs will not improve without increasing collective identity and action, and finding the money (in private or public pockets) to substantially improve wages and benefits.

Domestic workers and maids in private household services also are formally excluded from a number of labor protections, such as federal Occupational Safety and Health Administration regulations, and from the right to organize unions. "Part-time babysitting" services are explicitly exempted from federal minimum wage and overtime laws. Likewise, minimum wage and overtime requirements of the Fair Labor Standards Act exclude some home health workers. Most significant, though, is the informal nature of the jobs—formal labor protections do little for people working off the books. And given the isolated nature of the jobs, it is hard to draw these workers into collective action. The high turnover rate exacerbates organizing problems.

So one of the key strategies for trying to improve conditions among such workers is to breach the walls of isolation and develop a sense of collective identity. Through conversations and connections with others, in-home workers can view their individual situations in the larger context, and strategize more broadly about how improving the conditions of their work could improve service to the client—to whom the workers often feel a sense of personal loyalty. But many clients simply cannot pay more for the services they receive. So the search for money often needs to extend to the public sector, especially when the argument can be made that improving working conditions would also improve the care provided to the clients.

New thinking over the last 20 years about how to organize and improve these jobs has begun to produce meaningful results, including unionization, creation of co-ops, and the launching of legislative and advocacy campaigns. Most innovative has been the creation of the "public authority" model for home health workers, which identifies county or state governments as the institution with which to negotiate wages and working conditions. The roots of this model go back to the 1980s, when the Service Employees International Union developed the legal framework as it sought to organize home health workers in California. As a result, 74,000 home care workers joined SEIU in Los Angeles in 1999, the largest union organizing victory since the 1940s. And the public authority model is being adapted for in-home childcare providers as well.

For in-home workers, the shared lesson is clear. Their jobs will not improve without increasing collective identity and action, and finding the money (in private or public pockets) to substantially improve wages and benefits. And in spite of the isolation of these workers across the country, in-home cleaning and caring workers are building the awareness, the coalitions, and the policy models that can do just that.

The Contenders

PHOTO: James Leynse

Taking Advantage of Immigrant Labor

We live in a world on the move. The global flow of human migration has more than doubled since the 1970s, and more than one in ten people now living in the United States were born in a different country. While that ratio is slightly below earlier peaks in 1890 and 1910, immigration is at an historic—and society-changing—level.

MOST OF THE new immigrants are from Latin America. Many entered the U.S. legally, many others slipped through the borders. And under the current patchwork of outdated and ineffective immigration policies, "illegal" immigrants are inordinately vulnerable to the gloves-off economy, often working low-wage jobs with limited access to housing, health care, and public supports.

New immigrants tend to cluster in informal employment. They serve as expendable labor in poorly regulated sectors that often fall outside labor law, either by definition or by lack of enforcement. And undocumented workers are particularly vulnerable to predatory recruitment in the informal economy for low-paying and often dangerous work in industries such as construction, meat packing and processing, and hotels and restaurants. Not surprisingly, some of these occupations are among the nation's fastest-growing. The meat processing industry is emblematic of the constellation of forces that fosters informal and precarious work. Companies seeking to evade negotiations with unions relocate meat packing and processing to rural areas (where unions historically have been weaker), and then heavily recruit immigrants to staff the factories.

The characteristics of immigrant workers greatly affect where they work and under what conditions. Although Latino immigrants are heterogeneous and have varying educational backgrounds, as a group they have fewer years of formal education than other foreign-born populations. Moreover, recent immigrants from Mexico and Central America (who make up the majority of the Latino foreign-born population) appear to be from rural areas with lower levels of formal education than those from South America.

Foreign-born workers generally earn less than their native-born counterparts. And for immigrants without documents, wages and working conditions may be even worse. One national survey—covering 2,660 day laborers at 264 hiring sites in 139 municipalities in 20 states and Washington, D.C.—found that the overwhelming majority of day laborers were undocumented immigrants from Latin America. As we saw in earlier sections, day labor jobs are particularly susceptible to worker abuses, from reneged-on paydays to dangerous working conditions.

So why do they come? For many, it's an economic decision—a gamble on a better future. Some come with

This chapter is based on "Working on the Margins: Migration and Employment in the United States," by Sarah Gammage. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

Today's immigrant workers are disproportionately subject to punishment, not protection.

nothing and make a perilous journey through Central America and Mexico, boarding freight trains and risking assault and injury to find work in the United States. Others borrow thousands of dollars to pay a "coyote" to help them elude the U.S. Border Patrol, debts that can take years to pay off. To ensure that the debts get paid, some coyotes have also become labor barons running international recruiting networks. Many operate in the open. One coyote, a local mayor in eastern El Salvador, has boasted of finding jobs for more than 200 people in his town, most with Annapolis, MD-area construction firms. The same coyote held the title to houses and land owned by the immigrants' families as a guarantee that the debts would be paid back.

Legally, the onus is on the employer to establish whether a prospective employee has the right to work in the United States. The proof usually comes in the paperwork, so it's not surprising that a vast cottage industry in falsified documents has grown in immigrant neighborhoods. For as little as $100, undocumented workers can buy fake Social Security cards, employment authorization permits, and temporary protective status.

Even guest workers with legal visas to work in the United States often face poor and substandard working conditions, with few guarantees or protections. For example, 82 guest workers from Bolivia, Peru, and the Dominican Republic recently filed a suit against recruiting firms working for Decatur Hotels. The workers paid recruiting firms up to $5,000 for H-2B visas, which allow employers to hire non-native workers because they cannot find native workers to fill their positions. Under immigration law, these H-2B workers cannot work for another company or employer. So they are in essence working in peonage.

All of these workers are vulnerable to abuse. If you owe significant amounts of money to a coyote or labor broker, and your immigration status is at best conditional and at worst undocumented, you will be more likely to endure poor treatment and substandard working conditions. And even workers with proper H-1B or H-2B and related visas are less likely to complain about working conditions because their immigration status hangs on the whim of their employer. Studies have concluded that wages for some H-1B visa holders are significantly less than for their native-born counterparts—despite the fact that these jobs are higher status and higher skilled.

And to whom would they complain anyway? Federal authorities? From 1999 to 2004, the number of criminal cases in which employers knowingly recruited undocumented workers referred for prosecution by the federal government fell from 182 to 4, and the amount of fines collected dropped from $3.7 million to $212,000. At the same time, federal enforcement of regulations to protect workers has faded. An analysis of American sweatshops found that in the 1950s, the Department of Labor's Wage and Hour Division had one inspector for every 46,000 workers. By the 1990s, it had one inspector for every 150,000 workers.

Although documented and undocumented workers are protected by federal labor law, court rulings beginning with the 2002 Supreme Court decision in *Hoffman Plastic Compounds, Inc., v. NLRB* have changed the landscape for immigrant workers' labor and employment rights. Under the Hoffman ruling, undocumented immigrants are no longer eligible for back pay in the case of unfair dismissal, though, at least for the time being, they continue to be covered by other employment protections. Since the *Hoffman* ruling, employers have routinely raised court challenges to other remedies previously available to protect undocumented workers' labor rights. It's one more way that, compared with U.S.-born workers, today's immigrant workers are disproportionately subject to punishment, not protection.

Welfare Reform and Low-Wage Jobs

In 1992, presidential candidate Bill Clinton promised to "end welfare as we know it." As a result, hundreds of thousands of single mothers moved from the welfare rolls into the workforce—but often got stuck in low-wage, dead-end jobs. Some who left welfare were unable to find or sustain work at all. Which raises a key policy question: Was welfare reform only supposed to cut the caseload and move single mothers from public support into low-wage jobs in the gloves-off economy, or was it intended to help single mothers and their children into more rewarding lives?

IF THE LATTER was the intent, there is still ample work to be done.

Under the Clinton Administration and a Republican-majority Congress, the national welfare system changed dramatically from providing ongoing support to unemployed and very low-income parents to a far more restrictive program, providing only temporary assistance and emphasizing rapid employment. Aid to Families with Dependent Children was dropped and replaced by the Temporary Assistance for Needy Families program, under which several million low-income parents, principally single mothers, were pressured to take any available job, often facing the loss of welfare assistance for failure to do so.

At the same time, the economy of the late 1990s had nearly full employment with a high demand for labor, pulling new workers into the labor force. Wages grew in the latter half of the 1990s and on top of this, government policies—such as the expansion of the Earned Income Tax Credit, a tripling of childcare funding, broadened health care coverage for low-income families, and an increased minimum wage—helped shore up low-wage families.

After welfare reform, employment among single mothers grew from 55% in 1993 to 73% in 2000. Employment among never-married mothers—the group most affected by the policy changes—climbed from 43% in 1992 to 66% in 2000. But these jobs were not necessarily the first rungs on the ladder of advancement. Over time, most families leaving assistance remained mired in low-wage or unstable employment or fell out of the labor market altogether. And after peaking in 2000, employment among single mothers has fallen and poverty has grown.

Ultimately, welfare reform increased the supply of low-skilled workers but did little to improve the quality of

This chapter is based on "Single Mothers in the Era of Welfare Reform," by Elizabeth Lower-Basch and Mark H. Greenberg. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

Ultimately, welfare reform increased the supply of low-skilled workers but did little to improve the quality of the jobs, leaving less-educated single mothers stuck in the gloves-off labor market.

the jobs, leaving less-educated single mothers stuck in the gloves-off labor market. With so many workers needing work, employers were under little pressure to raise wages or improve working conditions.

The claim by supporters of welfare reform that taking any work would lead to better jobs and a career has been largely unfulfilled. Single mothers who entered employment during the 1990s started their careers at the bottom of the labor market, in jobs with low wages, unsteady hours, and few benefits. Many have remained there. Less-educated women rarely experience substantial advancement, and public policy interventions to help those in low-wage jobs move up were small and largely ineffective. Longitudinal tracking of former welfare recipients finds that some former recipients did move into better jobs over time, but many did not. One explanation is their heavy concentration in low-wage firms and industries. One recent study found that those who escaped poverty because they received wage increases were more likely to have held professional/technical jobs or administrative/clerical jobs, and less likely to have held a service job.

This is a story of missed opportunities. There is evidence that education and training programs can help low-wage workers obtain specialization credentials, and connect them with job opportunities with higher-quality employers. But such programs were the exception rather than the rule in the years following welfare reform.

While restoring training as a core component of TANF programs would be a valuable first step, far more is needed to support skill acquisition by low-wage workers. TANF currently serves only a fraction of low-income single mothers, so that any programs restricted to welfare recipients would have limited impact on the broader population. A range of policies is needed to expand access to adult education and training, to improve the connections between noncredit and for-credit workforce education at community colleges and other providers, and to make college more affordable and accessible for working adults. These are even more important now that the economy is in a deep recession.

The expansion of work supports (such as access to health care, childcare, and the Earned Income Tax Credit) during the 1990s was not designed to increase the quality of jobs that single mothers could obtain, but to make it possible for them to obtain the necessities of life despite working at low-wage, low-benefit, often irregular jobs. A new set of tools would be needed if the United States were to make a commitment as a society to improving the quality of jobs for low-wage workers. These tools include a level playing field for union organizing; strengthened regulatory mechanisms such as minimum wages, mandated paid leave, improved enforcement of health and safety requirements; leveraging of government spending through contracts and economic development activities; and support and technical assistance to sectoral workforce development initiatives.

The Elusive Step: From Prison to a Job

One group of workers often overlooked when contemplating the low-wage economy are people leaving prison. Americans value hard work and its redemptive power to help transform lives. Unfortunately, the reality for people leaving prison is far different from the nation's promise of economic opportunity for those who work hard and play by the rules. As a result of private screening firms that reap profit from our nation's obsession with crime, the politics of incarceration and punishment, and legitimate concerns for workplace safety, 20% of adult Americans—those with a criminal record—often find themselves stigmatized and shut out of the workforce. To make matters worse, screening firms often provide erroneous information about an applicant's criminal history, unfairly stunting the employment prospects of many.

CRIMINAL BACKGROUND CHECKS can serve a necessary and important function in today's workplace. But the integrity of their use has been undermined. New post-9/11 laws disqualify many job seekers based on their past convictions, and many private employers have adopted blanket policies denying employment to anyone with even a minor criminal record. Given the rush to judgment, policy makers have also failed to confront the poor quality of federal and state criminal records that can prejudice the employment prospects of large numbers of workers. Criminal background checks done wrong unfairly hurt workers' employment prospects.

As a result, African American men, urban youth, and others who already face significant barriers to good-paying jobs find themselves even further disadvantaged in today's labor market. Without viable employment options, they become further marginalized and driven deeper underground—more fodder for the gloves-off economy.

However, thanks to a growing prisoner re-entry movement and new public awareness of the costly failures of the "war on crime," an opportunity exists to create a more effective and fair criminal background check process that also helps reduce recidivism by promoting job options for people with criminal records.

This chapter is based on "The New Challenge of Employment in the Era of Criminal Background Checks," by Maurice Emsellem and Debbie A. Mukamal. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

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Over the past generation, the rate of incarceration has more than quadrupled, rising every year since 1972 to the point that it now exceeds 735 per 100,000 people. This year alone, more than 700,000 people will return home from state or federal prison and another nine million will cycle in and out of local jails. An estimated one in five adults in the U.S. has a criminal record.

The incarceration rate for African American men is significantly higher than for white and Hispanic men, and African Americans with criminal records are disproportionately disadvantaged compared with whites when seeking employment—reflecting both the effects of racial discrimination and employment bias against people with criminal records.

Experts agree that there is a strong relationship between employment and decreases in crime, and that helping former prisoners find and retain jobs contributes to public safety—and the social good. In fact, stable work is an especially strong predictor of low levels of crime. But people coming out of prison rarely are hired for good jobs. Audit studies in Milwaukee and New York City found that a criminal record is associated with a 50% reduction in employment opportunities for whites and 64% for African Americans.

Fear drives some of the hiring decisions. In a survey of more than 3,000 employers in Atlanta, Boston, Detroit, and Los Angeles, only 40% said they would consider hiring a former prisoner. They told surveyors that they believed a criminal record is evidence of untrustworthiness, and that they feared liability if they hired an applicant who later committed a crime on the job.

As a result, employers increasingly use background check services as part of their screening processes. The unfettered use of criminal record checks is exacerbated by the lack of laws protecting job applicants and employees with criminal records from employment discrimination. And few states have effective laws to govern how and under what circumstances an employer may consider an applicant's arrest or conviction record. Given all that, it's no surprise that people with criminal records tend to get hired in the gloves-off labor market.

Still, opportunities exist to promote quality employment for these job seekers. We can build on the contributions of the re-entry movement, including the advocacy efforts of formerly incarcerated people, to forge innovative policies that serve as models for federal, state, and local initiatives. Key to both is to regulate the expanding use of criminal background checks, and to develop programs that will help create quality jobs. Florida recently took inventory of its laws and practices limiting employment of people with criminal records, with an eye toward striking down some of the barriers when they did not affect job performance. Such an approach could go a long way toward reintegrating prisoners.

Similarly, all workers with disqualifying offenses for federal jobs should be provided a meaningful opportunity to establish that they have been rehabilitated and do not pose a safety or security threat. All federal and state occupational and licensing laws should require that only past crimes relating to the responsibilities of the job should be considered. Drug offenses should be closely scrutinized, given their disproportionate impact on people of color. And broad categories, such as "dishonesty, fraud and misrepresentation," should be strongly disfavored.

As for the screening process itself, criminal background checks should be limited to the final stages, after applicants are evaluated on their merits. And federal agencies such as the EEOC—charged with enforcing privacy and antidiscrimination laws—should

target major employers and commercial screening firms that violate federal law. At the same time, public and private sources of information for such background checks should be held liable for errors.

Finally, those in prison should be enrolled in training programs to increase their marketability as workers once they are released. And jobs created by taxpayer-subsidized projects like airports and convention centers should give hiring preferences to individuals with criminal records and other targeted groups of underrepresented workers.

The Defenders

PHOTO: David McNew

The Fight for Immigrant Worker Rights Goes Local

As we've seen, immigrant workers are among the most vulnerable to the excesses of the gloves-off economy for a variety of reasons—not the least of which is undocumented workers' lack of legal status. While unions can help shore up wages and working conditions, many low-wage immigrants work outside unions. But that doesn't mean they can't—and don't—organize. In fact, across the country immigrant workers have been coming together with a sense of shared purpose.

WHY FOCUS ON immigrant workers? Because they are the most vulnerable to exploitation, and labor rights are only as strong as their weakest application. Undocumented immigrants experience some of the most extreme violations of their workplace rights including outright wage theft. More chilling: Workplace deaths among immigrants have been increasing while such deaths overall have declined.

A number of factors feed immigrant workers' vulnerability, including lack of bargaining power, a legal framework in which undocumented workers are distinguished from other workers, and the informal nature of industries that rely on immigrant labor. While most federal and state workplace protections apply to all workers, regardless of immigration status, in practice, undocumented workers encounter serious obstacles to realizing their legal rights in the workplace—not to mention fear of drawing the attention of immigration authorities.

It is within this context that community-based organizations, immigrant worker centers, service providers, legal advocates, and unions have been pushing at the state and local levels for policies that advance the rights of immigrant workers.

A primary focus of these efforts has been to win better enforcement of existing workplace rights—in particular, ensuring that workers get paid the minimum wage and overtime. Government agencies can address the problem by aggressively enforcing these rights on behalf of all workers. But years of weak to non-existent enforcement has meant that the costs of violating workplace laws are lower than the costs of complying. That needs to change, and immigrant worker centers

This chapter is based on "State and Local Policy Models Promoting Immigrant Worker Justice," by Amy Sugimori. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

Years of weak enforcement have meant that the costs of violating workplace laws are lower than the costs of complying. That needs to change, and immigrant worker centers are at the forefront of the fight for better enforcement of labor standards throughout the country.

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Limited English proficiency is another barrier immigrant workers face when they attempt to enforce, or even understand, their rights—and a key reason that immigrant laborers suffer more workplace injuries and deaths than native speakers. Government agencies need to provide information about workplace rights and communicate in languages workers can understand. For example, Maryland has a language access law that requires all state agencies to provide services to individuals with limited English proficiency, and to translate vital documents into any language spoken by 3% of the overall population within a geographic service area.

Immigrant workers also need to know that fighting for their rights is safe. So advocates are working to limit the extent to which innocuous-seeming complaint forms end up screening out immigrants from accessing the legal protections to which they're entitled. Another example: Immigrant worker centers and legal advocates have had real success defending workplace rights through third parties, allowing them to protect vulnerable workers while defending wage standards. Finally, when possible, advocates are building strong firewalls between state and local authorities on the one hand, and federal enforcement of immigration law on the other.

All of these actions to support the rights of immigrant workers are essential given the growing hostility toward immigrants evident in recent state and local legislation. Civil rights and workplace rights must be pursued at the same time.

For example, if labor standards are to be maintained, it is essential that they also cover workers not authorized to work. But the unfortunate trend has been to focus more on punishing immigrant workers than on maintaining basic standards. While some states and localities continue to adopt sensible policies that further the rights of all workers, increased attention has recently focused on initiatives targeting and penalizing immigrants and those who interact with them.

This has a number of effects on workers' rights. For example, it creates a climate of fear in which many workers are pushed further underground. When the perception exists that state and local agencies are participating in immigration enforcement, it becomes much harder to encourage immigrant workers to come forward and report workplace abuses. That's why some cities and towns have adopted policies specifically stating that they will not assist in enforcement of federal immigration law; in the 1980s, San Francisco, among others, declared itself a "sanctuary city."

In some cases, the best way to lift the floor of wages and working conditions is to target entire industries, such as domestic work and day labor, which have low wages and poor working conditions and in which the (largely) immigrant workforce is vulnerable to abuse. Activists have sought to push local solutions to some of these issues, but comprehensive legislation at the federal or state level is often needed to right the wrongs that have developed in historically unregulated industries.

Ultimately, broad approaches that build power for all workers will have the biggest impact on eliminating sweatshop conditions. At the top of the list are comprehensive immigration reform that foregrounds workers' rights, and increased rates of unionization of all workers, immigrant and non-immigrant alike.

Community organizing can also help develop a climate in which it is harder for employers to use differences between workers to divide and exploit them. As increasing numbers of workers find themselves in the gloves-off economy, it is particularly important to identify policies—from local to national—that can ensure these workers are not forever doomed to operate in an abusive underground.

How to Win in the New Economy: Miami Janitors Show the Way

On Sunday, February 12, 2006, *The New York Times Magazine* ran a story about the luxurious 9,000 square-foot official residence in which University of Miami (UM) president Donna Shalala lived in Coral Gables, Florida. Headlined "An Academic Retreat," the article was filled with details about Shalala's Lexus SUV, her dining table for 24, the four beds for her dog, Sweetie, and the 29-foot motorboat up for sale because she just didn't use it enough.

MOST READERS probably chalked it up as another "lifestyles of the rich and famous" story, made somewhat more interesting because of Shalala's status as President Bill Clinton's one-time secretary of Health and Human Services. But for 400 low-wage janitors, landscapers, and cleaners on Shalala's UM campus, the story became a galvanizing moment in their campaign to win better wages, benefits, and union rights.

For nearly a year, the workers had been pressuring their employer, the national cleaning company UNICCO, and UM, which contracted with UNICCO for cleaning services, to raise standards for campus janitors. Now they began expanding their campaign out into the community. In a southern right-to-work state under Republican control, their quest seemed unlikely to succeed. Yet it did—just a little over six months after the Shalala article appeared, the Miami janitors ratified a four-year union contract with solid wages and benefits.

Their victory must be understood as part of an unfolding strategy developed by SEIU's "Justice for Janitors" campaign to rebuild its membership by targeting the corporations who purchase janitorial services from subcontractors, rather than the subcontractors who actually employ the janitors. The same strategy has been extended to other unorganized workers, including subcontracted security guards through SEIU's "Stand for Security" campaign. These campaigns offer lessons on how workers, their unions, and community allies can challenge the reorganization of the economy, rebuild their unions, and turn low-wage jobs into middle-class jobs as part of a broader campaign to win economic and social justice.

But the challenge now is to adapt the strategy for the global economy as major subcontracting firms go global, operating in dozens of countries. In fact, an Australian company recently purchased UNICCO, the

This chapter is based on "Fighting and Winning in the Outsourced Economy: Justice for Janitors at the University of Miami," by Stephen Lerner, Jill Hurst, and Glenn Adler. From *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market*, edited by Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly. 2008, Labor and Employment Relations Association, Champaign, IL.

But it's not enough to organize workers and their workplaces. To organize successfully at the worksite and in communities, immigrants and migrant workers need to be brought out of the shadows of second-class status in the countries where they work.

focus of the Miami janitors' campaign. And nowhere are the trends of consolidation and globalization—and the prospects for global union activity—clearer than in the security industry.

In the past, security officers, like janitors, were direct employees of the building owners, companies, and other institutions they were hired to protect. However, unlike janitors, who worked under the terms of SEIU's master contracts in big northern cities, security officers had little experience of strong unionism. As with janitors, security officers were the targets of massive outsourcing by building owners from the 1980s. They too experienced the race to the bottom, becoming the direct employees of private security companies engaged in cutthroat competition to secure contracts. In addition to the low wages, poor or missing benefits, and insecurity that are the familiar consequences for workers of this competition, officers' daily exposure to physical risks was heightened by poor training and shoddy equipment provided by cost-cutting companies.

These conditions gave rise to distinctive grievances among security officers, who often invited SEIU to organize by pointing out the huge gap in wages and benefits between themselves and the unionized janitors at their worksite. In 2002, SEIU launched the "Stand for Security" campaign, with the goal of organizing security officers citywide in the 10 largest cities in the U.S. Contrasting the wages and benefits of unionized cleaners with those of non-union security officers has been the most powerful evidence that unionizing the service sector can turn low-wage jobs into middle-class jobs. In Los Angeles, the campaign calculated that if security officers had the same wages and benefits as janitors, it would add $50 million to the city's poorest neighborhoods.

But in the course of the campaign, the U.S. industry underwent unprecedented globalization and consolidation. A Swedish company, Securitas, bought two large U.S. firms and overnight became the largest security company in the country. This was part of a global spasm of consolidations that, once the dust settled, saw the top five companies—including Securitas and Wackenhut Corporation, a subsidiary of the London-based Group 4 Securicor (G4S)—employing some 215,000 workers in an industry that used to be dominated by mom-and-pop firms.

So SEIU went global, focusing first on Securitas. Owing in large measure to the solidarity of the Swedish Transport Workers' union, the company signed an agreement in March 2003 allowing workers to organize citywide in multiple U.S. cities when a majority of workers sign cards for the union. Securitas had earlier acquired Pinkerton's, and the agreement converted this once-notorious strike-breaking company into a union shop.

And starting in late 2003, SEIU worked to build a true global campaign focusing on G4S for a world labor rights agreement. In December 2008, the global union federation Union Network International (UNI) signed a global agreement with G4S that all of its 570,000 employees, spread across more than 110 countries, have the right to organize unions in a free and fair atmosphere. At the same time, SEIU and Wackenhut announced an agreement that will allow G4S Wackenhut employees who work in nine American metropolitan areas to choose SEIU as their bargaining representative.

In the face of years of union decline, it may sound far-fetched, but SEIU believes that it is now entering a moment of incredible opportunity for workers and their unions. But it's not enough to organize workers

and their workplaces. To organize successfully at the worksite and in communities, immigrants and migrant workers need to be brought out of the shadows of second-class status in the countries where they work. The campaign needs to take the lead in each country, and globally, to defend the rights of immigrant and migrant workers. It must promote laws that give immigrant and migrant workers full legal rights so they can organize, unite with native-born workers, and help lead this fight.

Even more, the campaign needs a powerful message about the immorality of workers living in poverty amid incredible wealth—now more than ever, with the recent worldwide economic recession. Religious, community, and political leaders need to embrace and help lead the campaign, because it highlights the moral issues of poverty, points a finger at the corporations responsible for it, and offers solutions good for workers and the community as a whole.

Charting New Directions in the Living Wage Movement

While some battles to improve conditions for low-wage workers need to be fought globally, others can be—and have been—fought with great success on the local level.

THE SHARP DECLINE in private sector union density has given rise to a new kind of organizing—the grassroots "living wage" movement, with more than 130 cities and counties passing living wage ordinances in just over 10 years. The impact was initially limited mostly to firms contracting with local government, and enforcement has been uneven, but organizers have begun to broaden their focus to state and federal minimum wage increases and retooling local living wage laws to promote good jobs for broader groups of workers. As with some union campaigns, they have begun to go global.

And it all started in Baltimore.

In 1994, community organizers there decided it would be easier to persuade local elected officials to raise the minimum wage than it would be to lobby Congress. They began pressuring the Baltimore City Council, which eventually adopted the nation's first "traditional" living wage law, setting a higher minimum wage for employers doing business with the city government. The campaign spread to other cities, where activists built grassroots coalitions and raised awareness about the growth of the working poor.

Still, there were limits. Relatively few workers in the local economies were covered, lack of commitment by officials in some cities led to poor enforcement, and some laws let cities grant waivers that circumvented the new wage protections. And the campaigns were geographically self-limiting.

So the living wage movement raised its sights to the state and, ultimately, federal levels. It gained momentum as the value of the federal minimum wage—frozen at $5.15 an hour for 10 years—continued to fall. In 1999, just 10 states and the District of Columbia had minimum wages higher than the federal level. By early 2007, 33 states representing more than 70% of the U.S. population had raised their minimum wages—some more than 50% higher than the federal minimum wage.

Most of these state campaigns focused on state legislatures, but another important tool was the ballot initiative. After successful campaigns in Oregon, Washington, and California, the approach gained momentum in 2004 when activists organized ballot initiatives in Florida and Nevada to raise the minimum wage and—equally important—to provide for annual cost-of-living increases in future years to prevent the minimum wage from eroding again. The Florida and Nevada initiatives were approved by

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Organizers have begun to broaden their focus to state and federal minimum wage increases and retooling local living wage laws to promote good jobs for broader groups of workers.

overwhelming margins, and simultaneously helped engage low-income voters in the political process.

Building on those successes, in 2006, activists began to organize ballot initiative campaigns in eight more states. Just the threat of a possible ballot initiative campaign won minimum wage increases in Michigan and Arkansas. When organizers in those states began to gather signatures for minimum wage initiatives—which had the potential to bring low-income voters to the polls in a year of hotly contested elections—the conservative legislatures reversed their longstanding opposition to the minimum wage and approved substantial wage hikes in order to get the issue off the ballot.

Those successes encouraged the Democrats to make the minimum wage a central plank of the platform on which their congressional candidates ran in 2006. It was effective: Congress approved the first federal minimum wage increase in 10 years, to $7.25 by 2009. Living wage activists continue to push for legislation to restore the federal minimum wage back to its high level, accounting for inflation, during the postwar decades of prosperity, and then have it automatically increase each year as the cost of living rises.

Activists are pushing on other fronts, too, including looking at new ways to expand the coverage of municipal living wage laws. Citywide minimum wage laws have been pursued in cities such as Santa Fe and San Francisco, where the state minimum wage is too low to adequately support low-wage workers. And in 2006, living wage activists and labor allies in Emeryville and Los Angeles, California, successfully enacted the nation's first industry-targeted living wage laws for hotel jobs. In Chicago, grassroots groups have been campaigning for the first living wage law for retail jobs—one of the largest low-wage industries—and in Washington, D.C., they pushed through a wage law for the city's security guard industry. Elsewhere, activists have pushed to expand living wage laws to any business receiving a municipal tax break.

But laws are meaningless without enforcement, and living wage activists are joining with other organizers to fight for better enforcement of these basic protections. Worker centers and immigrant rights organizations are leading this movement to publicize the pervasive wage-related violations in dozens of major industries, and in some states activists are pushing for local wage theft laws to increase penalties for employers.

In another approach, advocates for immigrant restaurant workers in New York are urging the city council to adopt a "responsible licensing" policy that would take into account a restaurant's record of wage violations in granting operating-license renewals.

But activists aren't focusing just on wages. Using "community benefits agreements" (CBAs), coalitions negotiate with developers to ensure that new projects mesh with community needs for good jobs, affordable housing, and livable communities. CBAs typically require that some or all of the resulting jobs be paid a living wage and that local residents receive priority for them. They may also include requirements that the development adhere to certain environmental standards, be built with union labor, or include childcare facilities and public park space.

There has been increasing interest in these approaches among international activists, and living wage campaigns have taken root in Great Britain and Canada. Unions in India have even been exploring the idea of coordinated wage standards for garment workers across Asia. If workers in Asian countries could establish similar wage standards, they could begin to eliminate the whipsawing competition among nations that has helped keep wages low.

Key to all of these successes has been local grassroots organizing—showing that neighborhood and regional activism can have far-reaching success, and deep impacts on the lives of the working poor.

When Business is Not United: Lessons from Successful Workplace Legislation

One element that has been consistent in efforts to legislate improved working conditions has been the reaction of business and industry—they are nearly always against it. But their opposition has not been unified, and the fissures offer pressure points for those seeking to improve the lives of workers in the gloves-off economy.

DESPITE THE VARIED pressures toward deregulation of labor markets, over the past quarter century significant federal workplace legislation has been passed. Although support for workplace legislation among business groups is rare, segments of the business community have had reason to move from a position of strict opposition to one of negotiation. In these cases, and in the presence of a broad coalition of legislative advocates, Congress has been able to pass watershed legislation such as the WARN Act of 1988 (which cushions workers during plant closings), and the Family and Medical Leave Act (FMLA) of 1993.

But there have been failures as well, most strikingly in labor law reform. In fact, for more than 30 years, every legislative effort to reform federal labor laws—including those that would curtail management's ability to hire permanent replacement workers during a strike or change the methods used in union recognition elections—has met defeat.

The key difference: The opposition of business interests has been unwavering over laws governing union-management relations, but less so in other areas. Small business remained for the most part implacably opposed to legislation like WARN and FMLA. However, other segments of the business community began to negotiate about the legislation rather than simply trying to thwart its passage. The divergence arises in part from the underlying motivations driving different segments of the business community. That fissure is significant for mapping future legislative battles.

The strong and consistent opposition toward workplace regulation from the small-business community reflects both practical and ideological concerns. From a practical perspective, small businesses tend to have a higher proportion of their costs related to labor, employ a higher proportion of low-wage workers, and generally operate in more competitive product markets. Those factors mean that workplace regulations can significantly affect their costs and profitability. Ideologically, many of the positions that small-business lobbies like the National Federation of Independent Business stake out are based on the premise that

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Although support for workplace legislation among business groups is rare, segments of the business community have sometimes had reason to move from a position of strict opposition to one of negotiation.

attempts to regulate one aspect of the workplace inevitably lead to wider and more onerous regulation. This ideological orientation—accompanied by a political ethos that venerates small businesses—promoted a highly antagonistic response to virtually all major workplace regulations introduced over the last 30 years.

Big business, on the other hand, sometimes moved away from the reactive to the practical. For example, during the years between the initial proposal of FMLA in 1984 and its passage in 1993, big business representatives seemed to have decided to negotiate for a more limited medical leave policy rather than simply trying to block it—which seemed unlikely to succeed.

Part of the explanation lies with the coalition-driven nature of such legislative battles. With the growing diversity of the labor force, the increase in dual-income and single-parent families, and the resulting impact of household structure on family-work balance, many recent workplace policies have engaged groups beyond the labor movement. Antidiscrimination policies, for example, have engaged political coalition partners from the NAACP, the Urban League, NOW, and groups representing the disabled.

And this is where reform stands its best chance of success.

A legislative strategy to address gloves-off business strategies must focus on building a broad constituency to overcome what are likely to be formidable political obstacles. One recent example is the passage of an increase in the federal minimum wage in 2007 after nearly a decade-long battle. Along with the change in political control of Congress, passage was spurred on by the adoption of higher, state-level minimum wage policies in more than 30 states.

Several prospective workplace problems offer similar political opportunities, such as laws asserting employer liability for subcontractors, and laws curbing worker misclassification as a means to escape regulatory and tax policies. Passage of federal legislation is promising, since many states have recently introduced legislation regarding misclassification and related problems while others have increased enforcement of existing statutes. The interest of state and local governments (seeking lost tax revenue), along with community, immigrant, and worker rights groups, creates the basis for a broader coalition to support such initiatives.

A progressive workplace agenda must also seek better ways to enforce existing laws given the difficult politics of passing new workplace legislation. Focusing on enforcement and implementation of existing minimum wage, overtime, health and safety, and antidiscrimination laws affords opportunities to address workplace problems immediately. Using scarce political resources to create innovative tools and approaches for enforcement can produce more significant results in a shorter amount of time than focusing solely on new legislation.

Finally, the likelihood of significant labor law reform faces many of the same political obstacles as past efforts, even in a Democratic Congress and with a Democrat in the White House. But battles can be won, and significant gains can be made in improving the lives of workers most vulnerable to the effects of the gloves-off economy. The path won't be easy, but the road maps are there. Organization. Broad coalition-building based on real recognition of mutual interests. Community—and worker—education. These will be the key ingredients of future legislative victories.

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