

NELP

**National
Employment
Law
Project**

Drafting Day Labor Legislation: A Guide for Organizers and Advocates

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About This Report

This report was prepared by the National Employment Law Project (NELP). NELP is a nonprofit policy advocacy and legal organization based in New York City. NELP has advocated on behalf of immigrant, low-wage and unemployed workers for over 30 years, and is particularly concerned with assisting these workers in overcoming barriers to employment and government systems of support. For further information about NELP, visit our website at <http://www.nelp.org>.

NELP's Immigrant and Nonstandard Worker Projects. NELP's Immigrant Worker Project seeks to protect and promote the employment rights of immigrant workers, including the five million undocumented workers who labor in the lowest paid, highest risk jobs in the U.S. economy. NELP's Nonstandard Worker Project seeks to ensure that all workers regardless of what their employer calls them – temp, independent contractor, part-timer – receive the full benefits of labor and employment laws. Both projects work directly in support of worker organizers and advocates across the country, representing day laborers, domestic workers, grocery, garment and agricultural workers, to name a few. NELP provides technical assistance, educational materials and trainings, legal and policy analysis, while also serving as a liaison between local and national groups.

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Introduction:

While the majority of state and federal employment and labor laws apply to day laborers, the short term nature of the job and the multiple entities involved in the employment relationship call for legislative reforms addressing the specific needs of day laborers. This Guide provides policy advocates and day labor organizers with a step-by-step guide to drafting day labor legislation. Each step discusses important principles and the specific elements to advocate for in protective day labor legislation. The Guide provides organizers and advocates with model language to propose to policy makers for each of the elements. The appendix offers a chart surveying existing state laws protecting day laborers and regulating day labor agencies.

Day labor is not a new phenomenon in the United States. Historically, employers have relied on day laborers to perform manual labor such as construction work, landscaping and domestic services. More recently, the downturn in the economy has resulted in a growing number of workers turning to day labor as their only viable employment option. Whether seeking work informally on urban and suburban corners or through temporary labor agencies, day laborers continue to make significant contributions to the economy.

Day laborers obtain employment through various means. Some take part in the long tradition of street corner day labor where workers negotiate with employers at designated “shape-up” sites. A growing number of employees are obtaining day labor jobs through temporary employment agencies. These temporary employment agencies dispatch day laborers and other workers to third party employers. Temporary agencies operate by collecting fees from both the third party employer and the day laborer.

Whether the day laborer obtains work through an informal gathering site or a temporary employment agency, the resulting working conditions are characterized by short-term employment, low-wages, frequent non-payment of or illegal deductions from wages, and occupational health and safety hazards. The short and intermittent nature of day labor and the multiple entities often involved in day labor employment relationships pose significant barriers to enforcement of existing workplace laws.

Despite providing a flexible pool of workers to the benefit of employers, day laborers are commonly subject to the most egregious workplace exploitation. Day laborers are often assigned to the dangerous tasks shunned by workers with more options. These workers are disproportionately exposed to violations of occupational health and safety laws, as they are less likely to receive necessary safety equipment and training. Exacerbating these problems is the fact that many day laborers have no resources for healthcare, increasing the likelihood that these workers will not seek medical attention.

Studies and anecdotal evidence also show pervasive wage and hour violations committed by day labor employers and temporary labor agencies. Day labor employers may delay payments of promised wages until the completion of a job. Upon completion, day laborers are often left with less than promised compensation or a void check. Other forms of wage abuses include making excessive or illegal deductions from worker’s pay. Unscrupulous employers will charge laborers for check cashing, transportation, meals, and safety equipment. Lack of access to social and legal services leave few options for day laborers seeking to recover unpaid wages.

NELP supports legislative reforms that recognize the particular vulnerability of day laborers and seeks to proactively assert and protect the workplace rights of day laborers. This guide is meant to assist organizers and advocates of day laborers to promote legislation that will help remedy abuses experienced by this vulnerable sector of the workforce.

For additional day labor advocacy materials including, legal resources, academic studies, and legislative resources, visit <http://www.nelp.org/nwp/initiatives/day/index.cfm>.

Step 1: Provide a Clear and Broad definition of the Employer –Employee Relationship.

The first step towards effective advocacy is identifying the entity responsible for remedying the wrong. Thus, a clear definition of the “employer-employee” relationship is a cornerstone of protective legislation. Regardless of whether the day labor obtained work through a temporary agency or by negotiating directly with an employer, all entities benefiting from the day laborer’s work should be held accountable as “employers.” For day laborers working through a temporary agency it is particularly important to define the third-party user or on-site employer as an “employer.” This enables day laborers to hold the on-site employer accountable when a temporary agency fails to meet its legal obligations. In sub-contracted work situations, a definition of “employer” should include all entities that benefit from, or permit the work of the day labor. This enables day laborers to hold general contractors accountable when sub-contractors renege on their legal obligations.

Model language:

DAY LABOR EMPLOYER –For purposes of this Act, the term “day laborer employer” refers to any person or entity that directly or indirectly, through an agent, day labor service agency or any other entity acting in the employer’s interest, engages, suffers or permits a day laborer to work or otherwise exercises control over the wages, hours or working conditions of a day laborer. The term includes day labor service agencies and third party employers as defined in this act.

DAY LABOR SERVICE AGENCY—The term “day labor service agency” means any person or entity that recruits, dispatches or otherwise facilitates the employment of day laborers by a third party employer. Day labor service agencies are day labor employers and share all legal obligations placed on day labor employers by this Act. Not-for-profit organizations are not day labor service agencies.

THIRD PARTY EMPLOYER--The term “third party employer” refers to a person or entity that suffers or permits a day laborer to work by contracting for personal services with a day labor service agency. Third party employers are day labor employers and share all legal obligations placed on day labor employers.

STEP 2: Define Day Labor

Day labor can encompass workers referred through a temporary agency, construction workers, clerical workers or someone who finds work through a shape-up site. It is important to define the scope of the workforce to which the legislation will apply. The most expansive legislation would protect day laborers in all industries regardless of how they obtained the work. In crafting definitions, the options are to include all temporary workers regardless of the type of work they do, or to limit the scope of the legislation to day laborers referred by a temporary agency. The model language below offers the most expansive definition of day labor. The appendix offers examples of how different states have defined day labor.

Model language:

DAY LABOR—The term “day labor” means labor or employment that is occasional or irregular, in which an individual is employed for not longer than the period of time required to complete the assignment for which the individual was hired and in which wage payments are made directly or indirectly to the day laborer by the day labor service agency or by the third party employer, for work undertaken by the day laborer. Day labor does not include labor or employment of a professional or clerical nature.

STEP 3: Expand and Protect the Right to be Paid.

Day laborers are commonly denied the most basic right to be paid for work performed. Due to the intermittent nature of the work and low-wages, full payment rarely provides a living wage. Thus, expanding and protecting the right to be paid should be a central piece of day labor legislation. Legislation should clearly regulate fees and deductions for meals, equipment and tools, transportation, check cashing and time and manner of payments.

A. Provide for strong wage and hour rights.*1. Wages in parity with full time permanent employees performing similar work.*

Ensure that day laborers are paid at a rate no less than that of a full time permanent employee performing substantially equivalent work. In a union regulated industry, this means a day laborer must earn at least the prevailing wage or the union wage rate paid to full time permanent employees performing the same work.

Model language:

WAGE PARITY—A day laborer shall be paid not less than the prevailing wage rate paid to permanent employees performing substantially equivalent work, with due consideration given to seniority, experience and skills.

2. Overtime.

The use of day labor allows employers to adjust work schedules to meet project deadlines and seasonal needs. Although day laborers are often required to work daily and weekly overtime, employers often pay a “daily rate” that makes it difficult to account for overtime pay. Proposed legislation should clearly provide for daily and weekly overtime rates.

Daily overtime.

Day laborers should be paid one and a half times the hourly rate for each hour over eight hours in one day and for the first eight hours working on the seventh consecutive day of work in a workweek. Day laborers should be paid double the hourly rate for each hour over 12 hours in one day and for all hours over eight hours on the seventh consecutive day of work in a workweek.

Model language:**DAILY OVERTIME--**

(a) Work beyond 8 hours in one day—A day laborer shall be compensated at a rate of one and a half times the regular rate of pay for each hour worked beyond 8 hours up to and including the 12 hours in a workday, and for the first 8 hours worked on the seventh consecutive day of work.

(b) Work beyond 12 hours in one day—Day laborers shall be compensated at a rate of double the regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of 8 hours on the seventh consecutive day of work in a workweek.

WEEKLY OVERTIME—A day laborer shall be compensated at a rate of one and one-half times the regular rate of pay for each hour worked beyond 40 in a workweek.

3. *Minimum daily pay.*

A day laborer must be compensated for every hour worked, but must be compensated for at least 4 hours of work at the regular rate of pay for each day worked.

Model language:

MINIMUM DAILY PAY—A day laborer shall be compensated for no less than 4 hours of work for each day worked.

4. *Call-in pay and waiting time.*

If a day labor employer asks a day laborer to report to work and the employer does not appear, the day laborer must be compensated for 4 hours of work at the regular rate of pay. If an employer is late, the day laborer must be compensated at the regular rate of pay for the time spent waiting for the employer.

Model language:

CALL IN PAY—If a day labor employer fails to appear at a designated time and location after requesting a day laborer's services, the day laborer shall be compensated for 4 hours of work at the regular rate of pay.

5. *No reductions in promised wage rates.*

If a day labor employer and a day laborer agree on a wage rate, the employer may not reduce that rate of pay during the agreed term of employment.

Model language:

PROHIBITION ON WAGE REDUCTION—Where a day labor employer and a day laborer have agreed upon a wage rate, the day labor employer shall not reduce the negotiated salary during the agreed term of employment.

7. *Provide for paid meal times and breaks.*

A paid 15-minute break must be provided for each 4-hour period of uninterrupted work. A 30-minute paid meal break must be provided for every shift longer than 6 hours.

Model language:

BREAKS AND MEALS – For each four-hour period of uninterrupted day labor, a 15 minute compensated break shall be provided. For periods of uninterrupted day labor lasting longer than 6 hours, a 30-minute compensated lunch period shall be provided in addition to break time.

8. *Provide that travel time is compensable work time.*

Day laborers must be compensated for travel that is an integral part of the job. In addition, day laborers must be paid at the regular rate of pay for time spent traveling from a day labor site, day labor hiring site or day labor service agency to the work site.

Model language:

TRANSPORTATION TIME—Time spent traveling for the day labor employer’s benefit is compensable at the regular rate of pay. Such travel time includes but is not limited to, travel to and from the work site and day labor service agency, and travel between work sites.

B. Regulate and limit fees and deductions from wages.

1. *Limit fees for meals.*

Proposed legislation should prohibit employers from charging day laborers more than the actual costs of a meal. Purchase of a meal should not be made a condition of employment.

Model language:

MEALS-- No day laborer employer shall charge a day laborer more than the actual cost of providing a meal. In no case shall a deduction for meals be permitted where;

- (a) The day laborer does not consume the meal;
 - (b) The day laborer has no realistic opportunity to obtain meals by other means due to the location of the job site and the time permitted for the meal; or
 - (c) The purchase of a meal is a condition of employment.
-

2. *Impose a duty to provide equipment required for the job at no cost to the day laborer.*

Day labor agencies often deduct fees from wages or otherwise charge a day laborer for equipment required for the job. Proposed legislation should affirmatively state the day labor employer's obligation to provide, at no cost to the worker, equipment required to perform the job. If a day laborer "willfully" fails to return equipment, a day labor employer may charge the market value of the item. Day labor agencies and employers should be limited to charging the market value of all optional equipment.

Model language:

SAFETY & PROTECTIVE EQUIPMENT-- The day labor employer shall provide, at no cost to each day laborer, any special attire, accessories, tools, safety equipment or other items required by law or custom to perform the work assignment. For any other equipment, clothing, accessories, or any other items the day labor service agency or day laborer employer makes available for purchase, the day laborer shall not be charged more than the actual market value for the item.

In the event that the day laborer willfully fails to return equipment provided for a job, the day laborer employer is not precluded from charging the day laborer the market value of items temporarily provided to the day laborer.

3. *Prohibit or limit transportation fees.*

Day labor agencies should be prohibited from charging workers for transportation to and from the work site. In the alternative, day labor agencies should be restricted to charging workers no more than a "reasonable amount" for transportation. Some laws prohibit day labor agencies from charging more than the cost of public transportation in the area.

Model language: (*Complete prohibition of transportation fees*)

TRANSPORTATION FEES--: Day labor employers are prohibited from charging a day laborer for the transportation to and from the worksite or between worksites.

Model language: (*Limitation of transportation fees to actual cost*)

TRANSPORTATION FEES--Day labor employers shall charge no more than a reasonable amount to transport a worker to or from the designated worksite or between worksites, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area.

4. *Ban check-cashing fees.*

Day labor agencies should be prohibited from charging a fee for cashing a paycheck. Arizona, Florida, Illinois and Texas have banned check-cashing fees.

Model language:

CHECK CASHING FEES--Day labor employers shall not directly or indirectly charge a day laborer for cashing a paycheck.

5. *Require written authorization for fees and wage deductions.*

Deductions from wages should only be permitted with the express written authorization of the day laborer.

Model language:

WRITTEN AUTHORIZATION FOR FEES AND WAGE DEDUCTIONS--A day labor employer shall not charge a day laborer and fees or make deductions from wages without the express written authorization of the day laborer. Authorization must specify the amount and purpose of the fee or wage deduction. Authorization must be obtained in a language understood by the day laborer.

6. *Prohibit any deductions that bring wages below the minimum wage.*

Arizona, Florida, and Georgia prohibit deductions that bring a day laborer's wages below the minimum wage.

Model language:

PROHIBITION ON DEDUCTIONS--A day labor employer may not make deductions that bring a day laborer's wages below the federal or state minimum wage.

7. *Clearly delineate a payment schedule and impose sanctions for late payments.*

Daily Payments. If employment lasts less than one week, a day labor employer must comply with a day laborer's request to be paid at the end of each working day.

Model language:

DAILY WAGES – Where day labor employment lasts less than one week, wages shall be paid at the end of each workday.

Weekly and bi-monthly payments. At the request of the day laborer, a day labor employer must make weekly or semi-monthly payments. A day labor employer that makes daily payments must provide written notice to day laborers of their right to request weekly or semi-monthly checks. Day labor employers can provide this notice by posting the information in the location where day laborers receive their wages.

Model language:

PAYMENT SCHEDULES-- A day labor employer must comply with a day laborer's request for weekly or bi-monthly wages. The wages shall be paid in a single check representing the wages earned during the period for which wage payments are to be made. A day labor employer that makes daily wage payments shall provide written notification to all day laborers of the right to request weekly or semi-monthly checks. The day labor employer may provide such notice by conspicuously posting the notice at the location where the wages are received by the day laborers.

8. Payment Upon Termination.

All wages should be paid within 72 hours of termination. Upon termination a day laborer can choose to be paid either at the work site, the day labor site or the day labor service agency.

Model language:

PAYMENT ON TERMINATION – All wages must be paid to a day laborer within 72 hours of termination.

PLACE OF PAYMENT ON TERMINATION –Upon termination, a day laborer may elect to be paid either at the work site, the day labor site or the day labor service agency. A day laborer may also elect that the check be sent by first class mail. A day labor employer must comply with this specification.

9. Ensure that day laborers are paid with valid checks that can be cashed at a bank or financial institution of their choosing.

Day labor agencies have schemes to charge day laborers for cashing their paychecks. Some agencies issue checks that can only be cashed for a fee at specific machines operated by the day labor agency. Many states have passed laws that prohibit such check cashing fees and thus ensure that day laborers receive the full wages they are owed.

Model language:

NEGOTIABLE TENDER – All wage payments to day laborers shall be in the form of immediately negotiable tender payable in cash, on demand at a financial institution, and without discount.

PAYMENT BY CHECK – Where a day labor employer pays day laborers by check, that check shall be immediately redeemable.

STEP 4: Strictly Regulate Day Labor Service Agencies.

Six states (Arizona, Florida, Illinois, Georgia, New York, and Texas) have passed legislation regulating day labor service agencies. Day labor service agencies and day labor employers commonly maintain questionable business practices such as charging inflated rates for equipment and failing to provide itemized wage statements. Without clear regulation and licensing, day labor agencies and employers are allowed to create their own rules of operation without concern for day laborers.

A. Require day labor employers and day labor service agencies to register with the State.

Licensing and registration can help ensure proper regulation of day labor agencies and day labor employers. Day labor service agencies and day labor employers must register with the Secretary of Labor and pay a registration fee.

Model Language:

REGISTRATION—

(a) IN GENERAL- Day labor service agencies shall register with the Secretary in accordance with rules adopted by the Secretary, and with State departments of labor which require such registration.

(b) FEES- The Secretary may assess each day labor service agency a registration fee not exceeding \$250.

B. Impose notice requirements for day labor service agencies.

1. Require day labor service agencies to post in a public access area:
 - the name and address of third party employers and the address of the work site, the type of job opportunities available,
 - the wage rate for each job,
 - whether transportation is available, and whether the work site is accessible by public transportation, and the approximate commute time to the work site.

Model language:

NOTICE REQUIREMENTS—

(a) A day labor service agency shall, in the public reception area, post a list of all employers that are seeking day laborers, which shall include the following:

(1) The name and address of the employer and the address of the work site if different from that of the employer.

(2) The type of job opportunities for day laborers.

(3) The amount of wages to be paid per hour for the work.

(4) Whether transportation is available, whether the work site is accessible by public or personal transportation, and the approximate commute time to the work site.

2. For each job opportunity posted, a day labor employer must provide, in writing, to each day laborer:

- (1) a detailed description of the work to be performed by the day laborer, including any requirements for special clothing or equipment,
- (2) the exact address of the work site and a telephone number at which a day laborer can be reached for emergency purposes. If the site is in a rural area, the notice must also provide directions to the work site,
- (3) the beginning and end time for the job,
- (4) the overtime rate of pay, and
- (5) information about whether a meal is provided but the day labor service agency, day labor employer or third party employer and the cost of the meal, if any.

Model language:

JOB NOTICES--A day labor employer shall, for each job opportunity posted, provide a detailed written description of the work to each day laborer, which shall include the following:

- (a) A detailed description of the work to be performed by the day laborer, including any requirements for special attire, accessories, or safety equipment.
- (b) The exact address of the work site and a telephone number at which a day laborer can be reached for emergency purposes. If the location is in a rural area, the notice must also contain directions to the work site.
- (c) The time of day the work will begin, the time of day the work will end, and the overtime rate of pay.
- (d) Whether a meal is provided, either by the day labor service agency, day labor employer or the third party employer, and the cost of the meal, if any.
- (e) A phone number and business address for the third party employer requesting the day laborer through the day labor service agency.

3. Ensure that all notices must be provided in English and any other language that is generally used in the locale of the day labor service agency or worksite.

Model language:

LANGUAGE ACCESS REQUIREMENTS-- The notices required to be posted under this section shall be written in English and any other language that is generally used in the locale of the day labor service agency.

C. Deter processing delays.

If a day labor service agency spends more than 30 minutes processing a work assignment, the day labor service agency must pay the day laborer for any additional waiting time at the regular rate of pay.

Model language:

AGENCY PROCESSING DELAY-

(1) IN GENERAL- If a day labor service agency expends more than 30 minutes in processing a day laborer's work assignment, the day labor service agency shall pay the day laborer for any additional waiting time at the regular rate of pay.

(2) LIMITATION- The time spent in transit to or from the designated work site or to or from the day labor service agency shall not be included in computing processing time.

D. Impose requirements for public access areas.

Day labor service agencies must provide adequate seating, restrooms and water in the public access area of the agency. The public access area is where notices required by this Act must be posted.

Model language:

PUBLIC ACCESS AREA- Each day labor service agency shall provide adequate seating in the public access area of the agency. Employment and wage notices required by this Act shall be posted in the public access area and provided in hand to day laborers. The public access area shall allow for access to restrooms and water.

E. Prohibit restrictions on accepting or offering permanent work.

Prohibit day labor service agencies from placing restrictions on a day laborer's right to accept permanent work or an employer's right to offer permanent employment to a day laborer.

Model language:

WORK RESTRICTION- No day labor service agency shall restrict the right of a day laborer to accept a permanent position with a third party employer to whom the day laborer has been referred for temporary work or restrict the right of such third party employer to offer such employment to a day laborer. This subsection shall be understood to outlaw the charging of fines or additional amounts for making or accepting an offer of employment.

F. Require itemized wage statements.

- 1. Provide for itemized wage statements with each payment.*

At the time of payment, a day labor employer must give a day laborer an itemized statement listing any deductions, the hours worked and the wage rate for that pay period.

Model language:

ITEMIZED WAGE STATEMENTS--At the time of the payment of wages, a day labor employer shall provide each day laborer with an itemized statement showing in detail each deduction made from the wages.

2. Provide annual statements.

Require day labor employers to provide each day laborer with an annual earnings summary no later than February 1st of the following year. A day labor service agency must notify day laborers of the availability of an annual earnings summary by either giving notice with each wage statement or by posting a notice in the public access area of the day labor service agency.

Model language:

ANNUAL STATEMENT- A day labor employer shall provide each day laborer an annual earnings summary within a reasonable time after the preceding calendar year, but no later than February 1. A day labor employer shall, at the time of each wage payment, give notice to day laborers of the availability of the annual earnings summary or post such a notice in a conspicuous place in the public access areas.

G. Overpayment.

Ensure that day labor employers do not charge day laborers fees for overpayment.

Model language:

OVERPAYMENT- A day laborer shall not be charged fees for overpayment to them by the day labor employer.

H. Prohibit strike breaking.

A day labor employer may not send a day laborer to any place where a strike, lockout or other labor trouble exists.

Model language:

LABOR DISPUTES—A day labor **employer** shall not send any day laborer to a workplace where a strike, lockout, or other labor trouble exists.

STEP 5: Impose Strict Health and Safety Obligations on Day Labor Employers.

Day laborers are frequently assigned to hazardous work shunned by more permanent employees. Since day laborers are only on the job for short periods of time, employers rarely invest in proper health and safety equipment or training. Furthermore, the involvement of multiple employers and day labor service agencies can make it difficult to determine which entity is responsible for abating workplace hazards. This has resulted in disproportionately high injury and fatality rates amongst day laborers. Proposed legislation should place affirmative duties on day labor service agencies and employers to provide a safe and healthy work environment and ensure that injured day laborers receive proper compensation.

A. Create a duty to provide a safe and healthful working environment for day laborers.

Model language:

HEALTH AND SAFETY--Every day labor employer shall furnish employment and a place of employment that is safe and healthful for day laborers.

B. Clearly establish parties accountable for health and safety obligations.

On sites with multiple employers, the following employers should be held responsible for exposing day laborers to a health hazard:

- the employer whose day laborers were exposed to the hazard,
- the employer who actually created ht hazard
- the employer who was responsible by contract or practice for the safe and healthful conditions of the worksite, and
- the employer who had the responsibility for actually correcting the hazard.

Model language:

HEALTH AND SAFETY – MULTIPLE EMPLOYER WORKSITES--On multi-employer worksites, both construction and non-construction, citations may be issued to the following categories of employers when there is evidence that a day laborer was exposed to a hazard in violation of any health and safety requirement of state and federal law:

- (1) The employer whose day laborers were exposed to the hazard (the exposing employer).
- (2) The employer who actually created the hazard (the creating employer).
- (3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer).
- (4) The employer who had the responsibility for actually correcting the hazard (the correcting employer).
- (5) The employer who had the responsibility for actually correcting the hazard (the correcting employer).

The employers listed in paragraphs (2) to (4), inclusive, of this subdivision may be cited regardless of whether their own day laborers were exposed to the hazard.

C. Protect workers' rights to refuse unsafe work.

Clearly establish that a day labor employer may not require or permit a day laborer to work in a place of employment that is not safe or healthful. Prohibit day labor service agencies and day labor employers from retaliating against day laborers who refuse to perform hazardous work due to health and safety concerns.

Model language:

HEALTH AND SAFETY—DISCRIMINATION PROTECTIONS--No day labor employer shall require, or permit any day laborer to go or be in any employment or place of employment that is not safe and healthful. A day labor employer shall not discriminate or take any retaliatory action against a day laborer that refuses to perform hazardous work due to health and safety concerns.

D. Clearly establish that a day labor employer must adopt and use adequate methods to render the work and worksite safe.

Model language:

IN GENERAL—A day labor employer shall:

- (1) Provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe at no cost to the day laborer;
- (2) Adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and
- (3) Do every other thing reasonably necessary to protect the life, safety and health of day laborers.

E. Require notification and consent for hazardous work.

A day labor employer should be required to inform a day laborer of possible exposure to hazardous chemicals, unsafe working conditions and work that requires the use of safety and protective equipment. The day labor employer must obtain the written consent of any day laborer who will be exposed to hazardous materials. The written consent must include:

- a description of the materials to which the day laborer will be exposed;
- the possible health and safety consequences of such exposure; and
- any specialized training required to safely handle the hazardous materials.

A day labor employer may not retaliate against a day laborer who refuses to consent to hazardous work due to health and safety concerns.

Model language:

NOTIFICATION, CONSENT & DISCLOSURE – The day labor service agency or any employer or agent of the employer must disclose the exposure to hazardous chemicals or any other unsafe materials or working condition that require the use of safety and protective equipment. Day labor employers are required to obtain the informed written consent of any day laborer who will be exposed to hazardous materials. Written consent must include: a description of the hazardous materials to which the day laborer will be exposed, the possible health and safety consequences of exposure to the hazardous materials and any specialized certification or training required to safely handle the hazardous materials. No day labor employer shall discriminate or take any retaliatory action against a day laborer who refuses to perform hazardous work due to health and safety concerns.

F. Ensure that day laborers injured on the job have access to medical treatment.

If a day laborer is injured while working, unless workers' compensation benefits are available to the day laborer, the day labor service agency and day labor employer are responsible for the health care costs associated with the injury and for all damages flowing from the injury.

Model language:

HEALTH CARE EXPENSES- If a day laborer is injured while working, the day labor employer shall be responsible to pay for the health care costs associated with the injury and all compensable damages flowing from that injury unless coverage for the accident is available under the applicable state worker's compensation law. The statute of limitations shall be otherwise tolled during the period in which the day laborer seeks coverage under the applicable state workers' compensation law.

G. Workers' Compensation Benefits.

All day labor employers must provide full workers' compensation coverage for their day laborers, regardless of immigration status for work related injuries.

Model language:

WORKERS' COMPENSATION-All day employers are required to provide workers' compensation benefits to their day laborer employees, whether lawfully or unlawfully employed, for injuries arising out of and in the course of employment.

H. Require notification of the availability of workers' compensation benefits.

Day labor employers must provide day laborers with the following information on the first day of employment a statement of the day laborer's right to workers' compensation benefits and• the day labor employer's workers' compensation insurance carrier name and number.

This notice should be provided in English and any other language that is generally used by the workforce employed by the day labor employer.

Model language:

NOTIFICATION OF WORKERS' COMPENSATION BENEFITS-Day labor employers shall provide all day laborers written notice of the following information on the first day of employment: a statement of the day laborer's right to workers' compensation benefits and the day labor employer's workers' compensation insurance carrier name and number. This notice shall be provided in English and any other language that is generally used by the workforce employed by the day labor employer.

STEP 6: Regulate Transportation

- See page 12 for suggestions regarding transportation fees.

A. Require transportation back to the point of hire.

Unless the day laborer requests otherwise, the employer or day labor service agency should provide transportation back to the point of hire at the end of each work day.

Model language:

TRANSPORTATION BACK TO POINT OF HIRE – Unless the day laborer requests otherwise, the day labor employer shall provide transportation back to the point of hire at the end of each work day.

B. Impose liability for transportation related injuries.

A day labor service agency, day labor employer or any agent of either entity that transports a day laborer to and from the agency or hiring site to the worksite or between worksites is liable for any injury to a day laborer arising from any work related transportation accident.

Model language:

TRANSPORTATION LIABILITY- A day labor employer or any other employer or agent of the employer that transports a day laborer to or from a designated work site is liable for injuries to a day laborer arising from an accident that occurs while the day laborer is being transported to or from the work site.

C. Ensure safe means of transportation.

Any motor vehicle used to transport day laborers that is owned or operated by a day labor employer or a contractor or agent of the employer should be required to have proof of financial responsibility according to the applicable State laws, have secure seats fastened to the vehicle, be equipped, if a truck, with a railing or other enclosure on the sides and ends of the truck at least 46 inches above the floor of the truck, and be equipped with steps, stirrups or a similar device to allow for safe mounting and dismounting of the vehicle.

A day labor employer may not use any motor vehicles that do not comply with the requirements of this Act to transport day laborers.

Model language:

MOTOR VEHICLE SAFETY – (1) Any motor vehicle that is owned or operated by the day labor employer or any other employer, or a contractor of either, which is used for the transportation of day laborers shall:
(a) have proof of financial responsibility as provided for in applicable State insurance laws of the area;

- (b) be equipped with seats securely fastened to the vehicle;
- (c) be equipped, if a motor truck, with a railing or other suitable enclosure on the sides and end of the vehicle not less than 46 inches above the floor of the vehicle;
- (d) and be equipped with steps, stirrups, or other equivalent devices so placed and arranged that the vehicle may be safely mounted and dismounted.

(2) Any day labor day labor employer who knows or should know that a motor vehicle used primarily or regularly for the transportation of day laborers is unsafe, or not equipped as required by this Act, or any regulations adopted thereunder, shall not use the motor vehicle for transporting day laborers.

(3) The owner or person who rents any motor vehicle used primarily or regularly for the transport of day laborers is responsible for compliance with the motor vehicle requirements of this Act.

D. Require motor vehicle inspections.

Motor vehicles used to transport day laborers must pass an inspection by an appropriate administrative agency each year. Motor vehicles used to transport day laborers must display a certification of inspection issued by the Department confirming compliance with the safety requirements of this Act.

Model language:

INSPECTIONS--The department shall inspect motor vehicles used primarily or regularly for the transport of day laborers at least once annually to determine whether its construction, design, and equipment comply with all provisions of the law. No person shall drive any motor vehicle used primarily or regularly for the transport of day laborers without displaying a certificate issued from the department confirming timely inspection and compliance with all laws and regulations relating to construction, design, and equipment.

STEP 7: Adopt Strong State and Private Enforcement Provisions.

The provisions of protective legislation should be enforceable through appropriate administrative enforcement agencies such as the state Departments of Labor. In addition, day laborers should have the right to go to court to enforce the law. The model language below provides for a private right of action, a 3-year statute of limitations, imposes significant damages when employers are found in violation of the law and awards attorney's fees and costs.

A. Administrative Enforcement.

Empower the Department of Labor or appropriate administrative enforcement agency to investigate violations of the proposed law, impose fines and revoke licenses.

Model language:**ADMINISTRATIVE ENFORCEMENT—**

- (a) IN GENERAL- The Secretary shall adopt rules and regulations necessary to implement the provisions of this Act, including provisions for hearings and imposition of penalties for violations of this Act.
- (b) POSTING REQUIREMENT- The Secretary shall cause to be posted in each day labor service agency a notice in English and any other language generally spoken in the locale of the day labor service agency which informs the public of a toll-free telephone number for day laborers and the public to file wage dispute complaints and other alleged violations by day labor service agencies.
- (c) FINES- The Secretary shall have the authority to fine a day labor service agency or day labor employer that fails to register with the Department of Labor in accordance with this Act \$1,000 for the first offense and \$5,000 for the second offense.
- (d) SUSPENSIONS AND REVOCATIONS- The Secretary shall have the authority to suspend or revoke the registration of a day labor service agency or day labor employer if warranted by public health and safety concerns or violations of this Act.
- (e) INVESTIGATIONS- The Secretary shall promptly investigate complaints concerning alleged violations of this Act.

ADMINISTRATIVE SANCTIONS—Civil Money Penalties for Violations – Any person who commits a violation of this Act or any regulation under this Act shall be assessed a penalty of up to \$1000 for each violation for each day laborer affected.

B. Ensure a day laborer's right to sue for enforcement.**Model language:**

MAINTENANCE OF CIVIL ACTION BY AGGRIEVED PERSONS—Any person aggrieved by a violation of this chapter or any regulation under this chapter by a day labor employer may file suit in any district court of the United States or state court of competent jurisdiction without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein. Actions may be brought by one or more day laborers for and on behalf of himself or themselves and other day laborers similarly situated.

(A) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF – Any day laborer whose rights have been violated under this Act by his or her employer shall be entitled to collect;

(1) In the case of a wage and hour violation, the amount of any wages, salary, employment benefits, or other compensation denied or lost to such day laborer by reason of the violation, plus an equal amount in liquidated damages;

(2) In the case of a health and safety or notice violation, compensatory damages and an amount up to \$500 for the violation of each subpart of each section;

(3) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate; and

(4) attorney's fees and costs.

(B) STATUTE OF LIMITATIONS – The right of an aggrieved person to bring action under this section terminates upon the passing of three years from the final date of employment by the employer. This limitations period is tolled where a day labor employer has deterred a day laborer's exercise of rights under this act by contacting or threatening to contact law enforcement agencies.

C. No waiver of rights.

Prohibit employers from benefiting from contracts that would deny a day laborer their legal rights by declaring that any waiver of rights guaranteed under the protective legislation is void and unenforceable.

Model language:

WAIVER THROUGH CONTRACT—Any agreement between a day laborer and a day labor employer or day labor service agency to waive rights and responsibilities under this Act is void and unenforceable as violative of public policy.

D. Do not penalize day laborers for an employer's failure to maintain records.

Day laborers seeking to recover unpaid wages should not bear the burden of an employer's failure to maintain required records. In such cases, there should be a presumption that a reasonable factual representation by a day laborer of the employment conditions is accurate. Employers must disprove the day laborer's representation by clear and convincing evidence.

Model language:

EVIDENTIARY BURDEN – Where a day labor employer has not engaged in the notification or record keeping provisions required under this Act or pursuant to 29 U.S.C. § 201 et seq., there is a presumption that any reasonable factual presentation by the day laborer is accurate. The employer is then required to disprove the day laborer's representation by clear and convincing evidence.

STEP 8: Provide Strong Anti-Retaliation Protections for Workers seeking to Enforce their rights.

SEE SECTION 5 (C) AND (D) FOR SPECIFIC PROVISIONS ON HEALTH AND SAFETY.

Employers frequently intimidate day laborers seeking to enforce the employment and labor laws. Intimidation can take many forms such as, threats to call immigration enforcement authorities, physical assault, and refusal to hire the worker for subsequent jobs. Such retaliatory acts chill day labor organizing and restrict enforcement of workplace laws.

A. Prohibit retaliation against day laborers enforcing their rights.

A day labor employer may not retaliate against any day laborer who:

- makes a complaint to the employer, appropriate state or federal agencies, co-worker, community organization, in a public hearing or press statement that a right guaranteed under this Act has been violated;
- institutes a proceeding under or related to this Act; or
- testifies or prepares to testify in an investigation or proceeding under this Act.

Model language:

FREEDOM FROM RETALIATION—A day labor employer shall not retaliate against day laborers seeking to enforce their rights under this Act. Protected activities include, but are not limited to:

- (1) making a complaint to the day laborer's employer, or a state agency, or federal agency, or community organization that rights guaranteed a day laborer under this Act have been violated;
- (2) making a complaint to an employer, a co-worker, or before a public hearing or the press that rights guaranteed a day laborer under this Act have been violated;
- (3) causing to be instituted any proceeding under or related to this Act; and
- (4) testifying or preparing to testify in an investigation or proceeding under this Act.