



Deferred Action Protections for Labor Enforcement: *A Guide for Worker Advocates*

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Acknowledgements

We honor and ground this work in the legacy of immigrant workers at the frontlines, those who have taken on some of the most abusive employers and the largest fights, with the most at stake. We thank workers like Fermin Rodriguez; Rosario Ortiz; Jonas Reyes; Fausto Garcia Figueroa; Olivia Guzman; Silvia Garcia and Baldomero Orozco; Alma Sanchez and Alfredo Benedetti; Pedro Manzanares; the workers of Espiga de Oro; the members of the Blue Ribbon Commission on Immigrant Work; and the countless other immigrant workers who have fought for their rights, publicly and privately, and raised their voices to call on immigration authorities to respect workers' rights. Without workers' organizing and advocacy in the face of immense risk, the deferred action protections process discussed in this guide would not exist.

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Cover photo: On January 9, 2023, current and former Unforgettable Coatings, Inc. (UCI) workers rallied outside the Las Vegas Federal District Courthouse during a settlement conference in *Walsh v. UCI*. *Credit: Arriba Las Vegas Worker Center*



About Author Organizations

Arriba Las Vegas Worker Center is a nonprofit with a mission to inform, empower, and organize immigrant workers, families, and worker-led movements for dignity, inclusion, and justice. Arriba Las Vegas supports day laborers, domestic workers, and low-wage workers through strategic organizing, direct services, and leadership development and training. Arriba Las Vegas has anchored organizing to expand and implement deferred action protections, supporting some of the first cases in the country to access deferred action protections on the worksite-wide level. Learn more at arribalasvegas.org



Jobs With Justice (JWJ) is a network of 27 community-labor coalitions located in 25 states across the country. For over 30 years, JWJ has brought together labor, community, student, and faith voices at the national and local levels to win improvements in people's lives and shape public discourse on workers' rights and the economy. JWJ coalitions convene organizations who understand the interconnectedness of worker issues to the broader issues of healthcare, public education, immigrant rights, racial justice, and globalization and trade issues, and who seek to expand opportunities for building collective power. Learn more at www.jwj.org



Founded in 1969, the **National Employment Law Project (NELP)** is a nonprofit advocacy organization dedicated to building a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. Learn more at www.nelp.org



The **National Immigration Law Center (NILC)** is one of the leading organizations in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 44 years, NILC has won landmark legal decisions protecting fundamental rights, and advanced policies that reinforce our nation's values of equality, opportunity, and justice. NILC's interest in deferred action for workers in labor disputes arises from its first-hand experience with the ways that immigration-based retaliation against workers chills them from asserting their workplace rights, which, in turn, erodes workplace standards for all workers. Learn more at www.nilc.org

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On December 13, 2022, Pastor Isaac Umaña, who is also a former UCI worker, led workers and supporters in a prayer for justice during a settlement conference in Walsh v. Unforgettable Coatings, Inc. (UCI). Credit: Arriba Las Vegas Worker Center





In August 2021, Rosario Ortiz, former Unforgettable Coatings, Inc. (UCI) worker and worker leader, presented then Secretary of Labor Marty Walsh with a t-shirt following a round table listening session with immigrant workers. Credit: Arriba Las Vegas Worker Center

Introduction & Terminology

In the United States, we face a crisis of workplace abuses. Researchers estimate that wage theft costs workers more than \$50 billion per year.¹ Inequality has increased in direct relationship to the decline in union membership,² with union representation rates at an all-time low.³ Several states across the country are currently seeking to dissolve child labor laws.⁴

Immigrant workers, especially immigrant workers of color, are at the forefront of this crisis of workplace abuse. This crisis is fueled by direct attacks from employers, corporations, politicians, and courts that have functionally eroded immigrant worker rights, establishing a more vulnerable class of workers: undocumented and temporary visa migrant workers who are subjected to some of the most severe forms of workplace abuse.⁵

In addition, workplace raids such as the New Bedford raid⁶ and the Mississippi raids⁷ have created long-lasting trauma that has silenced many immigrant workers who, as a result of these raids, see labor enforcement and negative immigration consequences as one and the same. This political and legal context has facilitated abuse by employers who use workers' immigration status to severely undermine undocumented and other immigrant workers' rights and their organizing efforts.

In the face of these workplace abuses, immigrant worker leaders, organizers, and advocates have long pressed the federal labor agencies and the United States Department of Homeland Security (DHS) to keep immigration enforcement out of the workplace, and to

collaborate to provide immigrant workers protections so they can fully exercise their workplace rights. Most recently, because of these collective efforts, the [National Labor Relations Board \(NLRB\)](#)⁸ and the [U.S. Department of Labor \(DOL\)](#)⁹ made announcements in 2021 and 2022 respectively, reaffirming their commitments to enforce the rights of all workers and to support immigrant workers in seeking deferred action protections from DHS. Then, in January 2023, [DHS announced](#) a streamlined process for workers to seek deferred action protections based on federal, state, or local labor agencies' enforcement interests.¹⁰ Deferred action protections via prosecutorial discretion based on labor disputes have long existed.¹¹ But prior to January 2023, DHS had not provided workers with any centralized and transparent application process to seek them. DHS and labor agencies' collaboration on this key worker protection represents a significant organizing and advocacy victory. This is a critical step towards true justice for immigrant workers.

As a result of these hard-fought victories, there are new opportunities for workers to organize, build power, and collaborate with labor agencies in holding employers accountable for harm and violating the law. We created this resource based on our experiences and lessons learned from piloting the expansion of deferred action protections at Arriba Las Vegas Worker Center; accompanying additional labor disputes across the country; representing immigrant workers in a diverse range of labor disputes before labor agencies and courts; and advocating with labor agencies and DHS to effectively implement the deferred action protections process. We hope this guide serves to further expand the effective use of deferred action protections for immigrant workers.

This guide is intended as a resource for organizers and workers' rights attorneys who are considering how deferred action protections might strengthen immigrant workers' efforts to combat labor abuse, build power, and organize to enforce workplace rights. First, the guide provides an overview of deferred action protections based on labor disputes, including information on eligibility criteria; how to seek support from a labor agency; and the five main steps in the process. For each of the five steps, we provide more detailed information on 1) how to collaborate with workers to identify labor violations and the corresponding agencies, while building worker power in the process; 2) how to file labor agency complaints and secure strong labor agency investigations; 3) how to obtain a labor agency Statement of Interest (SOI), including more detailed information on what this is and important tips for engaging workers in this process; 4) what to do after obtaining the SOI, including engaging workers about the SOI, integrating immigration practitioners into the team so workers can apply for deferred action protections, and thinking about deferred action renewals and permanent forms of immigration relief based on labor disputes; and finally, 5) how to continue organizing efforts and prepare for next steps in the legal process to build worker power and ultimately achieve a successful resolution of the labor dispute. We also discuss strategies to build the team; the importance of effective relationships between worker leaders, organizers, and lawyers; and strategies to protect workers' confidential information.

This guide does not provide legal advice and, because it is not designed for immigration practitioners, it does not provide information on how to file a worker's deferred action application with DHS. That said, we welcome immigration practitioners to review this guide to better understand the process of securing deferred action protections for labor enforcement interests in order to collaborate more effectively with workers' rights advocates. For a full description of best practices for immigration practitioners when engaging in the immigration side of the deferred action protections process, please consult the [Practice Manual: Labor-Based Deferred Action](#) (referenced throughout as the "Immigration Practice Manual").¹²

A Note on Terminology

While there are different forms of deferred action in immigration practice, the term **"deferred action protections,"** as used throughout this guide, refers to deferred action based on labor enforcement interests. We use the term **"deferred action protections"** since this type of deferred action is designed to protect immigrant workers involved in labor disputes from egregious retaliation that has historically undermined effective labor enforcement. For context, some workers and advocates use the term **"DALE"** (Deferred Action for Labor Enforcement).¹³ Others may refer to these protections as **"labor-based deferred action,"** as in the [Immigration Practice Manual](#). DHS has sometimes referred to applications for deferred action protections as **"Labor Enforcement Deferred Action Requests"**.

In several parts of this guide, the term **"campaign"** is used to describe both union and non-union worksite-based organizing around workplace rights, including filing a labor complaint or participating in a labor investigation. Here, we use the term **"campaign"** because Statements of Interest from labor agencies most frequently cover the entire workforce of a given employer and are intended to broadly boost worker participation in labor agency investigations and litigation. In community and labor organizing, the term campaign may be used to describe a diversity of organizing activities, from campaigns for legislative reform to individual deportation defense. Some advocates may use the term **"case"** in similar contexts, which may refer to a case regarding a company that impacts a broad group of workers or may refer to an individual worker case. In this guide, both circumstances are encompassed by our use of **"campaign."**

In this guide, we use the term **"immigrant workers"** broadly to encompass undocumented workers and migrant workers on temporary work visas, including but not limited to H-2A, H-2B, and H-1B visas (**"non-immigrant"** visas), and other noncitizen workers.

Throughout this guide, we use the term **"workers' rights attorney"** to refer to worker-side labor and employment attorneys, though we recognize these are distinct practice areas. Similarly, authors use the term **"labor law"** to encompass both labor and employment law for the purposes of readability.

On April 27, 2023, worker leaders and advocates attended the POWER Act Congressional briefing. Several of them spoke at the briefing about the need for deferred action protections for workers who file labor complaints. Credit: Anita Mathias, Jobs With Justice (JWJ)





Case Study: The Unforgettable Worker Committee Wins Unpaid Wages and Deferred Action Protections

Immigrant workers at Unforgettable Coatings, Inc. (UCI) were among some of the first workers to receive deferred action protections from DHS on a worksite-wide level. In the face of wage theft, health and safety risks,¹⁴ and severe and ongoing retaliation, immigrant workers fought for their rights. They reported violations, advocated for protections, and ultimately won a [\\$3.68 million consent judgment](#), which included unpaid overtime and damages owed to 593 workers.¹⁵

UCI is a multi-state commercial painting company based in Las Vegas, Nevada. The U.S. Department of Labor's Wage and Hour Division (DOL WHD) first investigated UCI for wage and hour violations in 2013, and although that investigation settled, UCI continued to violate the Fair Labor Standards Act (FLSA).¹⁶

In 2019, workers reported overtime violations to the DOL WHD. Soon after the agency opened its investigation, UCI engaged in tactics to obstruct it and to retaliate against workers by intimidating and attempting to silence them. UCI directed workers to lie to investigators and threatened workers with immigration consequences if they shared information about their work.¹⁷ In March 2020, the DOL sued Unforgettable Coatings in federal district court for violations of the FLSA.¹⁸ Throughout the investigation and litigation, workers confronted retaliation ranging from firing, reduction of hours, and direct threats related to immigration consequences.¹⁹ The federal district court judge issued a preliminary injunction in April 2020 to prohibit the company from retaliating against employees, instructing workers to not speak with or lie to DOL, or reducing workers' wages.²⁰

In early 2021, workers requested that DOL write to DHS in support of UCI employees and contractors seeking deferred action protections. With support from the Arriba Las Vegas Worker Center, the International Union of Painters and Allied Trades (IUPAT), and the National Day Laborer Organizing Network (NDLON), they sought worksite-wide protection against deportation and work authorization. Their purpose was to protect all UCI workers, to ensure that threats of deportation could not be carried out and that retaliation—when it occurred—would not be as severe.

Worker leaders from UCI who had been fired for their organizing activities became national advocates for expanded protections. They called on DOL and DHS to formalize a faster pathway for applications, ultimately contributing to DHS's creation of their [deferred action protections application process](#). Workers like Rosario Ortiz and Jonas Reyes met with then DOL Secretary Marty Walsh and DHS Secretary Alejandro Mayorkas to advocate for expanded access to protections for their coworkers, and for workers across the country facing similar abuses.²¹

Workers from Las Vegas were not alone in the fight for expanded immigrant worker protections. Members of the Unforgettable Worker Committee joined workers in Georgia, Mississippi, New York, California, Florida, Chicago, and other localities to advocate for deferred action protections as part of the [Blue Ribbon Commission for Immigrant Worker Protections](#) and [DALE Campaign](#).

In January 2023, Luis Carmona, a former Unforgettable Coatings, Inc. (UCI) worker, shared his testimony calling for unpaid wages to be paid to workers at a rally.

Credit: Arriba Las Vegas Worker Center

Deferred action protections served their purpose. They helped workers form the Unforgettable Worker Committee and report and participate in the DOL WHD investigation. They also escalated pressure on the employer to pay wages owed. On January 13, 2023, workers celebrated two key successes. First, after more than four years of organizing, workers won a \$3.68 million consent judgment.²² Second, workers celebrated DHS Secretary Mayorkas' [formal announcement](#) of a centralized and expedited deferred action protections application process. Workers continued to organize by identifying and reporting new violations and supporting workers in other worksites interested in taking action in the face of similar workplace abuses.

On November 8, 2022, Rosario Ortiz and his sons participated in a day-long picket held by unpaid workers outside the Las Vegas Federal District Courthouse during a settlement conference in Walsh v. Unforgettable Coatings, Inc. (UCI). Credit: Arriba Las Vegas Worker Center



Five Step Process for Workers to Obtain Deferred Action Protections for Labor Enforcement

Click on each number below to jump to the corresponding step:





Throughout this guide, we include feature quotes from five immigrant workers who have acted against workplace abuse, advocated for immigrant worker and worker justice, and participated in campaigns to expand access to deferred action protections. We thank Arriba Las Vegas Worker Center members Norma Gomez, Rosario Ortiz, Jonas Reyes, Misael Rivas, and Cesar Rodriguez for sharing their experiences.

From Las Vegas to Washington DC, to Mississippi to New York, we have fought tirelessly to reach this moment. My coworkers and I have been fighting our case in court for three years, facing threats and intimidation. These circumstances are in addition to confronting wage theft and health and safety risks as former workers of Unforgettable Coatings Inc. We've met with Secretary Walsh and Secretary Mayorkas to call for these protections. **Today, I am proud of my coworkers and our brothers and sisters across the country who have helped open a pathway for others in our circumstances to seek the deferred action protections that we have won."**

— Rosario Ortiz, former employee of Unforgettable Coatings, Inc., worker leader at Arriba Las Vegas Worker Center, and DALE Blue Ribbon Commission member responds to DHS Secretary Mayorkas' announcement on January 13, 2023, regarding the streamlined process for workers impacted by labor disputes to apply for deferred action protections.

Credit: Arriba Las Vegas Worker Center

Overview of Deferred Action Protections for Labor Enforcement

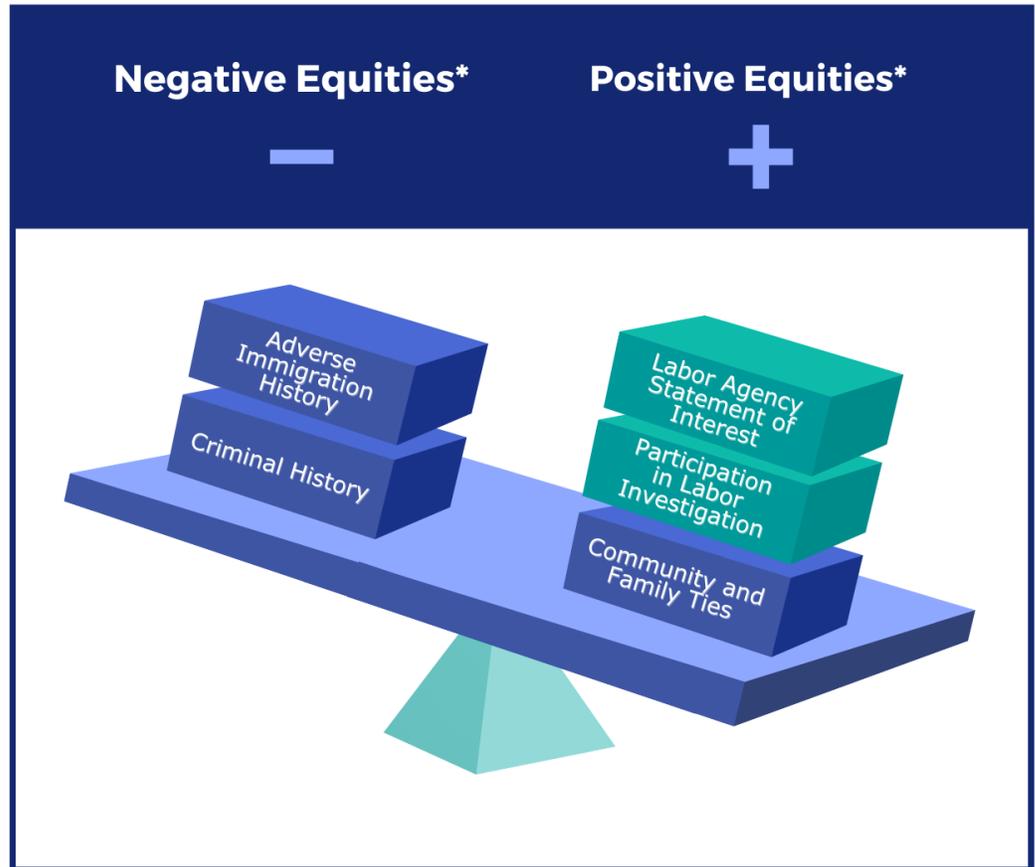
1. What are deferred action protections for labor enforcement?

 Deferred Action for Labor Enforcement IS:	 Deferred Action for Labor Enforcement IS NOT:
<ul style="list-style-type: none">■ Is at the discretion of DHS and granted by DHS on a case-by-case, individual basis to workers who fall within the scope of a labor agency Statement of Interest.■ Is a temporary protection from deportation and a work authorization that lasts up to 2 years and that can be terminated at any time by DHS.■ Is potentially renewable, depending on whether the labor agency sees a “continued enforcement interest” in the case. The potential renewal is at the discretion of DHS.	<ul style="list-style-type: none">■ Is not a form of permanent immigration relief, lawful status, or a visa. It is temporary protection from deportation. (While this may seem like a small distinction, it is important to be clear and transparent with workers.)■ Is not a protection that allows workers to leave and reenter the United States.

Deferred action protections based on labor enforcement refer to a kind of temporary protection from deportation to support the labor enforcement interests of a federal, state, or local labor agency.²³ These protections exist and can be sought by workers when a labor agency—including the U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), U.S. Equal Employment Opportunity Commission (EEOC), or other labor agency—has requested that the Department of Homeland Security (DHS) exercise its discretion to grant deferred action to workers as a way to respect the labor agency’s investigative needs and authority and ensure that workers’ immigration status will not be used against them when participating in the labor agency’s investigation or other processes.²⁴ Labor agencies and DHS’s joint goal is to ensure labor law compliance. This type of deferred action protection is first and foremost a labor enforcement tool that supports immigrant workers’ participation in a labor investigation, litigation, or other labor enforcement activity.

When labor agencies request this type of protection for workers, they send a formal request to DHS through a letter that is known as a Statement of Interest (SOI) (see [Section 2](#) and [Step 3](#) below for more information). Once a labor agency has sent DHS the SOI, each worker applies individually to United States Citizenship and Immigration Services (USCIS) for deferred action protections and work authorization, legally referred to as an employment authorization document (EAD). When DHS reviews individual workers’ requests for deferred action protections, they take into account the labor agency’s labor enforcement interest, as expressed in its SOI.

DHS currently grants deferred action protections to individual workers on a case-by-case basis via the [centralized application process](#) that the [agency announced in January 2023](#). As part of its consideration of deferred action applications, DHS will weigh negative and positive factors (“equities”) in each individual worker’s situation. DHS grants deferred action protections to individual workers for two-year periods. The deferred action application process also gives workers the ability to apply for a two-year work authorization and to request a Social Security number (SSN).²⁵



*DHS assesses many equities. For the purposes of this graphic, only a select few are included. The positive equities that arise through the labor dispute process are highlighted in teal.

Legally speaking, deferred action protections based on labor enforcement interests are a type of “prosecutorial discretion” where DHS can (but is not required to) grant an immigrant worker temporary protection against deportation so that the worker can fully participate in a labor agency’s efforts to enforce labor laws. To be clear, there is no guarantee that DHS will grant an individual worker deferred action protections. In the context of immigration law, “prosecutorial discretion” refers to DHS’s discretion to choose not to take immigration enforcement actions against an individual who is not a citizen of the United States and could otherwise be deported. While there are various types of prosecutorial discretion or deferred action, this guide focuses only on DHS’s use of its discretion in relation to labor disputes.

2. How labor agencies can assert their labor enforcement interests for the purposes of deferred action protections: the Statement of Interest (SOI)

As noted above, labor agencies can ask DHS to support their interest in enforcing labor laws by granting deferred action protections to workers. A labor agency formally makes this request by sending DHS a letter known as a Statement of Interest (SOI). This section includes a basic overview of SOIs. See [Step 3](#) below for more detailed information on SOIs, including how to request them from labor agencies.

What is an SOI? An SOI is the labor agency's letter to DHS requesting that DHS consider granting deferred action to workers at the given worksite(s) to bolster the labor agency's enforcement activities and ensure that its labor enforcement interests are not undermined by immigration enforcement actions.

Who issues an SOI? Any local, state, or federal agency that is engaged in enforcing labor or employment laws and has an interest in the labor dispute can issue an SOI.²⁶ In addition to labor and employment agencies, state attorneys general or local district attorneys can also provide SOIs if they are engaged in a civil or criminal investigation or enforcement action regarding labor or employment laws. In some circumstances, agencies proactively issue SOIs. In other circumstances, worker advocates will have to request an SOI from the agency.

Who can request an SOI? Typically, a worker's advocate—e.g., an attorney, organizer, or social worker—would request an SOI from the labor agency that is investigating or otherwise has an enforcement interest in the labor dispute against the worker's current or former employer(s).

When can someone request an SOI? Simultaneously or immediately after filing a labor complaint, or after the labor agency has initiated an investigation. Note that filing a complaint and requesting an SOI are distinct processes.



3. Who can apply for deferred action protections for labor enforcement?

Any immigrant worker who is impacted by a labor dispute where a labor agency has asserted the need for deferred action protections is eligible to apply for deferred action protections if they fall into the scope of the SOI. A labor agency SOI defines who is eligible to apply. For example, it might specify employees or contractors at a certain company or companies during a certain time period.

Because this form of deferred action protections is based on a labor agency's enforcement interests, workers cannot request or obtain deferred action protections through DHS's centralized process without an SOI.

Additionally, each worker has a unique story and situation. Individual workers should consult with immigration attorneys to decide whether to seek these protections, and to explore whether they may also be eligible for other forms of immigration relief, including permanent relief.

Sometimes, an immigration attorney may advise a worker not to apply for deferred action protections if there are significant negative equities that DHS would consider in their application.²⁷ As discussed in [Section 1](#) above, deferred action protections are a form of prosecutorial discretion, and DHS will weigh positive and negative factors when reviewing each individual's application. Labor agency interest—indicated through the SOI—is a positive factor in applicants' favor. In some cases, there may be negative equities that cannot be overcome by labor agency interest. For example, individuals with serious violent criminal history may be advised not to apply by their immigration attorney. That said, workers with some negative equities have still been approved for deferred action protections.

In August 2022, a worker participates in a Deferred Action for Labor Enforcement (DALE) campaign march in Jackson, MS calling for protections for workers impacted by ICE's workplace raids and for immigrant worker protections overall. Credit: National Day Laborer Organizing Network (NDLON)

Building the Team and Organizational Infrastructure

4. Effective collaboration between organizers, workers' rights attorneys, and worker leaders

Effective collaboration between law and organizing has produced some of the best examples of building worker power and winning labor disputes. This collaboration is essential throughout the campaign, including if and when workers seek deferred action protections. That said, there is also some history of distrust between organizers and attorneys. For example, some organizers have experienced attorneys who join the team later in a campaign and force a halt to all communication between workers and organizers. While this situation might stem from an attorney's abundance of caution, it can hinder worker leadership and breed distrust by isolating workers from organizers and their coworkers.

To set law and organizing labor campaigns up for success, it is essential that lawyers, organizers, and worker leaders understand and respect each other's expertise, roles, and limitations. Reaching impacted workers at one or more worksites so they can obtain deferred action protections and fully participate in the labor agency's enforcement activities is much more attainable as part of a broader worker-led campaign, as opposed to when attorneys act alone and without avenues to establish trust with workers. Knowledge of each other's areas of expertise and the requirements at different steps in the process can help clarify roles and facilitate successful collaboration, centered in workers' goals. As discussed in [Section 5](#) below, a collective understanding of privilege and confidentiality issues also helps the team plan out their communication strategies.

In May 2023, members of Arise Chicago obtained deferred action protections.
Credit: Arise Chicago



Worker leaders are workers directly impacted by the labor dispute who engage in collective action and support other workers to participate in protected organizing activities. They are experts in their work, workplace conditions, strategies to improve these conditions, and their ultimate goals. Worker leaders frequently organize their coworkers, before and during campaigns. For example, workers may inform each other on the job site about their rights or ask other workers to support them in filing a complaint. Worker leaders have typically built trust with their coworkers and are therefore more effective than other advocates in reaching other workers at their worksite who have experienced or witnessed labor violations. Workers who would otherwise not speak with a government agency or organization may join campaign efforts thanks to worker-to-worker communications. Worker leaders are therefore one of the most essential partners for engaging a broad network of workers.

Worker committees are organized by worker leaders, with the support of worker center or union organizers. The worker committees then meet, as a group of impacted workers, to identify shared concerns, goals, and collective actions they will take to achieve their goals. Worker leaders and committees should be included in key decisions, including the decision to seek an SOI from a labor agency. Worker leaders and committees benefit greatly from leadership development and know your rights (KYR) training.

Organizers work in a range of settings, such as worker centers and unions, and have expertise in strategically engaging workers and institutions to help build worker power that results in long-term improvements to workplace conditions. Organizers are often the first to hear from workers about workplace rights violations and to identify worksites for a potential labor campaign. Organizers may reach out to workers directly to engage with them about organizing a workplace, or may develop relationships with workers through KYR sessions, one-on-one meetings, or other services provided by their organization or union. They also facilitate worker committee meetings. Because worker center and union organizers have frequently earned workers' trust, workers may be more willing to discuss their concerns with them than with labor agencies. In these situations, organizers can assist workers in deciding whether to file a labor agency complaint; preparing and filing labor agency complaints (whether for the worker or as a third-party complaint); becoming the main point of contact for the labor agency; and representing workers during the labor agency process. Many worker centers chose to have organizers provide support to workers in preparing and filing agency complaints and/or do not have the legal resources for attorneys to prepare and file all complaints. Organizers and worker center staff can serve as non-attorney representatives in several types of investigations, including Occupational Safety and Health Administration (OSHA), EEOC, and NLRB investigations.

Workers' rights attorneys work in a range of settings, such as legal nonprofits, unions, worker centers, and plaintiff-side private firms. They have expertise in labor and employment and related laws and engage in activities such as litigating labor claims; representing individual union members in arbitration; counseling clients throughout the relevant legal processes; and providing counsel for organizing campaigns. Some attorneys are skilled at providing worker trainings, such as explaining rights and labor agency jurisdiction at worker committee meetings. Like organizers, workers' rights attorneys can also assist workers in filing labor agency complaints and representing them throughout the administrative process. While some workers' rights attorneys regularly file labor agency complaints and are very familiar with labor agencies' processes, others—especially those

who work at private, plaintiff-side firms—may practice almost exclusively in state or federal courts and may not be as familiar with labor agencies’ processes.

Immigration practitioners are also key partners in labor cases where workers seek deferred action protections. They play a key role by providing worker consultations and submitting workers’ deferred action applications. See [Step 4](#) below for tips on how to expand the team to collaborate with immigration practitioners after an SOI has been issued.

5. Structures and best practices to protect case information

When employers become aware of an investigation or organizing campaign, they may attempt to prevent workers from organizing or pursuing legal claims by seeking sensitive information from a worker, organizer, or organization. As a case proceeds, there may be other opportunities for an employer to attempt to deter workers from participating and to attempt to weaken the enforcement efforts. Many labor agency investigations are settled through informal agency procedures, without ever reaching later stages. But for cases that go to an administrative trial or to court, employers may try to use legal processes to discredit or intimidate workers—or to seek information about a worker center’s campaign strategies. For example, an employer may try to obtain information related to workers’ immigration status or ask for information about the worker center or union organizing to try to counter the organizing campaign.

These attempts should be vigorously resisted by workers, organizers, and attorneys. The first step is to prepare for these possibilities and have strategies in place to protect workers and advocates from potential attacks. This section covers some of these strategies.

First, a couple important points to keep in mind:

- The strength of the protections afforded by the agreements and arrangements discussed below will vary depending on the relevant state and federal laws, terms of the agreements, and facts of individual cases. The below information is just a starting point for discussions about how to set up these structures, when appropriate, in the course of a campaign. When setting up any of these structures, think about how to best establish lines of communication so that the legal structures protect the organizing instead of stifling it. For example, some conversations between organizers and workers should be outside the scope of any legal representation, such as discussions about plans to engage in public protest of the worksite.
- Similarly, it is important for information to be shared between the attorneys and organizers to further the labor enforcement and organizing goals of the worker leaders and worker committees. Therefore, attorneys and organizers should communicate clearly at the outset of their collaboration about how they intend to strike this balance.

There are several potential legal processes that an employer might utilize to attempt to obtain sensitive information. In a case that goes to an administrative trial or to court, there will be a phase called “discovery” where parties to a lawsuit seek information from each other before the case goes to trial.

During discovery, employers might seek information related to immigration status and other sensitive information, such as weaknesses in the labor claims, or information about the campaign strategy of workers' or worker centers' organizing by:

- Issuing “**subpoenas**,” which are a formal legal order issued to an entity that is not formally involved in a case (a non-party, such as the worker center in a case where workers are pursuing unpaid wages). Subpoenas might ask worker centers or organizers for documents (for example, emails, text messages, or files) or to question these individuals on the record (known as a “**deposition**”).
- Issuing other types of “**discovery**” to the parties to a case (e.g., the individual workers or organizations that are suing the employers). These discovery requests, similar to subpoenas, can include requests for documents, including written communications, and for people to be questioned in depositions.

Strategies to consider to protect sensitive case information from disclosure:

There are steps that organizers, worker centers, and attorneys can take to protect communications between organizers and workers from disclosure to an employer. There are several “**legal privileges**” that might protect these communications. A legal privilege is a legal rule that prohibits asking about or forcing someone to disclose certain types of information.

Absent a legal privilege covering communications, communications are generally not protected from disclosure in the above situations. The strategies below attempt to mitigate the risk that an organizer or worker leader might have to provide sensitive written communications or testify about certain conversations. Regardless, it is a best practice to avoid engaging in written communications about sensitive information (such as immigration status, weaknesses in the labor case, etc.).

Sources of legal privileges to protect communications:

Attorney-client privilege is the strongest form of protection which covers communications between a lawyer and a client where legal advice is sought or provided. An employer should not be able to obtain these communications at any stage in the proceedings, including during litigation. In addition, internal documents that attorneys create to prepare for litigation—such as an analysis of the strength of a labor claim—are protected from disclosure through the “**work product**” doctrine.

To utilize attorney-client privilege, or work product protections, there must be an attorney involved who represents their client(s). The privilege protects communications between that attorney and their client(s). In this situation, the attorney and client enter into a “**retainer agreement**,” an agreement that outlines, among other topics, the scope of the attorney’s legal representation. Attorney-client privilege can be exercised in several different types of relationships; for example, this type of privilege can be applied between attorneys and worker center or union clients; between attorneys and worker clients; and in an attorney’s joint representation of more than one client. More details about these examples are included below.

- **Agreement between attorney and worker center or union:** Attorneys can represent worker centers (or unions) as their clients. In that case, the attorney and worker center or union would enter into a retainer agreement, and communications between the attorney and worker center or union staff about the legal representation would be

privileged. Worker centers looking for legal representation can reach out to national networks they belong to that have attorneys on staff, or ask local workers' rights attorneys, who may be willing to provide advice on a pro bono basis. Most unions already have retainers with union-side law firms (and those agreements may also cover individual worker representation).

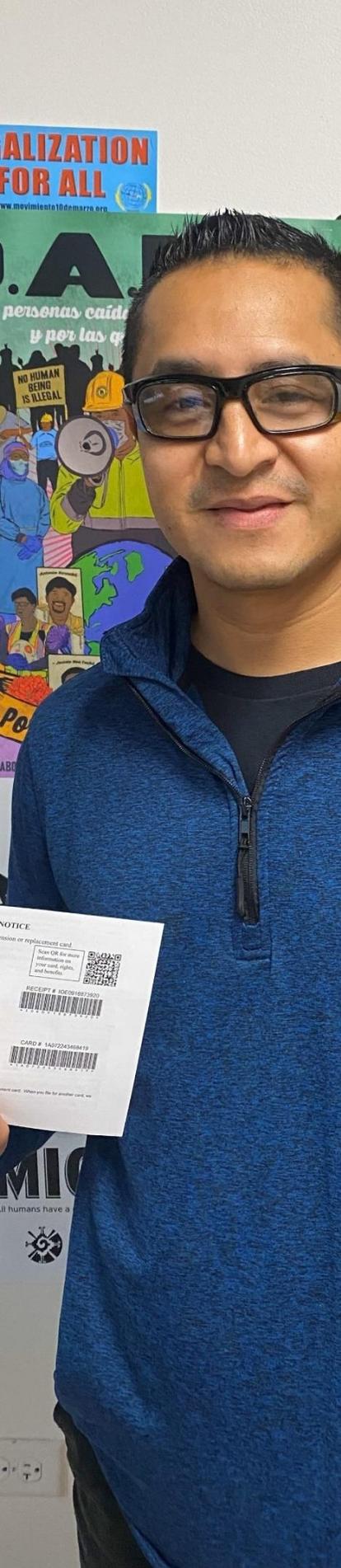
- **Agreement between attorney and worker(s):** An attorney and an individual worker can enter into an attorney-client relationship and sign a retainer agreement. Communications between the worker and the attorney would then be privileged. An attorney can represent multiple individuals from the same worksite (see below). The communications between the attorney and each individual worker and also a group of worker clients would be privileged.
- **Joint representation:** An attorney can represent both the worker(s) and the worker center or union in the same case. In such cases, the attorney would sign representation agreements with both the individual worker(s) and the worker center or union. To be most protected, the worker(s) and the worker center or union should also sign a "common interest privilege agreement."²⁸ Under this arrangement, communications among the three parties (the attorney, the worker(s), and the organizers) would generally be protected.

If an attorney represents more than one worker and/or worker center or union in the same case, the attorney would ask these multiple clients to enter a "conflict waiver," which lays out agreements in relation to conflicts that might arise among the clients and what would happen in those circumstances.

There are other ways of extending attorney-client privilege and work product privilege to cover communications between organizers and workers and protect them from disclosure. Some other structures to consider with limited legal resources available are:

- **Creating a structure where the worker center organizer is an agent of—or works under the supervision of—the attorney.** Attorney-client privilege would protect the communications an organizer has with a worker when those communications are for purposes of the legal representation. For example:
 - **Hiring an attorney as a worker center employee:** An attorney that is a worker center employee can officially supervise—including jointly supervise—the organizer for certain activities, including documenting sensitive information through, for example, intakes.
 - **Where a worker center does not have a staff attorney,** they can contract an attorney outside the organization through a retainer or other agreement for legal supervision of certain activities performed by worker center staff.
- **An organizer as interpreter:** An organizer can function as an "interpreter" for the attorney—whether by providing literal language interpretation or playing a broader interpretive role that is necessary for the effective consultation between the lawyer and the worker client. The latter could include situations where the organizer provides cultural competencies and specialized information about the worksite and underlying labor dispute that is necessary for the attorney's legal representation.²⁹

Other privileges or defenses: Even without the involvement of an attorney giving rise to the above legal protections, an organization such as a worker center or union also has other legal rights that could be a source of protection, for example, an organization could assert a constitutional right, such as the "**First Amendment right to association**," which arguably protects some of the internal communications within the worker center, and some of the



communications between an organizer and worker leaders or worker committees.³⁰ Or an organization may assert the “**labor relations privilege**” to protect certain communications about organizing.³¹

You could also consider requesting a “**common interest agreement**” with the relevant labor agency to protect sensitive communications.

If an employer attempts to access sensitive information during discovery, it is important that attorneys and organizers be prepared to defend against such measures. For example, an attorney can file a motion to quash a subpoena.³² Alternatively, an attorney can file a motion for a protective order, asking the hearing officer or judge to protect the requested information from disclosure.³³

Samples of some of the agreements discussed in this section are available upon request via [this form](#).

6. Roles to strengthen campaign efforts when legal relationships have been established

Below are some concrete examples of roles organizers and attorneys can play under the legal arrangements (discussed in [Section 5](#) above) to uplift organizing, support workers in being successful in the underlying labor dispute and campaign, and provide as much legal protection for sensitive information as possible.

Roles for organizers:

- Organizers can do initial worker screenings and/or complete intake forms for the purpose of legal consultation or representation under a process that is clearly intended for attorney review and done under an attorney’s supervision. There should be relevant documentation of such an arrangement, with agreements in place to prove that the information collected is privileged.
 - Alternatively, where legal representation is available, organizers can participate in such worker screenings/intakes for purposes of providing interpretation to the attorney, and such communications would still be privileged.
- Examples of how organizers and worker centers can be involved in labor agency processes include:
 - Organizers can contact their regional NLRB office to ask to accompany workers during the affidavit process, where a board agent takes the workers’ affidavit. Whether this is allowed is at the discretion of the region. Worker centers and organizers can also file a third-party charge but should be cautious to preserve their 501(c)(3) status by not negotiating directly with the employer.
 - Organizers can become an “employee representative” in OSHA processes. An employee representative has rights ranging from participating in opening and closing conferences, doing walk-arounds during in-person inspections, obtaining copies of citations, contesting citations during the abatement period, and electing party status before the Occupational Safety and Health Review Commission.³⁴

In March 2023, a member of Arise Chicago obtained deferred action protections.

Credit: Arise Chicago

- Organizers or worker center staff can also serve as non-attorney representatives to file a worker’s charge and communicate with the EEOC.
- Worker centers can make a referral or file a third-party complaint with the DOL WHD. Organizers and worker centers as third-party complainants are entitled to updates about the case and investigation every 30 days.
- See [Step 2](#) below for more information on filing complaints.
- Organizers can provide KYR sessions and facilitate regular worker committee meetings to provide updates on the investigation and continue to engage workers. If there is a joint representation agreement, and an attorney represents all parties involved in the conversation, then the communications about the legal representation (and the details pertinent to the legal case) may be privileged. Absent joint legal representation, these conversations are generally not covered by legal privileges, even with an attorney present or facilitating.
 - It is worth nothing, however, that these sorts of worker committee meetings should be considered confidential, and any attempt to discover information about such worker committee meetings should be disputed.

Roles for attorneys:

- Legal representation is not always desired or available when a worker center is supporting workers in a labor dispute. Although some legal nonprofits may be available to provide some representation without cost, and some private attorneys offer free or low-cost services for certain cases, legal representation can be expensive and worker centers may not have the resources to employ an attorney or contract one for full representation. In such circumstances, attorneys can provide representation for specific, brief, or limited services (e.g., complaint filing only).
- Below are examples of ways attorneys can collaborate in a campaign:
 - Attorneys can review intakes done by organizers or supervise organizers conducting intakes to review the facts of the labor dispute, for purposes of analyzing violations and consulting on the presentation of labor complaints.
 - Attorneys can prepare and file labor agency complaints on behalf of workers and can prepare and file third party complaints on behalf of worker centers. They can also provide legal representation throughout the agency process.
 - When attorneys represent worker(s) and/or the worker center in labor agency complaints, it is important for there to be clear agreement with the workers and the organizers involved in the campaign about the sharing of information. It is a common point of tension between organizers and attorneys when information is withheld from or not timely shared with organizers (with attorneys arguing that information must be withheld to retain its privilege). Such information is often critical to an organizer’s credibility with workers—and withholding it can be detrimental to succeeding in the worksite claim or achieving the goals of the worker organizing campaign. It is therefore extremely important for advocates to talk about communication in advance. Advocates should agree on what types of information will be shared with whom and when, and why that is important for accomplishing the workers’ goals. The strategies above ([Section 5](#)) provide protected ways for sharing such critical information.

- If the case is litigated by a labor agency in court, the attorney can serve as attorney of record for service purposes for workers or the worker center. The attorney could also represent the worker center or worker in a deposition or to defend against a subpoena or other discovery request. In some circumstances, depending on agency process, an attorney may represent the organization as a party in the administrative adjudication or court.
- Attorneys can litigate a case on behalf of workers or a worker center in court, for example, after the termination of the EEOC investigation. See [Step 2](#) and [Step 5](#) below.³⁵
- Attorneys can provide direct representation for workers for immigration purposes, for example, filing a deferred action application. See [Step 4](#) below.

*In July 2021, Rosario Ortiz speaks at a rally outside the U.S. Department of Labor (DOL) calling on DOL to assert its enforcement interest by requesting that the U.S. Department of Homeland Security (DHS) provide protections for workers impacted by labor disputes.
Credit: Arriba Las Vegas Worker Center*



STEP 1

Step 1: Identifying labor violation(s) and their corresponding agency/agencies

7. How are employers violating workers' rights and where can someone file a labor agency complaint about those violations?

An important role for organizers, worker centers, unions, and attorneys is to assist workers in the process of understanding and identifying violations and which agencies investigate which type of complaint. It is not uncommon for there to be misunderstanding over which agency may have jurisdiction over which type of violations.

This section describes common labor violations and the main federal labor agencies that have jurisdiction to investigate, adjudicate, and potentially provide remedies for those violations. Given the number of labor and employment laws, this section does not cover every possible rights violation or labor agency. Also, in this section, how to file claims in court (which is an option in many cases) instead of with a labor agency is not covered. In any case or campaign, it is important that advocates have knowledge of labor and employment law or consult with practitioners who do when determining a worker's claims and avenues for legal relief.

For a chart breaking down the main categories of federal workplace rights violations and labor agencies, see [Appendix A](#).



I experienced workplace abuse at Unforgettable Coatings Inc., a painting company based in Las Vegas, NV. They forced us to work long days, but they wouldn't pay overtime. I decided to start to organize my coworkers. That's when the company owner, Cory Summerhays, called me. He tried to intimidate and scare me. He threatened that if I continued organizing workers, he would send lawyers to my house to cause me legal trouble. **But we didn't stop organizing workers. Despite facing these threats, my coworkers and I continued the fight together."**

— *Jonas Reyes, former employee of Unforgettable Coatings Inc. and member of Arriba Las Vegas Worker Center, DALE Blue Ribbon Commission, and IUPAT Local 159 reflects on his experience of workplace abuse and his decision to continue organizing in the face of retaliation.*

*Jonas Reyes is interviewed about his experience with workplace abuse in the fall of 2022.
Credit: Arriba Las Vegas Worker Center*

A. Tips for identifying workplace rights violations

The following considerations apply to every category of rights violations and agencies described in more detail in the below [Section 7.B](#):

- **Timeline/Statute of limitations:** Every type of labor claim has what's known as a "statute of limitations." This refers to the deadline for filing the claim with a labor agency or court. If a worker misses this deadline, they generally lose their right to file that claim. Determine when the employer's unlawful actions first started and last occurred and the relevant statutes of limitations from the outset so this does not happen. For some types of labor violations, the statute of limitations may be very short, such as 30 days or six months.³⁶ If advocates learn about cases at a time near the end of the statute of limitations, be prepared to move fast to preserve workers' claims.
- **Multiple violations:** Where an employer is violating one law, they are often violating many. In that case, a worker might be able to file claims with multiple labor agencies. Often, it is best to file complaints with all the relevant agencies, especially if any of the worker's claims must be filed with a labor agency before filing a case in court (known as an "administrative exhaustion" requirement).³⁷
- **Jurisdiction:** Worker advocates must determine whether the potentially applicable law applies to the worker's employer(s). Some laws apply to, for example, only private or public sector employers, employers with a certain minimum number of employees, or engaged in certain industries. If a worker's employer is not covered, then the worker is outside the scope of that law's protection and the labor agency would not be able to investigate that claim. In other words, the dispute would fall outside the agency's jurisdiction.
- **Multiple employers:** Under many laws, more than one employer can be liable for the same rights violation. For example, if a worker is placed by a temporary employment agency ("temp agency") in another company's factory, the worker might have claims against both the temp agency and the factory. The temp agency and the factory may be "joint employers." Another common situation is when a large company sub-contracts with a smaller company that directly employs workers. These two (or more, at times) companies could be "joint employers."³⁸ In these types of cases, list all the separate entities as employers in the labor agency complaint.³⁹
- **Independent contractors/Misclassification:** It is important to know whether the employer has treated the worker as an "employee" or an "independent contractor" and, most importantly, whether this classification is legally correct. Employers commonly misclassify workers as "independent contractors" when they are in fact employees.⁴⁰ They do this because many workplace protections do not apply to actual independent contractors. A worker who has been misclassified as an independent contractor should still file a labor agency complaint pursuant to a law that applies to only employees, but they should prepare for the employer to try to get the complaint dismissed on this ground.
- **Excluded workers:** Some employees are partially or completely excluded from certain categories of rights based on their occupation. For example, because of the Fair Labor Standards Act's (FLSA) and the National Labor Relations Act's (NLRA) racist origins,⁴¹ farmworkers; domestic workers; day laborers; and others are excluded to some degree or entirely from these laws' protections. Domestic workers are also often expressly excluded from anti-discrimination laws' protections or by default because they work in homes with too few employees for these laws to apply. Advocates continue to push for expanded protections and some of these exclusions can be overcome with careful

investigation, documentation, and advocacy. Even when exclusions do not apply, proving and recovering remedies for domestic workers and day laborers can be challenging since, given the informal nature of the occupations, traditional employment records often do not exist. As such, seeking an SOI for workers in these occupations may present unique challenges and limit opportunities to apply for deferred action protections.

- **Guestworkers (including those on H-2A agricultural and H-2B nonagricultural visas):** Guestworkers face unique considerations when identifying labor issues and filing labor complaints. Temporary visa programs in underpaid industries, such as agriculture, hospitality, seafood processing, and other industries are rife with labor abuses.⁴² In certain industries, guestworkers commonly live in employer-provided housing, further cementing their isolation and employer control over them. Guestworkers are only permitted to work for the employer on their visa and it is nearly impossible for guestworkers to change employers even if the working conditions are intolerable or unlawful; doing so risks losing their lawful immigration status. Guestworkers also commonly arrive in the United States deeply in debt, having paid the cost of their visa; travel; and recruiting fees, even though the law generally prohibits passing such costs to workers. If an employer fires a guestworker, the worker must leave the country or remain in the United States without lawful immigration status and risk the ability to obtain a visa in future seasons. Retaliation against guestworkers for asserting their labor rights is common and guestworkers fear being “blacklisted” for future visas (even with a different employer). Given these realities, the timing for filing labor complaints and seeking SOIs in labor disputes involving guestworkers is especially critical and may need to be accelerated.
- **Accounting for federal, state, and local laws:** Remember that there are federal, state, and local labor laws. If a worker is excluded from federal workplace protections, check whether any state or local laws might apply to their situation (the reverse can also be true). Given the exclusions discussed above, this can be especially relevant for farmworkers, domestic workers, and day laborers.

B. Identifying violations and their corresponding labor agencies

Wage and hour laws: Wage and hour laws protect workers’ rights to, for example, minimum wage; overtime; tips; rest and meal breaks; pay stubs; employer recordkeeping; to be free of unlawful deductions from pay; and required timing of regular and last paychecks. Violations of these laws, often referred to as “wage theft,” are extremely common.⁴³ Wage and hour laws also cover prohibitions and rules on child labor.

The [Fair Labor Standards Act \(FLSA\)](#) is the main federal law that addresses child labor and sets wage and hour standards across the U.S. This law is enforced by the [DOL Wage and Hour Division \(DOL WHD\)](#).⁴⁴ In general, there is a two-year statute of limitations to file claims under the FLSA, with three years for “willful” violations.⁴⁵ To be covered by the FLSA, businesses must have an annual dollar volume of sales or business of at least \$500,000, or be a hospital; business providing medical or nursing care for residents; school or preschool; or a government agency.⁴⁶ In addition, even if the business is not covered, individual workers at that business are covered if a job regularly requires the worker to be involved in “interstate commerce,” such as working in a plant that produces or uses products that are shipped to and from other states.⁴⁷

The [Davis Bacon Act](#) is another wage and hour law enforced by DOL WHD. The Act requires employers to pay workers local “[prevailing wages](#)” when they are working under federal public works contracts receiving more than \$2,000 from the federal government. For contracts receiving above \$100,000, contractors must also pay 1.5 times the hourly rate for overtime worked beyond the 40-hour workweek. For more information, see [DOL resources](#) on the Davis-Bacon Act.

Many states and cities provide broader protections—such as a higher minimum wage—than federal law. In those cases, the state or local standards would apply, and the relevant state or local agency would enforce them.⁴⁸

Health and safety: Employers are legally obligated to provide employees with a workplace free of hazards.⁴⁹ There are many ways that workers’ rights to a safe workplace can be violated. For example, a worker’s rights may be violated when they are exposed to dangerous chemicals; not provided training about workplace hazards in a language they can understand; or forced to work without proper safety equipment.⁵⁰ Heat stress related injuries and illnesses, workplace violence, and ergonomic hazards from repetitive motions are additional common violations of these rights.⁵¹

The federal [Occupational Safety and Health Act](#) (OSH Act)⁵² and its corresponding regulations govern these rights and the federal [Occupational Safety and Health Administration](#) (OSHA) is the agency that enforces them. In addition, twenty-two states have their own health and safety programs, known as “[State Plans](#).” In those states, a worker’s complaint would be routed to the OSHA State Plan office for investigation and enforcement.

Any health and safety citation against an employer must be issued within six months of the violation; therefore, a worker complaint about hazards should be submitted as soon as possible.⁵³ OSHA whistleblower complaints must be filed within thirty days.⁵⁴ Federal OSHA covers most private sector employers in states that do not have State Plans, while State Plans cover private sector employers in the remaining states.⁵⁵

Note that when workers are injured at work, they may have claims under health and safety laws and their state’s workers’ compensation laws.⁵⁶ An employer’s response to a workplace injury may also give rise to disability discrimination claims. For example, after a workplace injury (that may have been caused by a health and safety violation), a worker might have work restrictions, such as limits on how much weight they can lift. If an employer refuses to respect work restrictions, they might be violating workers’ compensation laws and the worker’s right to reasonable accommodations based on disabilities. As described below, at the federal level, a disability discrimination complaint would be filed with the U.S. Equal Employment Opportunity Commission (EEOC).

Sick and other leave laws: There is currently no federal right to sick leave. Whether a worker has a right to take paid or unpaid days off when sick depends on their state or local protections.⁵⁷ The federal [Family and Medical Leave Act](#) (FMLA) does provide a right for some employees to take “up to 12 weeks of unpaid leave for certain medical situations for either the employee or a member of the employee’s immediate family.”⁵⁸

The DOL WHD enforces the FMLA. A worker must file an FMLA complaint within two years of the violation (three years for a willful violation). The FMLA covers private sector employers employing 50 or more employees in 20 or more workweeks in the current or prior calendar year and public sector employers regardless of the number of employees.⁵⁹

Some states and localities also provide a right to paid or unpaid family and medical leave.⁶⁰

Discrimination and harassment: These laws prohibit employers from treating workers unfairly based on protected characteristics such as: race; color; religion; sex; pregnancy; gender identity; sexual orientation; national origin; age (40 years old and over); disability; genetic information; citizenship status; and veteran status.⁶¹ Employers' policies or practices that appear to be neutral but have a significant negative impact on members of a protected group might also be illegal.⁶² Discrimination laws also cover workers' rights to reasonable accommodations because of a disability or religious belief.⁶³ Common federal anti-discrimination laws include [Title VII of the Civil Rights Act of 1964](#), the [Equal Pay Act](#), and the [Americans with Disabilities Act](#).⁶⁴

The [U.S. Equal Employment Opportunity Commission](#) (EEOC) is the main federal agency that enforces employment anti-discrimination laws.⁶⁵ EEOC complaints must be filed within 180 days of the discrimination taking place.⁶⁶ Where a state (or sometimes local) agency enforces a law covering the same conduct, that deadline is extended to 300 days.⁶⁷ Most employers with at least 15 employees are covered by the federal employment discrimination laws (20 employees for age-based discrimination).⁶⁸

Local and state jurisdictions sometimes have anti-discrimination protections that are broader than federal standards.

Labor organizing and unionizing: The [National Labor Relations Act](#) (NLRA) protects unionized and non-unionized workers' rights to, among other things, engage in "concerted activity" to improve workplace conditions and to form or join a union. Protected "concerted activity" refers to when workers jointly take action to improve their collective workplace conditions.⁶⁹ Concerted activity includes collective worker actions, such as delivering a petition to an employer about health and safety hazards, or two or more workers asking their employer during a meeting to pay employees proper overtime pay. One worker can also engage in protected concerted activity if they are "acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action."⁷⁰

The [National Labor Relations Board](#) (NLRB) is the federal agency that enforces these rights. Complaints must be filed with the NLRB within six months of the employer's illegal conduct.⁷¹ The NLRA applies to most private sector employers, but it does not apply to governmental employers; employers who employ only agricultural workers; or employers subject to the [Railway Labor Act](#).

Many states also have laws, and corresponding state agencies, that cover and enforce some workers' organizing and collective bargaining rights.⁷²

Retaliation in relation to the above rights: Retaliation refers to when an employer acts against a worker or workers because they have exercised one of the above (or any of the many other) workplace rights. Retaliation is extremely common.⁷³ For example, an employer might fire a worker because they complained about sexual harassment (Title VII); asked to be paid for the hours they had worked (FLSA); or refused to work because of hazardous conditions (OSH Act). Whether in the context of an organizing campaign or not, any of these worker actions might also be protected "concerted activity" under the NLRA if the worker(s) undertook them for their and their coworkers' "mutual aid or protection regarding terms and conditions of employment."⁷⁴ Other examples of retaliation are employers cutting an employee's hours; moving them to unfavorable shifts; demoting them;⁷⁵ or threatening to report them to immigration authorities.⁷⁶ When an employer acts against a worker after

they have filed a labor agency complaint or the agency has initiated an investigation relating to any of the above laws, that action can constitute as an additional act of retaliation.

In a retaliation case, the worker will have to show that their speaking out about the workplace violation or participating in an investigation caused the employer's negative action against them. The level of proof to show causation varies depending on the right being protected and the law the worker is seeking to enforce.

Retaliation complaints are filed with the labor agency that enforces the underlying rights at issue. For example, a worker who is retaliated against for seeking overtime pay would file a complaint with the US DOL or the relevant local/state equivalent agency; workers retaliated against for engaging in concerted activity would file that complaint with the NLRB, etc.

8. Discussing workplace issues with workers to determine next steps and to build worker power

A. Topics for organizers to discuss with workers before acting

When determining whether remedies exist and whether and where workers would file a labor agency complaint, organizers should cover several key topics with workers to support them to be effective self-advocates; ensure they are informed about their options; and help prepare workers as much as possible for a winning fight.

During worker organizing, organizers aim to accompany workers in reaching their goals, and to support workers to transition from feelings of powerlessness or fear to a place of agency, collective power, and righteous anger. Legal processes can often feel disempowering. The following conversations are important to develop a shared understanding of what may happen during a labor dispute so workers can make an informed decision—individually and collectively—on whether to initiate a labor complaint or take other actions. This applies regardless of whether workers will be represented in the complaint process or will report violations themselves (known as “pro se”), or whether workers want to pursue deferred action protections.

- **Self-identified goals:** Before filing any type of complaint, it is important for workers and advocates to understand workers' goals. It's important for workers to self-identify their goals as sometimes filing a complaint is divergent from these goals. Workers' goals might include “getting justice,” in which case it's good to continue the discussion to understand the shared definition of justice. Workers might also identify obtaining deferred action protections as part of their goal since they consider this to be an essential protection as they move forward with enforcing their labor rights.
- **Workers rights' training:** It is key to invest in accessible KYR trainings and agency-specific trainings so workers understand what legal violations are, which violations are enforced by which agencies, and the process of an agency investigation. For example, hazard and body mapping exercises are one tool for workers to identify safety and health concerns that might lead to an OSHA complaint. Before any legal filing, workers need to understand potential remedies through agencies or private litigation; limitations or protections related to confidentiality; statutes of limitations; and whether the agency has a policy regarding deferred action protections (if workers identified that goal). It is not uncommon for workers to report violations to an agency without jurisdiction or to report violations after the statute of limitations has passed. In these circumstances, it is still an important investment in workers and their

communities to provide training on workers' rights so workers do not experience the same rights violations and can timely report any violations they do experience in the future.

- **Empower workers to lead:** Identify and train worker leaders on methods for workers to strengthen their chances of winning their campaign. Two key recommendations include:
 - **Build a worker committee:** Worker-to-worker organizing is one of the strongest strategies to build the campaign. When workers trust each other, an effective strategy is to bring workers together to define their goals and collectively train on workers' rights, as it builds a sense of confidence and mutual commitment. It's best for workers to identify other workers they trust, as it is possible that not everyone is on board with the campaign. Where there is a lack of trust in the workplace, there may be several small affinity committees.
 - **Trainings on gathering evidence:** Workers frequently have the best access to valuable evidence and additional workers. Review with workers the kind of evidence that will strengthen their claims, and train workers on ways to legally obtain the evidence. For example, when facing wage and hour violations, workers can start to maintain contemporary time records; take photos or screenshots of their timecards; and take photos of anything they are asked to sign, especially if it is in a language they don't read. If a worker has been fired in retaliation for exercising their rights, they can start gathering evidence related to damages like their dates of unemployment; proof that they are searching for new jobs; pay stubs from any new job; and records of any out-of-pocket costs associated with being fired (e.g., having to move or medical care). Also consider one-party/all-party consent rules in their state.⁷⁷ Workers may be able to legally record video or audio of violations taking place in the moment.

B. Additional guidance for workers' rights attorneys' and advocates' conversations with workers

Attorneys and organizers will have varied practices about how to discuss issues with workers before workers decide whether to file a labor agency complaint. Workers will also make this decision in a variety of contexts, from filing a complaint while represented by a legal nonprofit not tied to any worker member organization, to filing a complaint as a member of a worker center and as part of a campaign. In any circumstance, workers' rights attorneys and/or organizers should have frank discussions with workers about the potential benefits and risks of filing labor agency complaints so workers can make empowered and informed decisions about how to proceed.

Below are additional key topics to cover with workers. See [Section 5](#) for important confidentiality and privilege considerations to keep in mind when covering these topics.

- **The worker's goals and whether filing a labor agency complaint could fulfill them:** As part of discussing a worker's goals (see [Section 8.A](#) for more guidance) discuss the labor agency's process, timeline, and powers to investigate and potentially remedy the worker's claim. Discuss how the case could be dismissed or resolved early on or progress to litigation in court, if applicable. Being clear on these topics is key to setting realistic expectations for workers as they decide whether a labor agency complaint might meet their goals. If complaints could be filed with more than one agency, discuss whether to file with all or only some.



I decided to act in the face of discrimination and try to stop my employer’s abuse. That meant filing a complaint. When you speak out, a weight lifts off your shoulders. At first, it was difficult because I felt very alone. But I sought help, and that’s how I found Arriba Las Vegas Worker Center. At the worker center I learned I am not alone. I have rights and value. I contribute to society. It's about valuing ourselves as Latinos, women, and immigrants. We are the workforce, and we don’t need to remain silent. I am proud to be a Mexican woman, and I want to be an example for my children. **My message to other workers is to overcome the fear of speaking out. Do it for dignity. Lift up your voice. You matter. You are a force.”**

— *Norma Gomez, Arriba Las Vegas Worker Center member and worker leader shares her story about filing a discrimination complaint and organizing with coworkers who also experienced discrimination during an interview with local media.*

*In the summer of 2023, Norma Gomez is interviewed by a local news channel about employment discrimination after filing a discrimination charge.
Credit: Arriba Las Vegas Worker Center*

STEP 2

Step 2: Filing the labor agency complaint and getting the investigation

9. Filing labor agency complaints or charges

Filing complaints or charges—the two names used by labor agencies to refer to the document that formally alleges an employer has violated the law—with a labor agency generally requires, at minimum, the following:

- Identifying the employer(s);
 - Identify employers expansively, listing any potential joint employers, including both the host location and the temp/staffing agencies, or contractors and subcontractors.
- Information about the complainants(s) (i.e., the worker(s) filing the complaint);
 - Some labor agencies will allow an advocate or an advocacy organization to file a complaint (known as a “third-party” complaint) or accept anonymous complaints.
- A description of the facts that support a cognizable claim within the agency’s jurisdiction;
 - Make sure the labor complaint alleges a legal claim or claims that fall within the jurisdiction of the agency.
 - If the worker’s concern was raised with management prior to filing the complaint, note when and with whom it was discussed.
- The dates the conduct occurred; and,
 - Ensure conduct occurred within the agency’s statute of limitations (and be as expansive as possible to the dates of the alleged violations).
- A description of immigration-related threats made by the employer, if applicable.
 - If the employer has made immigration-related threats in response to workers asserting their labor rights, these retaliation details should be included *without providing information on the workers’ immigration status*.
- When filing complaints or charges do not disclose workers’ immigration status or request deferred action protections or the SOI in the labor agency complaint, and do not otherwise share workers’ immigration status with labor agencies. Even requests for

an SOI should not mention any worker's immigration status (see [Section 14](#) for more information on SOI requests). As noted in [Section 8.B](#) above, if it is known that a worker does not have work authorization, a court or the relevant agency is not allowed to order the employer to rehire that worker or, potentially, to award them backpay (wages for work they would have done if they hadn't been illegally fired).⁸³ However, by requesting deferred action protections, it may be possible to obtain work authorization in a timely manner and access these remedies.

In some cases, an agency can initiate an investigation on its own, without first receiving a complaint. For example, in the case of a workplace fatality, OSHA is required to open an investigation on its own. The EEOC can also initiate its own charge, known as a "Commissioner charge," which is in an EEOC Commissioner's name and is most common in systemic or class cases.⁸⁴

In cases where a worker or third-party files a labor agency complaint, the labor agency then engages in its own internal process to determine the next steps. A summary of those processes for the main federal labor agencies is below. Note that these processes may vary in a particular case or across field offices. When in doubt, contact the agency to ensure the right steps are being taken. Suggestions for how advocates can ensure that workers' interests are heard throughout labor agencies' processes are in [Section 11 and Step 5](#), below. Additionally, some agencies (such as [OSHA](#) and the [NLRB](#)) have publicly available databases to search for prior complaints or investigations against employers.

Sample labor agency complaints are available by request [via this form](#).

DOL WHD:

To submit a complaint to the DOL WHD, workers or advocates should first contact the agency by calling 1-866-487-9243 or by contacting their [local field office](#). DOL WHD will then work with advocates or workers to file the complaint. DOL WHD suggests having the following information ready for eventually filing a complaint: name and contact information; employer name, phone number, and location of the employer; the manager or owner's name; the type of work performed; and how and when the worker was paid.⁸⁵ The employer's "location" is where the business is incorporated or headquartered and may be difficult for workers to ascertain (especially when they worked in a different location). DOL WHD also has a [process](#) for someone other than the worker to submit a complaint ("third-party" complaint). **The DOL WHD generally will not share the worker's name or identifying information with the employer unless and until the worker decides to testify at a hearing or trial.**⁸⁶

If DOL WHD decides to investigate the complaint, the investigator meets with the employer, interviews workers, and reviews records.⁸⁷ The DOL WHD representatives will then hold a conference with the employer and if wages are owed, request that the employer pay those wages. If DOL WHD cannot resolve the complaint through this process, it can pursue the claims through an administrative hearing to seek back wages for the workers and liquidated damages (double the amount owed), in addition to civil monetary penalties (which are paid to the U.S. Treasury).⁸⁸ This process can take months or even years.

If a worker complaint to DOL WHD is not resolved through the administrative process (including through litigation before an administrative law judge), the agency has the option to litigate in federal court or in some cases, recommend criminal prosecution to the Department of Justice.

OSHA:

An OSHA complaint can be submitted online; by phone, fax, or mail; or in person.⁸⁹ For OSHA to conduct an onsite inspection, the complaint has to be in writing (including via the [online form](#)); made by a current employee or employee representative filing a complaint on behalf of a current employee; and meet at least one of eight criteria, including asserting that there is an imminent danger, exposure of workers to a potential physical or health harm in the workplace, or that the complaint is against an employer with recent “egregious” OSHA citations (among other criteria).⁹⁰ If a formal complaint is not filed—unless there is an injury or a fatality—OSHA will likely only perform an “inquiry,” in which it informs the employer in writing that certain hazards have been alleged, and provides the employer with an opportunity to respond in writing.⁹¹ Because OSHA typically will not issue citations in these types of inspections, it’s best practice to file a formal complaint. Upon request from the complainant, **OSHA will not share the complainant’s name or identifying information with the employer.**⁹² OSHA will also keep the names of all workers that talk to them during an inspection confidential. In the rare case that a contested case leads to a hearing, OSHA may ask a worker to testify if they feel comfortable, and it will have to disclose witness statements collected during the investigation. OSHA also prioritizes industries and/or types of injuries that are currently under either a [regional or national emphasis program](#). For further guidance on OSHA protocols on inspections, worker organizers and advocates should refer to the [Field Operations Manual \(FOM\)](#).

If OSHA conducts an inspection, a worker representative (who does not have to be an attorney), can accompany the OSHA inspector (at the inspector’s discretion).⁹³ Except in cases of retaliation, the OSHA process does not allow for monetary damages to be paid to workers. Instead, OSHA can assess and issue citations and penalties against the employer for violations.⁹⁴ For retaliation claims, workers may be able to obtain back wages and other damages.⁹⁵

Any employer can contest citations and penalties issued against it through a hearing with an administrative law judge from the Occupational Safety and Health Review Commission (OSHRC), and then a review board.⁹⁶ Workers can only contest the date of abatement of the hazard (the period by which the employer must correct and/or remove the hazard). Workers do not have the right to contest the citation itself or the penalty amount. However, workers can elect “party status” to be able to participate in the OSHRC hearing.⁹⁷ Any further litigation takes place in the federal circuit courts of appeals.⁹⁸

EEOC:

EEOC charges can be filed by workers or third parties through an [online portal](#) or through an in-person appointment at an EEOC office.⁹⁹ The EEOC first interviews the worker and if the EEOC determines the issue is within its jurisdiction, the EEOC then fills out a charge form based on that interview. A worker can also call 1-800-669-4000 to speak with a representative about their concerns, although charges cannot be filed by phone.¹⁰⁰ If there are fewer than 60 days to file the charge given the statute of limitations, there are instructions in the EEOC Public Portal about how to provide the necessary information and file the charge more quickly.¹⁰¹ Another option is contacting the closest EEOC [field office](#) about other ways to file the charge as soon as possible. If assisting multiple workers with separate charges about the same employer, flag this for the EEOC and ask them to investigate these charges together. If there are potential class claims, flag that for the EEOC too as this might make the charge a higher priority for the agency. **Unlike with DOL WHD and OSHA complaints, once the charge is filed, the EEOC will notify the employer about the charge, including who filed it.**¹⁰²

After a charge is filed, the EEOC investigates and determines whether there is “reasonable cause” to believe discrimination occurred. Sometimes the EEOC refers cases to a free, voluntary mediation program so the worker and employer can try to settle the case. Otherwise, at the completion of an investigation, if the EEOC does not find reasonable cause to believe that discrimination occurred, it issues a “dismissal and notice of rights” letter, informing the charging party that they can file a lawsuit in court within 90 days. If the EEOC finds “reasonable cause” to believe the discrimination occurred, it issues the worker and the employer a letter inviting them to try to settle the case via another informal resolution process known as “conciliation.” If conciliation is unsuccessful, the EEOC can litigate the case in federal court or issue a “right to sue” letter informing the worker that they have 90 days to file their own lawsuit in court.¹⁰³ Given the volume of complaints it receives, the EEOC rarely litigates a charging party’s case; instead, a worker would usually have to initiate their own lawsuit after the EEOC process.

Investigation and resolution of EEOC charges can take months or years. A party can ask for a right to sue letter at any point if they decide to go to court instead of waiting for the EEOC’s process to play out. Remedies for violations of the laws enforced by the EEOC can include damages, backpay, and injunctive relief (including reinstatement). Injunctive relief is a legal remedy that restrains a party from engaging in certain acts, like prohibiting a company from retaliating against employees, or requires a party to act in a certain way, for example, rehiring a worker (known as reinstatement).

NLRB:

A worker or third party can file an unfair labor practices (ULP) charge¹⁰⁴ against an employer or labor organization. The NLRB suggests contacting an information officer at the closest [Regional Office](#) for assistance with filing a charge.¹⁰⁵ **After the charge is filed, the NLRB will disclose the name of the charging party to the employer.** An NLRB representative will investigate the charge and gather evidence. The NLRB also has jurisdiction over other disputes, such as workers’ petitions to form a union. A Regional Director or NLRB attorney reviews the Board agent’s determinations and decides on next steps. According to the NLRB, decisions on charges are usually made within 7–14 weeks but may take much longer. If the NLRB finds the charge is sufficiently supported, it attempts to broker a settlement between the parties. If the parties are unable to settle, the NLRB issues a complaint, which goes before an administrative law judge. The Regional Director can seek a temporary injunction under Section 10(j) of the NLRA from a U.S. District Court to preserve rights while the case continues through the administrative process.¹⁰⁶ The NLRB does not assess penalties against employers but can seek reinstatement or backpay for unlawfully discharged workers, among [other limited remedies](#).¹⁰⁷ Any further litigation takes place in the federal circuit courts of appeals.¹⁰⁸

Reminder: Every claim has a filing deadline, known as a “statute of limitations.”

- If the deadline is approaching and the worker wants to proceed, file the complaint. If needed, it can be amended with additional information after it is filed.
- For some labor agencies, a complaint is not officially filed until after an intake or questionnaire is completed. This is true, for example, with the EEOC (see [Section 9](#) for more information). Be sure to initiate the process with the agency with enough time for the complaint to be officially filed before the statute of limitations expires.
- Sometimes, it makes sense to first try to resolve the issue directly with the employer or through a union grievance process.¹⁰⁹ If so, keep an eye on the statute of limitations to not miss the deadline if this takes time or ultimately fails. If the deadline to file a complaint is coming up, consider entering a “tolling agreement” with the employer. A “tolling agreement” is an agreement to suspend the statute of limitations for a certain period of time.

10. Conversations with workers when filing a labor agency complaint

When filing a labor agency complaint, make sure to discuss the following with workers and worker committee members. Clarity with workers on expected agency actions and timelines is essential, as is clear information about how workers may strengthen outcomes.

- **Retaliation:** Workers and their advocates need to prepare for potential retaliation when filing a complaint. Advocates should have discussed this with workers prior to filing the complaint and it is important to do so again when filing the complaint. Workers will likely face questioning from the employer regarding their or other workers' involvement in the dispute, even when confidentiality provisions apply. Workers should know that labor agencies and advocates cannot prevent retaliation when employers decide to take unlawful action. However, workers and advocates can prepare for retaliation and plan to act if retaliation occurs. A request for deferred action protections may be part of this strategy.
- **Getting the investigation:** Filing a complaint or charge doesn't guarantee that the agency will investigate it; instead, they may dismiss it or issue a private right of action letter. It may also take a long time for the agency to initiate the investigation since many agencies have long backlogs. Delays vary by agency and region. Before, and again when filing a complaint, workers should be aware of potential delays and the possibility that a complaint will not be investigated at all. To try to avoid delays, advocates should follow up with the agency staff after any initial complaint is filed (this could be directly with known agency staff or through general agency contact information via the links in [Section 9](#)). It may also be necessary to escalate issues to the regional or headquarters level when an agency has declined to investigate or when time is quickly passing, especially if workers are experiencing escalating retaliation. Workers can be involved in this process and improve outcomes in several ways, including gathering evidence to substantiate the complaint; recruiting other workers to participate in a complaint process; participating in labor agency stakeholder meetings to bring attention to their case; and/or engaging in public facing strategies as discussed in [Section 11](#).
 - **Media Strategy:** It also may be helpful to bring media attention to the dispute where appropriate and to put pressure on the agency to act in a timely manner. Not all cases or campaigns benefit from media attention. The benefits and risks of a media strategy should be discussed among workers, organizers, and lawyers, in addition to communications professionals on staff. It is imperative that workers agree with bringing media attention to the dispute and are prepared to speak with the media before implementing this strategy.

11. Strategies for organizers and worker organizations to consider to improve outcomes in labor agency investigations

Labor enforcement agencies are historically under resourced and frequently manage unsustainable caseloads. This may result in a lack of investigative resources to open an investigation, or light-touch investigations where charges are not fully investigated (for example, where an agency fails to interview a large base of workers or does not pursue all possible charges). The way the agency conducts its investigation can also result in incomplete investigations. For example, when DOL WHD investigates potential rights violations, it begins with a conference with the employer, and frequently interviews workers

on site at the same time. Often, workers are not free to talk or are uncomfortable talking to investigators on site. The employer may also intentionally schedule certain workers (such as newly hired workers or U.S. citizen workers) who did not experience the issues in the labor complaint, to be on site during the investigators' visit. Similarly, in the OSHA context, because most on-site investigations begin with an employer conference, the employer may have enough time to clean up or otherwise address problems at the worksite before the inspection begins (even if the inspection itself was unannounced).

Worker centers and unions can employ a series of strategies to improve the likelihood that the agency opens and conducts an effective investigation. Potential strategies include:

- **Worker and worker committee leadership:** Empowered worker leaders may act as a group in collaboration with worker centers or unions, or independently, as they deem appropriate. Workers can be instrumental by gathering new evidence, bringing in new complainants or witnesses, and maintaining regular communication with the labor agency. They can help increase the likelihood of a thorough investigation by proactively providing additional information and worker contacts to investigators and maintaining consistent communication by asking for updates. Continued KYR and worker organizing trainings are beneficial to support worker leaders in developing their understanding of the evidence and how witnesses can strengthen the investigation.
- **Strategic enforcement relationships:** It is invaluable to develop and maintain relationships with individual agency staff members, including investigators and community outreach personnel, but also district and regional managers. Relationships can be developed prior to an organization supporting workers in bringing a complaint. These relationships can be crucial when advocates need to bring a complaint to the attention of a manager, regional supervisor, or national level contact in the face of limited investigative resources. If a given agency staff member does not recognize the strength of a complaint, bringing it to the attention of another agency official may help ensure timely attention or allocation of investigative resources for a case. These contacts should be employed responsibly, where compelling evidence exists, and advocates should be cognizant of internal agency dynamics that impact when and where to escalate a case. Escalating a case without sufficient evidence, or where workers are unwilling to participate in the agency investigation, may be counterproductive. To learn more about how to effectively engage with agencies, review [additional resources](#) and recommendations on strategic enforcement.¹¹⁰
- **Raise the profile of the campaign:** By making an egregious case more visible, worker centers' and unions' participation may make any enforcement action more effective in resolving the underlying labor dispute. Strategies to increase visibility may include organized direct actions, ally-organization driven actions, and media attention. These strategies, which should be grounded in workers' goals, can bring the most egregious violations to light and encourage the agency and employer to respond accordingly. Any strategy that raises the profile of the labor dispute also has potential risks to discuss with workers before taking public action, including, but not limited to, employer retaliation. When workers speak publicly about their experience participating in a labor dispute, or immigration status, they are essentially waiving confidentiality/privilege regarding what they share and should always have the information necessary to make informed decisions about their participation in public facing actions. As with all public actions, organizations should consider necessary roles, like march captains, designated people to engage with law enforcement, etc.
 - **Public actions:** When an employer is already aware of a labor dispute, and retaliation is escalating, consider drawing public support and attention through

public actions like a walkout, petition delivery, picket line, or rally. In some circumstances, this may increase the pressure on the employer to settle a pending issue. In other circumstances, the employer may escalate their unlawful behavior. In the latter scenario, workers will ideally be prepared to collect evidence of the employer's escalating unlawful actions. See [Section 8.A](#) for more information on collecting evidence. Public actions may result in some workers pulling further away from organizing efforts for a time, typically because the employer has escalated retaliation. Some workers will always prefer to participate confidentially and should be informed that this is their right. On the other hand, other workers may come forward after observing the action, and join the fight.

- **Media strategies:** A public-facing media strategy may increase agency interest when the case has strong factors such as prominent worker participation and high dollar value. Like other types of public-facing actions, a media strategy can provoke an increase in retaliation from an employer. One advantage of a media strategy is that workers may participate anonymously or under a pseudonym (if this is discussed and agreed with the reporter/outlet), unlike other forms of public action. When employing a media strategy, it can be more effective to identify reporters who focus on labor and employment beats since they may be more familiar with labor law and labor violations. See [Section 10](#) for steps to take and guidance to follow before engaging in a media strategy.

In August 2022, worker and organizer panelists discussed worker organizing and deferred action protections at the Deferred Action for Labor Enforcement (DALE) campaign regional convening in Jackson, MS.

Panelists' names from left to right: Jorge Torres, National Day Laborer Organizing Network (NDLON); Leticia Casildo, Familias Unidas en Acción New Orleans; Rosario Ortiz, Arriba Las Vegas Worker Center; and Mario Reyes, Immigrant Alliance for Justice and Equity of Mississippi. Credit: National Day Laborer Organizing Network (NDLON)



STEP 3

Step 3: Requesting the labor agency Statement of Interest (SOI)

12. What is a Statement of Interest (SOI) from a labor agency?

A Statement of Interest (SOI) from a labor agency is a written request from the agency to United States Citizenship and Immigration Services (USCIS), a component agency of DHS, requesting that DHS consider granting deferred action to workers at the given worksite(s) to support the agency's labor enforcement interests and ensure they are not undermined by immigration enforcement actions. An SOI identifies the employer(s) and explains the agency's enforcement interest and the need for workers to be present in the United States and protected from potential immigration-related retaliation during the pendency of the labor dispute. DHS considers granting that protection to workers through deferred action and work authorization.¹¹¹

As explained in [DHS's FAQs](#), it is necessary to obtain an SOI in order for individual workers impacted by labor disputes to apply for deferred action protections, as these protections are based on the labor enforcement interests of a labor agency. DHS will not consider a worker's request for deferred action protections via the centralized process unless they are covered by an SOI from the relevant labor agency and include that SOI as part of their deferred action application.

DHS defines labor agency broadly, and includes federal, state, and local labor agencies, as well as prosecutors. Labor agencies may issue SOIs in relation to laws they enforce. For example, a state agency may issue an SOI in relation to state laws that agency enforces, but not in relation to violations under federal laws for which they don't have jurisdiction.

Labor agencies' SOIs generally include information on:

- The labor dispute, the agency's jurisdiction over it, and the agency's investigation or other enforcement actions (e.g., lawsuit) related to the dispute;
- The employer(s) being investigated;
- The worksite(s) included in the scope of the agency's investigation;
- The time period covered by the agency's investigation; and,

- A request to DHS that it consider granting deferred action protections and work authorization to workers for a minimum of two years, or longer, if necessary, for the labor agency's enforcement activities.

Remember, labor agencies are not required to name any worker(s) in SOIs and **SOIs should not name any worker(s)**.

DHS has provided labor agencies with guidance about what to include in an SOI and DHS is available to provide technical assistance directly to labor agencies on this topic (see [DHS's FAQs](#)).

When an agency issues an SOI, any worker that falls within its scope (worksite, employer, and time period) would be eligible to apply for deferred action protections. An individual worker who is petitioning for deferred action protections will need to demonstrate to DHS that they in fact fall within the scope of the SOI.

When to request an SOI: If the advocates, the organizing committee, or the worker(s) think deferred action protections would be beneficial in the context of an ongoing labor dispute, the next step is to seek agency support in the form of an SOI. As detailed below and in [Step 4](#), if there is an organizing campaign related to the labor dispute, it is important that the worker organizing committee is engaged in the decision to seek an SOI.

Labor agencies typically issue SOIs only in relation to an agency's open investigation or enforcement action, including actions in the litigation through settlement compliance phase. Importantly, a labor agency is unlikely to issue an SOI in relation to a closed case (whether through dismissal, completion of settlement compliance, or final judgment and completion of collection) or where the agency lacks an identifiable enforcement interest.

Seek an SOI as early as possible, which is often soon after a labor agency complaint or charge has been filed, or, where an agency initiates an investigation on its own, after that investigation has begun. Depending on agency backlogs at both the investigative and SOI-request level, and the urgency of the facts on the ground, advocates may want to submit the SOI request at the same time that they file the labor agency complaint or charge (but through the separate processes). If, given the nature of employer retaliation at the worksite, deferred action protections would be necessary prior to filing a complaint, ask the labor agency for an SOI at the pre-complaint stage—but know that an agency will typically need to have a complaint on file or have opened the investigation to substantiate their SOI to DHS.

If a labor agency grants an SOI request, it will send a copy of the SOI directly to USCIS. USCIS then typically takes three business days to review and either request additional information or accept the SOI for submission. Once accepted by DHS, the labor agency will send a copy of the SOI to the requestor (e.g., the worker's advocate).¹¹² Where a worker organizing committee has been involved in the SOI request process, as it should be, this committee should be notified when the labor agency issues the SOI.

If a labor agency denies the SOI request, it will *not* send any information to DHS and will simply proceed with its investigation or other activities. Labor agencies have discretion over whether to grant SOI requests, and review requests on a case-by-case basis. Just because a complaint has been filed or an investigation has been initiated, does not mean the labor agency will necessarily provide an SOI. If the agency denies the request, consider consulting with the agency about why. In some cases, SOI requests have been denied because of lack of agency jurisdiction or enforcement action. In other circumstances, SOI

requests did not adhere to agency guidelines regarding how to request an SOI. There is not a process to appeal a denial, although advocates may choose to resubmit a request.

Sample SOIs and SOI requests are available by request [via this form](#).

13. Engaging workers, worker committees, and organizers before seeking an SOI

Before organizers, attorneys, or other advocates request an SOI, they should consult with workers and be sure the workers want to request one. Workers have agency and collective power, and requesting an SOI without consulting with worker leaders does not respect the important role of workers in labor disputes. When workers do not participate in the decision to seek an SOI or are unaware of the process to seek deferred action protections, they may not trust the process's validity or may feel coerced to participate. This could be counterproductive to the agency's interests and advocates' efforts. It could also present implementation challenges if workers are unaware of or unsupportive of the requests.

To avoid misleading workers, it is also important that early conversations about requesting an SOI are transparent and clear on what deferred action protections are, and what they are not. It's equally important to acknowledge that requesting an SOI doesn't ensure an SOI will be granted, and receiving an SOI doesn't immediately confer protections or guarantee any protections will ultimately be granted. Advocates should keep in mind that, as a case proceeds, employers might try to uncover evidence of conversations or written communications with workers about deferred action protections and allege that advocates "promised" workers an immigration "benefit."

When workers are involved in the process of deciding to request an SOI, workers develop a better understanding of the relationship to organizing and the importance of their participation in agencies' investigations. Workers who participate in the decision to seek an SOI ideally become active worker leaders who contact other workers to participate and strengthen the investigation by bringing forward new witnesses and additional evidence of labor violations.

Key points to frame SOIs conversations with workers, worker committees, and organizers:

- It is essential for workers, organizers, and advocates to understand that labor agencies have the authority to issue an SOI when it serves their investigative or broader enforcement interest. The intention is to overcome chilling effects that cause workers to remain silent about workplace abuse, limit consequences of retaliation, and make sure that workers remain present and available in the United States so they can participate in the labor agency investigation and any associated litigation. Issuing an SOI implies the need for continued and/or increased worker participation in the labor agency's investigation or other enforcement activities.
- The SOI is primarily a tool to strengthen the agency's investigation, and this consideration is part of the underlying labor dispute. Immigration protections may be a pathway to success in the investigation or labor dispute, but they are not the goal in and of itself.
- It is essential to understand that requesting an SOI does not mean the agency will grant it.

- At this stage, workers and organizers should understand what protections deferred action provides and what they do not provide. Deferred action protections based on labor enforcement are not a visa, nor are they a pathway to permanent status. Deferred action protections are temporary protection against deportation, accompanied by work authorization, to support workers' participation in labor agency investigations and litigation and ensure the agency has full use of available remedies.
- The SOI usually covers all workers from the company during the investigative time frame, but it may not be in all workers' interests to apply for deferred action protections. If the SOI letter is issued, workers should consult with an immigration attorney to determine whether pursuing deferred action protections may be right for them.
- As in the overarching labor dispute, each stage of a deferred action case may require additional advocacy to be effective.
- Notario fraud is persistent and harmful for immigrant workers and families. It is important for advocates to flag for workers throughout the process that, unlike in some countries, in the United States "notarios" (notaries) are not attorneys and they should not hire a "notario" to assist them with any type of immigration application, including for deferred action protections.

SOI-related conversation questions for workers and worker committees:

- Have you experienced retaliation? What forms of retaliation have you experienced? What forms of retaliation have others experienced? (A KYR training on retaliation would be a useful activity prior to this conversation to support workers in understanding and recognizing what is considered retaliation under relevant laws.)
- What is stopping you or other workers from coming forward and reporting violations or joining your coworkers in organizing activities?
- Would requesting deferred action protections for victims and witnesses help you feel more comfortable collaborating with the labor agency or being named in legal proceedings?
- Would requesting deferred action protections for victims and witnesses help other workers feel protected to participate in the labor agency investigation or organizing campaign?

14. What to include in the SOI request to the labor agency

Each labor agency has its own process for workers or their advocates to request an SOI. And most federal labor agencies have their own process for how to request an SOI. The guidance publicly available from federal labor agencies at the time of publication is outlined in [Section 15](#) below. For state agencies, at the time of publication, agencies in California, Illinois, New York, and Massachusetts have published some level of guidance on the process to request an SOI. In some cases, state agencies have issued SOIs without having published information about the formal process to request an SOI. Other states have not yet issued SOIs or published formal guidance but have indicated a willingness to issue SOIs. If you are unsure of the policies and practices in your jurisdiction, consider contacting other advocates or your state or local agencies to inquire.

The timeline for SOI issuance varies by agency. Advocates have reported receiving SOIs within two weeks and up to several months after submitting their requests. See [Section 15](#), below, for more information about the estimated timeline for agencies.

Not all labor agencies have published guidance or established a process for reviewing requests for SOIs. All agencies have the authority to make requests to DHS, if they choose to do so. In these cases, advocates should reach out to the appropriate agency contacts to inform SOI requests. See [Section 17](#) below for recommendations on how to engage in this process with state or local agencies that have not yet published SOI guidance.

While workers could request an SOI on their own behalf, or in relation to a complaint filed by a different worker, advocates are often better positioned to write and submit the request on behalf of groups of workers or worksites for several reasons, including protecting the identities of workers and supporting effective implementation when an SOI is issued.

What to include in an SOI request:

- ❑ Include a **description of the labor dispute** and how it relates to laws enforced by the agency. Include a clear articulation of **labor agency enforcement interests**. Keep in mind that an SOI request is not a labor complaint/charge and does not need to contain too much detail on the labor violations provided there is an open investigation. In the SOI request, one is arguing the enforcement interests of the agency to make the strongest possible argument for the agency's consideration.
- ❑ Specify **timeline, place, and nature of the violations**.

Advocacy tip on timeline: Ask that the SOI cover the longest possible time frame based on the labor agency's authority in the underlying labor dispute and the applicable statutes of limitations. For example, a worker can generally make a DOL WHD complaint regarding wage violations within a two-year window. When the DOL WHD opens the investigation, they can investigate facts going back three years. In this case, request that the SOI cover all three years. Given the varying lengths of statutes of limitations, some agencies can investigate longer time frames than others. For example, where both OSHA—which has a much shorter time frame for investigations—and DOL WHD are investigating claims, consider requesting the SOI from both sub-agencies, especially since DOL WHD's SOI could cover a longer time frame. Workers whose period of employment falls outside of the time specified in the SOI would not be able to use that SOI to apply for deferred action protections, even if they also need these protections to support the agency's investigation.

- ❑ Name all relevant **employers and worksite(s)**.

Advocacy tip on employers: When there is potentially more than one employer that committed labor violations—such as when there are temp agencies or sub-contractors involved—ask for the SOI to list all potential employers. This would ensure workers working under all relevant employers in a joint employment situation could seek deferred action based on this SOI, if needed. See [Section 7.A](#) for information on joint employers.

Advocacy tip on worksites: When an employer(s) operates at multiple worksites where employees may have witnessed or experienced the rights violations at issue, advocate for the SOI to identify all potential work locations that may fall within the scope of the agency's investigation or other enforcement action. This would ensure workers at all relevant worksites could seek deferred action based on this SOI.

- ❑ Describe how **fear among workers** related to immigration consequences, **retaliation**, or other factors in the labor dispute, has or may create a **chilling effect**. If retaliation has already occurred, consider describing the retaliation without naming any specific workers; fear of retaliation expressed by workers; and a short description of how the SOI would support the agency in its mission.
- ❑ Ask that the agency support deferred action and work authorization requests by workers **for at least two years and subject to extension for longer periods of time** based on the length of the investigation and subsequent litigation, enforcement action, compliance effort, or other enforcement activity.

Advocacy tip on deferred action time period: The agency investigation alone can take longer than two years and litigation can take longer. An SOI could provide support for workers’ deferred action applications at any point in the agency’s enforcement efforts. This includes, for example, during post-judgment consent decree monitoring or post-settlement compliance. See [Section 21](#) for information on deferred action protections renewals.
- ❑ If needed, ask the labor agency to request in its SOI that DHS expedite the processing of workers’ deferred action and work authorization applications. See DHS’s FAQs for more information on how an agency can do this.
- ❑ Address the request to the appropriate agency contacts, as specified by agency guidance.

What *not* to include in an SOI request:

- ❑ Do not name any worker(s) individually; and,
- ❑ Do not specifically reference workers’ immigration status.

15. Guidance on requesting SOIs from federal labor agencies

U.S. Department of Labor (US DOL):

The DOL has a centralized inbox for requests for SOIs: statementrequests@dol.gov. DOL receives requests related to DOL WHD and federal OSHA investigations, with some exceptions in states with OSHA approved state plans (see below).

The factors DOL notes that it will consider in deciding whether to issue the SOI, include but are not limited to:

- DOL’s need for witnesses to participate in its investigation and/or possible enforcement;
- Whether prosecutorial discretion from DHS “would support DOL’s interest in holding labor law violators accountable for such violations;” and,
- Retaliation concerns including the possibility of a chilling effect on workers; and whether immigration enforcement could interfere with DOL’s enforcement of laws in its jurisdiction or ability to pursue remedies for impacted workers.

[DOL’s FAQs](#) indicate that it will provide updates every 30 days after the request for an SOI is received. Requests to DOL have received responses anywhere between 2–8 months after the initial request, and the timeline may reflect the number of requests received by the agency.

States with OSHA State Plans: As noted in [Section 7.B](#), OSHA approved State Plans exist in 22 states, where OSHA has designated enforcement authority to a state entity. The states with a State Plan can be found on the [OSHA State Plan website](#). If the case falls within the jurisdiction of an OSHA State Plan, file the request for an SOI to the State Plan and to the DOL simultaneously. Federal OSHA will likely direct the request to the State Plan administration, but may consider issuing an SOI when a “worker raises a credible allegation of a violation of a law that federal OSHA enforces in that state, e.g., violations of whistleblower statutes other than section 11(c) of the OSH Act, or violations of the OSH Act that arise on federal establishments, Indian reservations, or other federal jurisdictions.”¹¹³ At this time, State Plans are not mandated to create a process for receiving requests for SOIs. However, State Plans are required to perform on the “At Least As Effective” Standard (ALAE).¹¹⁴ State Plans’ individual policies and resources vary, and the option of simultaneous NLRB filing remains available, when applicable. If working in a State Plan state without an SOI process, see [Section 17](#).

Equal Employment Opportunity Commission (EEOC):

The EEOC requires SOI requests to be submitted via email to the [District Office](#) closest to where the individual or advocate lives, directed to the District Director and Regional Attorney for that field office (the email format will be [firstname.lastname@eoc.gov](#)). For further information about the EEOC’s process, please see the agency’s [Frequently Asked Questions](#). Timeline estimate varies from 1–6 months.

National Labor Relations Board (NLRB):

To seek an SOI from the NLRB, a worker or advocate or representative should send a written request to any/all of the following: the Board Agent assigned to their case, the Immigration Coordinator in the Region, the Regional Director, or the Immigration team in Washington, DC at [Immigration.Team@nlrb.gov](#).¹¹⁵ The SOI request “should include the NLRB case number, the location of the worksite(s) involved in the NLRB action, the employer’s name(s) as it appears on paystubs, or other documents,” and an estimate of the number of workers impacted by the labor dispute.¹¹⁶ The estimated timeline for a response is a matter of weeks, although some advocates have received SOIs from the NLRB more quickly.

See [Appendix B](#) for a chart including federal labor agencies’ guidance and resources for SOI requests.

In May 2023, members of Arise Chicago obtained deferred action protections. Credit: Arise Chicago



16. Guidance on requesting SOIs from state labor agencies

Some state labor agencies have their own process for SOI requests. Below is a summary of the guidance that has been issued by state labor agencies so far.

California: Guidance on the process for requesting an SOI has been provided by the [Department of Industrial Relations' Labor Commissioner's Office \(LCO\)](#), [Division of Occupational Safety and Health \(Cal/OSHA\)](#), and the [Agricultural Labor Relations Board \(ALRB\)](#); all this guidance is also available in Spanish. Requests for an SOI should be submitted via email to LCOstatementrequests@dir.ca.gov (for the LCO), DOSHStatementRequests@dir.ca.gov (for Cal/OSHA), and GeneralCounsel@alrb.ca.gov (for the ALRB).¹¹⁷

Illinois: Both the [Illinois Department of Human Rights \(IDHR\)](#), which investigates charges of employment discrimination), and the [Illinois Department of Labor \(IDOL\)](#), which enforces state minimum wage, health and safety, and other laws) have issued guidance on how to submit a request for an SOI. To submit a request for an SOI to the IDHR, workers and advocates should send a request to IDHR.Legal@illinois.gov.¹¹⁸ Requests for a “letter of support” from the IDOL should be submitted to DOL.DeferredAction@illinois.gov or by calling 312-793-1966.¹¹⁹

New York: The [New York State Department of Labor \(NYSDOL\)](#) has also published guidance on requesting SOIs. To request an SOI, advocates can email SOIrequests@labor.ny.gov or call 877-466-9757 for further information.¹²⁰ The NYSDOL notes that its Worker Protection Unit decides on the SOI within 30 days and that it “will issue a denial letter on the 31st day if it has not received complete information relating to the SOI.”¹²¹

Massachusetts: The Massachusetts Office of the Attorney General has issued an [Attorney General Advisory](#) indicating that the agency will “assist eligible workers whose rights have been violated in seeking protection from immigration enforcement by supporting workers requests for prosecutorial discretion, and/or U or T visa certification,” and it recently issued an [FAQ on how to request an SOI](#). The Massachusetts Commission Against Discrimination (MCAD) has [publicly announced](#) that it accepts requests for SOIs and that “complainants or witnesses must file any such request to the MCAD with the Clerk of the Commission.”¹²²

See [Appendix B](#) for a chart including state labor agencies’ guidance and resources for SOI requests.

17. Recommendations for when agencies have no established policy regarding SOI requests

While most federal labor agencies have some form of published guidance regarding SOI requests, most state agencies and OSHA State Plan states do not have a published process. Despite not having a published process, these agencies still have the authority to request DHS grant workers deferred action protections in support of their labor enforcement interests. Organizers and advocates are calling for more local, state, and federal agencies to establish clear guidelines on how to request SOIs where deferred action protections are relevant to the agencies’ interests. If deferred action protections would be important to combat employer retaliation and ensure workers can participate in labor agency enforcement efforts, whether a labor agency has an established SOI policy or is otherwise open to these requests, is a factor to consider when determining where to file the labor agency complaint(s). For example, where possible, it is recommended to consider filing

complaints at multiple agencies.

NLRB charges and SOI requests in combination with other agency investigations:

Whenever there is a group of two or more workers, consider whether the employer has violated the rights of workers to engage in some form of protected concerted activity as a basis for filing charges and requesting an SOI through the NLRB. While advocates push local and state agencies to establish SOI policies, this may take months or years, and a request to the NLRB may take only weeks. As described in [Section 7.B](#) above, concerted activity is “when two or more employees act for their mutual aid or protection regarding terms and conditions of employment. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action.”¹²³ Even workers not represented by a union have these rights. For additional information refer to [Step 1](#) on identifying violations and agencies or refer to the NLRB for information regarding protected concerted activity.¹²⁴

In August 2022, worker leaders and members of the Deferred Action for Labor Enforcement (DALE) campaign from across the South were hosted by the National Day Laborer Organizing Network (NDLON) and the Immigrant Alliance for Justice and Equity of Mississippi. They called for protections and relief for workers impacted by ICE’s workplace raids in Mississippi and for deferred action protections to address rampant workplace abuse.

Credit: National Day Laborer Organizing Network (NDLON)





If we remain silent, we will continue experiencing the same conditions we have always known. We need to take off the blindfold, and not fear what others may say. We won our fight for deferred action protections, and we are experiencing the benefits of these protections, something that most of us desired. **If we stay silent, we will never win. We win by fighting.”**

— *Misael Rivas, Arriba Las Vegas Worker Center member and Unforgettable Coatings, Inc. employee reflects on the victories of the Unforgettable Worker Committee during a panel in Los Angeles, CA, hosted by the National Day Laborer Organizing Network (NDLON) and SEIU United Service Workers West.*

*In July 2023, Misael Rivas speaks about deferred action protections while participating in a panel.
Credit: Arriba Las Vegas Worker Center*

STEP 4

Step 4: After receiving the SOI: applying for deferred action protections

When an SOI is issued, it is critical to once again bring together workers, organizers, and lawyers to build a plan that ensures other workers are aware of deferred action protections, their scope, the labor agency enforcement interest, and how to continue to participate in and strengthen the investigation and campaign. This stage in the campaign requires effective and accurate messaging to workers, in addition to expanding the team, including identifying and partnering with immigration attorneys and DOJ-accredited representatives to provide immigration consultations and immigration legal services.

18. Engaging workers when an SOI is issued

With an SOI in hand, spreading the word to workers in a clear and accurate way requires strategic messaging and messengers among worker leaders, organizers, and attorneys. Some considerations to keep in mind:

- **Develop effective talking points** for organizers and workers to spread the word among other workers. Revisit the overview ([Sections 1–3](#)) for information regarding deferred action protections to help build talking points and informational presentations. It's a good idea to have both workers' rights and immigration attorneys review talking points and informational materials for workers. See [Appendix C](#) for a list of worker-facing resources.
- Given the lack of robust information regarding deferred action protections nationally, workers may be hesitant to trust the application process, and it's likely that workers will seek information and legal services in waves—many workers may wait until a coworker receives their work authorization card before making the decision.
- Particularly during early stages of worksite disputes or worksite-based organizing campaigns, workers may fear retaliation. For example, workers may not be inclined to attend large information sessions about deferred action for fear that a coworker may inform the employer of their participation. **One-on-one meetings and small group meetings may be more effective** for informational sessions about deferred action protections. This strategy can also help maintain confidentiality about who is considering applying for deferred action protections and immigration status in general.

- As with before seeking the SOI, **be aware of “notario” fraud**. Have conversations with workers about this so they can be better prepared to protect themselves from this type of fraud.

Worker leaders can be the best messengers to reach other workers. Rather than approaching the entire workforce with information about deferred action protections through methods like text, email, or phone calls, consider sharing information regarding deferred action with worker leaders who were involved in early stages of the campaign, including those who were part of the decision to seek an SOI. These workers may be the first to apply for deferred action protections. Workers will share information with their coworkers, and other workers may be more likely to trust information coming from their coworkers, especially when they haven’t previously been involved in the labor dispute or organizing efforts.

As new workers come forward, it is essential to continue KYR trainings. In addition to sharing clear information regarding deferred action protections, it is equally important to continue regular KYR trainings on workers’ rights, particularly in relation to those at issue in the labor dispute. Workers may be unaware of what constitutes a labor violation and may have information regarding violations that strengthens the labor dispute. It is important to ground the explanation of deferred action protections in the labor dispute and the labor agency’s labor enforcement interests.

Organizers can help provide KYR sessions regarding deferred action protections and the underlying labor dispute. It is important that organizers be clear sharing summary information without giving immigration advice—and that organizers only collect or retain information regarding immigration status, or who is or is not seeking protections, if doing so pursuant to a legal strategy that will protect that information as privileged (see [Section 5](#) above).

19. Expanding effective collaboration when an SOI is issued: integrating immigration practitioners into the team

Upon receipt of an SOI, informed immigration attorneys become an essential part of the team. Throughout the campaign, to support effective collaboration, it is essential to discuss and agree upon the roles of worker leaders, organizers, workers’ rights attorneys, and immigration attorneys to ensure clarity in communication and effectively uplift the underlying labor dispute. Revisit [Sections 4–6](#) for more on roles and effective collaboration.

Worker centers or worker advocates should generally consult immigration attorneys after an SOI has been obtained to support the worker center or worker advocate in setting up the necessary immigration services, including the necessary counseling for individual workers. Immigration attorneys typically file the deferred action applications, although, as discussed below, advocates are exploring other models of assistance. These include clinical and pro se models which, ideally, still include an immigration attorney screening or review of each worker’s case. Immigration attorneys may represent an individual worker for a discrete task, such as an initial consultation. Alternatively, they may provide broader representation, for example, such as identifying and applying for other potential immigration benefits or pathways to permanent status. Their knowledge of labor law and the labor side of deferred action protections may be limited, but immigration attorneys can support worker advocates and workers pursuing the underlying labor dispute by communicating relevant immigration

application updates in a timely and accessible manner. Immigration attorneys can also contribute to worker education by, for example, reviewing and developing informational and training materials for workers. Immigration attorneys should review the [Immigration Practice Manual](#) for best practices in filing labor-based deferred action applications.

Collaboration among different types of advocates at this stage remains important and mutually beneficial for both the immigration attorneys who file or are consulted about the deferred action applications and the worker leaders, organizers, and workers' rights attorneys in strengthening the labor dispute. For example, workers' rights attorneys or organizers may already have information on file that could provide the evidence of employment necessary for workers to demonstrate to DHS that they fall within the scope of the labor agency's SOI. Additionally, during immigration intakes, immigration attorneys may become aware of additional evidence related to the labor dispute that could be reported to the labor agency. Workers' rights and immigration attorneys may collaborate to develop a joint intake for immigration purposes that also screens for labor violations, especially where an employer has committed criminal activity that may rise to the level of qualifying criminal activity as the basis for applying for a U Visa or T Visa (see [Section 22](#) for more information).

As previously noted, it is important for advocates to flag for workers that **they should not hire a "notario" (notary)** to assist them with any type of immigration application, including for deferred action protections, since they are not qualified to do so, and this could lead to significant negative consequences for them. Organizers and workers' rights attorneys should also warn workers against hiring immigration attorneys who have little to no experience with the deferred actions protections process. Trusted immigration attorneys can assist workers' rights advocates in identifying other reputable immigration attorneys in their area.

20. Models for immigration services implementation

Worker centers, unions, immigration attorneys, legal nonprofits, and clinics are exploring evolving models for effective implementation at this stage of the campaign. As deferred action protections become more well known among workers and advocates, it's likely that best practices and recommendations will continue to develop and evolve.

Several models across the country include:

- **Contract representation:** Some worker centers and unions have privately contracted immigration attorneys to provide representation. Where a worker center or union is represented by a labor attorney, labor and immigration attorneys can enter into contractual agreements with provisions to protect confidentiality and enable immigration and labor attorneys and advocates to share information, accompanied by client authorization and engagement letters to support the effective flow of information to facilitate identifying and reporting labor violations alongside providing immigration representation.
 - In some cases, workers' rights attorneys are beginning to practice immigration law for the purposes of deferred action applications. In these circumstances, it is advisable to engage an experienced immigration attorney as a resource to provide supervision, consultation, and review, particularly in cases where adverse factors related to immigration or criminal history may impact how DHS adjudicates the worker's application. Additionally, experienced immigration attorneys may still be an important part of the team for the purposes of counseling workers on

permanent forms of relief, as it is very common for workers to raise this question. See [Section 22](#) for information regarding pathways to permanent immigration relief in relation to labor disputes.

- **Clinical models:** Worker centers and unions are exploring partnerships with law school clinics and U.S. Department of Justice accredited partners for preparing deferred action applications where workers do not have any significant immigration or criminal history.
 - Clinics have been set up to provide workers with limited representation in applying for deferred action protections. Under this model, immigration attorneys provide representation only to prepare and submit the deferred action application packet. They do **not** commit to assisting the worker with anything else. Given this, in this clinic model, DHS contacts workers directly at the address they provide in their application for any follow-up, including the scheduling of their biometrics appointment and any requests for additional evidence. Workers should have a point of contact with the worker center or other organization that set up the clinic to seek assistance in responding to any additional requests for evidence.
 - Note: “Pro se” refers to workers applying for deferred action protections on their own, without an attorney directly representing them. See [this toolkit](#) for more information on how to support workers to apply pro se through limited legal services and clinic models.¹²⁵ Given USCIS filing requirements and potential risks for certain workers, it is not advisable for workers to apply for deferred action protections unless they have at least some level of support from knowledgeable advocates in doing so.

For clinic or pro se implementation models, it is a good practice to identify an experienced immigration attorney to consult and be available to support workers following the initial application. For example, if a worker receives a Request for Evidence (RFE) from DHS following their application, workers should have access to support in answering the RFE on time. In these models, it is also important to ensure there is some form of protected communication with workers to track results, identify issues, and ensure workers have support to translate (as needed) and understand communications from DHS, including the letter regarding their biometrics appointment.

It is essential that immigration attorneys recognize that this form of deferred action is intended to support labor agencies' interests and that labor and employment law are vast legal practice areas. Immigration attorneys who feel a client may benefit from deferred action based on labor enforcement should consult with workers' rights attorneys or worker advocates to collaborate on labor side processes.

21. Renewing deferred action protections

Labor disputes often take years to resolve, and the threat of immigration-related retaliation persists throughout that time. Workers will undoubtedly ask about this consideration as they consider applying for deferred action protections, or as they near the expiration of their work authorization. DHS will consider requests for deferred action protections renewals “on a case-by-case basis when a labor agency provides a basis for such a request as it relates to the labor agency’s ongoing investigative or enforcement interests.”¹²⁶ DHS has stated that they are developing further guidelines regarding renewals but they have not published them yet. Advocates have also recently called for DHS to grant initial deferred action protections for a longer period of time based on the lengthy duration of labor agency proceedings.

When addressing a question of renewals, the guiding principle is that renewals, like initial deferred action protections, will be based on continued labor agency enforcement interests. Labor agency enforcement interests could be present in a wide range of circumstances, from the investigation and hearing stage, to litigation, and settlement/judgment compliance phases (for example, until the employer fully complies with a multi-year payment plan to remedy the workers). In each campaign or case, there will have to be an assessment of the labor dispute to determine how renewals will support labor agency enforcement interests. Depending on the circumstances, it may or may not be possible to seek renewals under the initial SOI. This would likely be more possible for labor disputes that are still ongoing. Workers and advocates should be prepared to articulate ongoing labor enforcement interests in seeking renewals.

We recommend reviewing DHS and labor agency guidance on renewals when it is published, and communicating with other advocates regarding renewals when that question comes up in the course of the campaign.

22. How labor violations can serve as the basis for permanent forms of immigration relief

While deferred action is a powerful tool to empower workers to act without fear, it offers only temporary protection and does not confer a path to permanent status in the United States. Workers will likely bring up questions of permanent relief throughout the process of seeking an SOI and considering or applying for deferred action protections. Workers can seek deferred action protections and apply for permanent relief at the same time, where eligible. An immigration attorney should assist workers with these applications.

Labor exploitation and criminal conduct that occurred in the workplace or is related to employment could support a worker's petition for a T or U visa. An individual who obtains a T or U visa can adjust to lawful permanent resident status if certain criteria are met.¹²⁷ Advocates should consider whether the labor abuses that form the basis for the deferred action request could also support applications for U visas or T visas.

The DOL WHD, federal OSHA, EEOC, and NLRB all have the authority to certify U and T visas for qualifying crimes related to the agency's mandate.¹²⁸ Certifications are required for U visas but not T visas.¹²⁹ See these agency-specific resources for guidance on which agencies provide T visa certifications and for which qualifying criminal activities (QCAs) they will provide U visa certifications: [USDOL](#), [NLRB](#), and [EEOC](#). OSHA State Plans are also authorized to certify U visas and T visas, but most do not have an established process for doing so at the time of publication. In these states, federal OSHA will consider certification requests "when the worker raises a credible allegation of a violation of a law that federal OSHA enforces in that state, e.g., violations of whistleblower statutes other than section 11(c) of the OSH Act, or violations of the OSH Act that arise on federal establishments, Indian reservations, or other federal jurisdictions."¹³⁰ Many other state and some local labor agencies (in addition to law enforcement agencies) also provide U and T visas certifications.

A more detailed description of the process for identifying eligibility and applying for T and U visas is available in the [Immigration Practice Manual](#).

U Visas: U visas are visas for survivors of certain QCAs who suffer substantial physical or mental abuse as a result of the QCAs, and who cooperate with the law enforcement agency.¹³¹ U visa applications require a certification (USCIS Form I-918, Supplement B) from

the investigative agency before applying to DHS. If a labor agency is investigating violations that are QCAs, they may be able to provide this certification.

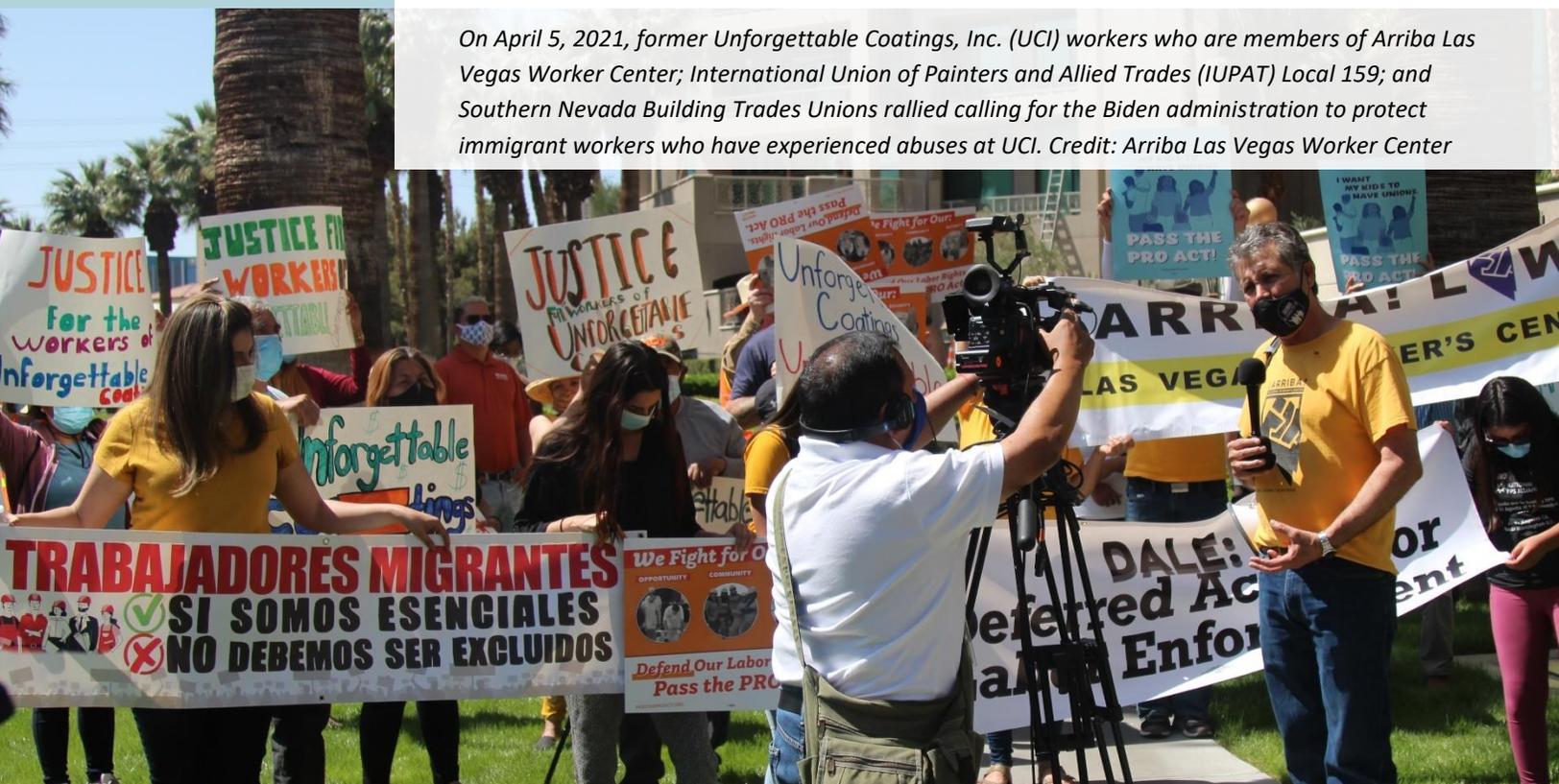
Workers may have already reported QCAs, or the employer may engage in QCAs in the course of a labor investigation or corresponding legal proceedings. For example, employers frequently engage in obstruction of justice, witness tampering, and/or unlawfully direct employees to lie to investigators. Unlike T visas, eligible workers may apply for a U visa even if they depart from the United States. A U visa allows an individual to apply to stay in the country for a four-year period, and U visa holders can apply to adjust status after three years.

U visas have a notoriously long waiting period due to congressional limitations on the number of visas authorized each year. Current wait times for processing are more than 10 years to obtain a U visa, although applicants may receive bona fide determinations (BFD) during that time, which provides deferred action and work authorization for four years.¹³² Current processing times to receive BFD is approximately five years from filing the initial U visa application.¹³³

T Visas: T visas are visas for survivors of human trafficking, including labor trafficking—when someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.¹³⁴ A worker may be eligible for a T visa if they are currently present in the U.S. "on account of" trafficking even if the trafficking occurred after they entered the country. T visas have a four-year duration and an individual can apply to adjust status after three years. Applicants are expected to comply with reasonable requests for assistance from law enforcement, including labor enforcement agencies.¹³⁵

Advocates who suspect labor trafficking should consult with an organization, like the [Coalition to Abolish Slavery and Trafficking](#), with experience in representing trafficking survivors to determine if the worker might qualify for a T visa. Wait times for processing T visas are currently around 18 months.¹³⁶

On April 5, 2021, former Unforgettable Coatings, Inc. (UCI) workers who are members of Arriba Las Vegas Worker Center; International Union of Painters and Allied Trades (IUPAT) Local 159; and Southern Nevada Building Trades Unions rallied calling for the Biden administration to protect immigrant workers who have experienced abuses at UCI. Credit: Arriba Las Vegas Worker Center





I worked for Unforgettable Coatings, Inc. for nine years. We were victims of wage theft and abuse. Since I was unfamiliar with the laws in the United States, I said ‘ok’ to all of it. I was not informed at the time. Through friends, I was introduced to the Arriba Las Vegas Worker Center, where I received support and orientation about my workplace rights. **We put together a group of workers from the same company to fight together. We weren’t alone. As immigrants and workers there are laws that protect us.** We achieved our key objective. We went as far as it took. And thank God, we did it. There was a lawsuit, and now we can share that we won. The money is in our pockets.”

— *Cesar Rodriguez, former Unforgettable Coatings, Inc. employee, worker leader, and member of Arriba Las Vegas Worker Center speaks to workers in Las Vegas, NV on the recent victory in the fight against Unforgettable Coatings, Inc.*

In February 2023, Cesar Rodriguez speaks to more than one hundred workers at a DALE (Deferred Action for Labor Enforcement) forum in Las Vegas, NV. This forum took place after a recent victory where Unforgettable Coatings, Inc. signed a consent judgment on January 13, 2023, where the company agreed to pay workers more than \$3.6 million in wages and liquidated damages after more than four years of worker organizing. Credit: Arriba Las Vegas Worker Center

STEP 5

Step 5: Ongoing participation in the underlying labor dispute

23. Continued organizing efforts

While this guide focuses on the deferred action protections process up until filing for immigration protections, the workplace-based campaign does not end there. The objective underpinning deferred action protections is to ensure workers continue to report violations and participate with the agency in support of their investigative and enforcement purposes. For example, workers may be asked to provide declarations or affidavits, to authorize an agency to name them in legal proceedings, or to speak as a witness during hearings.

As the campaign and investigation or legal processes continue, the following topics are key points and considerations for organizers and worker leaders.

- **Preparing for evolving forms of retaliation and identifying new violations:** As discussed in other sections of this guide, retaliation is common. Forms of retaliation frequently change, and employers may escalate retaliatory action in the course of the campaign and investigative or legal proceedings. Workers can continue to observe, document, and report retaliation in a timely manner to strengthen their own case. During the course of the labor dispute, additional violations may create new legal claims that can be filed in new or amended complaints.
- **Keeping workers informed and engaged:** It is imperative that worker leaders continue to be involved as decision makers and play key roles to drive forward their campaign and impact the outcomes of labor disputes. Too often, labor disputes stagnate, and long investigative and legal processes leave workers feeling uninformed and unengaged. Investigations and legal proceedings may take years, and workers may start to feel like nothing is happening, or that an agency or advocates are not acting. Consider organizing regular committee meetings to keep worker leaders and workers informed and help identify any new violations. In the absence of regular committee meetings, organizers can also keep workers informed and engaged through one-on-one meetings and regular communication.
- **Keeping up the pressure:** Continued organizing activities help keep workers engaged, informed, and empowered in the process. Public-facing organizing actions such as pickets, press conferences (See [Sections 10–11](#) for media strategy guidance), or rallies may also be effective strategies to pressure an employer to settle, negotiate a contract,

etc. Workers may feel safer and more interested in engaging in these types of strategies when they have attained deferred action protections. Organizing publicly is typically beneficial during the labor dispute; however, speaking publicly about deferred action protections may draw harmful attention to immigration relief, alert the employer, or otherwise shift the focus from the underlying dispute. Before engaging in public-facing strategies that highlight deferred action protections, organizers, attorneys, and worker leaders should reconvene to discuss reasons to keep this information confidential. Consider using public-facing organizing strategies without disclosing any immigration status information, and work with workers to prepare talking points to keep the focus on the labor dispute and help them stay on message.

- **Go for the win!** Maintain the commitment to support workers and worker committees to be successful in the labor dispute. Plan the allocation of ongoing resources and continue to explore innovative organizing strategies to advance the fight and build worker power at the jobsite over the course of the dispute.

In September 2022 members and staff of Arriba Las Vegas Worker Center; Workers Dignity; WeCount; New Labor; Southside Worker Center; Arise Chicago; Asociación Civil Guatemaltecos Unidos por Nuestros Derechos; Cincinnati Interfaith Worker Center; and the National Day Laborer Organizing Network rallied outside the White House calling on the Biden administration to support immigrant worker protections and extend deferred action protections for workers impacted by labor disputes. Credit: Arriba Las Vegas Worker Center



24. Next steps in the labor agency and legal process

Worker advocates should also anticipate the next legal steps in the labor agency process and beyond, if applicable, throughout the case and keep working towards the workers' goals in that process. Some common steps to anticipate and work towards along the way include:

■ **Securing a thorough investigation:**

- A thorough investigation of all rights violations within that agency's jurisdiction is key to support workers in achieving their goals through the labor dispute, and as discussed in [Sections 10–11](#) above, worker advocates play an important role in making that happen. Maintain regular contact with the agency, and file additional complaints or amended complaints in a timely manner as workers bring forward evidence of new violations. Advocates can assist agency investigators with contacting workers, especially workers who are hard to reach because they work offsite or are not available to be interviewed during an onsite investigation or conference, or workers who have limited access to technology or speak no or little English. Where language barriers exist, be prepared to advocate for high quality interpreters to assist in agency and worker communications.
- In the event the agency declines to investigate a complaint, or the agency closes an investigation in a way that workers are not satisfied with, consult with workers' rights attorneys who specialize in that area of practice to determine whether it may be appropriate to ask an agency to reopen the investigation.
- In addition to the information discussed in [Step 2](#) above, information the agency obtains through an investigation can be helpful in subsequent private litigation. For example, after an EEOC investigation is closed, [request the investigative file](#).

■ **Settling the case:**

- Sometimes the labor agency investigation is important leverage in settling the case, whether that settlement includes the agency or just the worker and the employer as parties. Some agencies offer free mediation programs, which vary in quality, to help the parties reach a settlement.¹³⁷ For deferred action purposes, a settlement does not necessarily indicate that a labor agency's enforcement interest is terminated. For example, an agency's interest may extend for years if the settlement agreement allows for an extended period for the employer to make payments to workers who are owed wages or penalties. Settlements may also include a compliance period where the worksite is subject to follow-up investigations to ensure compliance or abatement, for example, in relation to workplace occupational safety and health violations.

■ **Litigation after the labor agency's investigation:**

- Sometimes the worker does not have the option to litigate the case—that type of enforcement is only available via the agency (for example, with the NLRB or OSHA). With other agencies, such as the EEOC, the worker and/or the EEOC could litigate the case.¹³⁸ In either scenario, if it's desired that the agency litigates the case, advocate for this from the start by demonstrating why the case, among the many before the agency, should be one of its priorities. For example, if the agency has published its current areas of enforcement priorities and this case falls into one of those, highlight that to the agency. Or, if the case raises an important legal question that, if decided in favor of workers, could expand workers' rights under the laws enforced by the agency, highlight that. Agencies litigate at their own discretion.

During litigation, workers may be asked to participate in more significant ways, including authorizing use of their names for the purposes of court filings.

- If it's likely that private litigation in court (meaning, a lawsuit filed by the worker only) would be the only option after the agency investigation, anticipate and discuss this option with the worker throughout the agency process. If there is a short time period for filing a court complaint after the conclusion of the agency process, it's important to decide whether to litigate as early as possible.¹³⁹ It is unlikely that a labor agency would provide an SOI based on private litigation.¹⁴⁰

In January 2023, former Unforgettable Coatings, Inc. (UCI) workers rallied outside the Las Vegas Federal District Courthouse. Credit: Arriba Las Vegas Worker Center



Closing

Alongside our members, worker leaders, our affiliates, and allies, we envision a world free from workplace abuse, where workers and work are valued, honored, and respected. We work towards a world in which all workers' rights are dignified, and workers have the power to assert their rights and shape a better future. This world is not possible without uplifting and protecting the rights of immigrant workers.

Throughout the history of the United States, immigrant workers have fought and won monumental workplace rights. The 40-hour work week, occupational safety and health standards, child labor laws, and more are the direct result of immigrant workers who came together in partnership with non-immigrant workers and organized at key moments in this country's history. While profit-driven and abusive employers have actively sought to undermine immigrant workers' rights, immigrant workers continue to organize for expanded tools, like deferred action protections, to defend against these employers' attempts to erode workers' rights and undermine industry standards.

For too long, institutions have failed to support immigrant workers in successfully reporting and pursuing their claims, and in making workers whole after employer abuses. Immigrant workers have suffered some of the country's most egregious human rights violations at the hands of employers, while labor agencies, nonprofits, and unions alike have struggled to combat the chilling effect of immigration-related retaliation. Deferred action protections, when applied successfully, represent a key tool to strengthen labor agency investigations, towards a vision of collectively raising the floor and improving industry standards for all workers.

This guide is possible due to decades of advocacy and organizing by workers, worker centers, unions, and local and national advocacy organizations to halt the erosion of workers' rights, and to empower immigrant workers. What has been won in the last several years—an open and transparent centralized process to seek and apply for deferred action protections—is one victory in our larger fight to end workplace abuse, raise wages, and improve workplace standards.

We honor and ground this guide in the legacy of immigrant workers at the forefront of the fight to expand immigrant worker protections, including those who have taken on some of the most abusive employers and the largest fights, with the most at stake. When we support workers to report abuses, win campaigns, and seek deferred action protections, we are able to do so because of the fight of workers like [Fermin Rodriguez¹⁴¹](#); [Rosario Ortiz¹⁴²](#); [Jonas Reyes¹⁴³](#); [Fausto Garcia Figueroa](#) and [Olivia Guzman¹⁴⁴](#); [Silvia Garcia](#) and [Baldomero Orozco¹⁴⁵](#); [Alma Sanchez](#) and [Alfredo Benedetti¹⁴⁶](#); [Pedro Manzanares¹⁴⁷](#); the brave workers of [Espiga de Oro¹⁴⁸](#); the members of the [Blue Ribbon Commission on Immigrant Work](#) who raised their voices to call on DHS to make real the promise of policy change¹⁴⁹; and countless other workers who have participated in labor disputes, both publicly and confidentially. We celebrate their success in raising the floor for all workers and strive to carry their torch forward as a movement.

In drafting this guide, we sought to provide a tool for organizers and workers' rights attorneys to successfully partner with immigrant workers in labor disputes. These partnerships will play a key role in achieving the outcomes workers seek and create effective pathways for workers to assert their workplace rights now and for years to come, with deferred action protections as a tool to support effective labor rights enforcement and worker organizing campaigns. We hope this will be one of many resources, and that the

deferred action protections process will continue to be utilized and strengthened by growing numbers of brave workers. We hope to see you on the frontlines of the fights to come.

Cleveland Workers United members demonstrate their support for workers' rights and immigration reform.

Credit: Deborah Kline, Cleveland Jobs with Justice (JWJ).



Appendices

Appendix A: Federal Labor Agencies and Common Labor Violations Chart

The majority of the information in this chart is borrowed with permission from the *Practice Manual: Labor-Based Deferred Action* (March 24, 2023).

Agency	Laws Enforced	Examples of Violations	Typical Statute of Limitations	Complaint Process	Coverage of the Law/Agency
National Labor Relations Board (NLRB)	National Labor Relations Act (NLRA) <ul style="list-style-type: none"> Right to unionize Right to organize and engage in “protected concerted activity,” free of retaliation 	An employer cuts a worker’s hours for talking to coworkers about poor working conditions. An employer fires a worker for supporting the union.	6 months	NLRB Complaints	NLRB Jurisdiction
U.S. Department of Labor (DOL) Wage and Hour Division (DOL WHD)	Fair Labor Standards Act (FLSA) <ul style="list-style-type: none"> Minimum wage Overtime Child labor Retaliation 	Workers work over 40 hours in a workweek and do not receive overtime pay. An employer threatens to call immigration because a worker asks to be paid (since the employer had not paid them) for their work.	2 years (3 years for willful violations)	WHD Complaints	FLSA Coverage
	Family Medical Leave Act (FMLA) <ul style="list-style-type: none"> Unpaid, job-protected leave for certain family and medical needs 	A new parent is fired for requesting 12 weeks off to care for their newborn.	2 years (3 years for willful violations)		FMLA Coverage
	Labor standards protections of H-2A, H-2B, and H-1B programs <ul style="list-style-type: none"> Wage, housing, transportation, and disclosure standards 	An employer pays their H-2A agricultural workers by piece rate, and the resulting wage is below the local adverse effect wage rate (AEWR) for U.S. workers in the same occupation.	No explicit statute of limitations; best to file as soon as possible.		H2A Program H2B Program

	Migrant and Seasonal Agricultural Worker Protection Act (MSPA or AWPA)	An agricultural employer fails to pay its workers the wages promised at the time of recruitment.	No explicit statute of limitations; best to file as soon as possible.		MSPA/AWP A Coverage
	Davis-Bacon Act (DBA)	A contractor for a federally-funded project of more than \$2,000 fails to pay its workers the local prevailing wage.	2 years (3 years for willful violations)		Davis-Bacon Act Coverage
Occupational Safety and Health Administration (OSHA)	Occupational Safety and Health Act (OSH Act) <ul style="list-style-type: none"> Health and safety standards Whistleblower protections 	A construction worksite fails to provide proper fall protection training. An employer gives a worker a less favorable job assignment because they filed an OSHA complaint.	6 months for health and safety violations 30 days for whistleblower violations	OSHA Complaint	OSH Act Coverage
U.S. DOL Office of Federal Contract Compliance Programs (OFCCP)	Executive Order 11246 and other anti-discrimination laws and regulations applicable to federal contractors and subcontractors <ul style="list-style-type: none"> Prohibiting discrimination based on race, color, sex, sexual orientation, gender identity, religion, national origin, or veteran status. Prohibiting retaliation for inquiring about or disclosing compensation. <p>Note that OFCCP refers complaints alleging individual discrimination based on race, color, religion, sex, or national origin to the EEOC.</p>	A business with federal government contracts fires a worker for talking with coworkers about how much she is paid. A business with federal government contracts discriminates against workers based on sexual orientation.	180 days for discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, or compensation inquiries/disclosure 300 days for discrimination based on disability or protected veteran status	OFCCP Complaint	OFCCP Coverage

U.S. Equal Employment Opportunity Commission (EEOC)	<p>Federal anti-discrimination laws (including Title VII and part of the Americans with Disabilities Act (ADA))</p> <ul style="list-style-type: none"> ■ <i>Prohibiting discrimination based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, or genetic information.</i> 	<p>An employer uses racial slurs, creating a hostile work environment.</p> <p>An employer fires a Latina worker for reporting discrimination based on her national origin.</p>	<p>180 or 300 days depending on state/locality</p>	<p>EEOC Charge</p>	<p>EEOC Coverage</p>
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Appendix B: Federal and State Labor Agency Statement of Interest (SOI) Guidance Resources

Federal Agency	Federal Agency SOI Guidance Resources
National Labor Relations Board (NLRB)	<p>NLRB General Counsel Memorandum 22-01: Ensuring Rights and Remedies for Immigrant Workers under the NLRA (Spanish version/en español)</p> <p>Requests for Statement of Interest in Support of Deferred Action</p>
U.S. Department of Labor (DOL)	<p>Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes, Frequently Asked Questions (FAQ's)</p>
U.S. Equal Employment Opportunity Commission (EEOC)	<p>EEOC's Support for Immigration-Related Deferred Action Requests to the DHS, FAQ's</p>
State Agency	State Agency SOI Guidance Resources
California Labor Commissioner (LCO)	<p>FAQ's on LCO's Role in Supporting Immigration-Related Prosecutorial Discretion</p>
California Division of Occupational Safety and Health (Cal/OSHA)	<p>FAQ's on Cal/OSHA's Role in Supporting Immigration-Related Prosecutorial Discretion</p>
California Agricultural Labor Relations Board (ALRB)	<p>FAQ's on ALRB's Role in Supporting Immigration-Related Prosecutorial Discretion</p>
Illinois Department of Human Rights (IDHR)	<p>IDHR Deferred Action for Labor Enforcement FAQ's</p>
Illinois Department of Labor (IDOL)	<p>IDOL Deferred Action FAQ's</p>
Massachusetts Office of the Attorney General (OAG)	<p>Attorney General Advisory: All Workers Are Entitled to Employment Protections Irrespective of Immigration Status</p> <p>FAQ's on AG's Role in Supporting Worker Requests for Deferred Action to Provide Protection from Immigration Related Retaliation</p>
Massachusetts Commission Against Discrimination (MCAD)	<p>MCAD Notice of Meeting and Agenda <i>(NOTE: Includes MCAD approval for the Office of the General Counsel to accept SOI requests.)</i></p>
New York State Department of Labor (NYSDOL)	<p>NYSDOL Prosecutorial Discretion FAQ's</p>

Appendix C: Resources for Workers on Deferred Action Protections

Information Sheets/Flyers:

- National Day Laborer Organizing Network (NDLON): Proceso DALE para Obtener Acción Diferida: https://www.popedliberates.org/_files/ugd/cb2549_6357b33828de4750a8b357ef0aaf0a5.pdf
NOTE: The above resource is only available in Spanish.
- National Immigration Project of the National Lawyers Guild (NIP-NLG) and National Immigration Law Center (NILC), Frequently Asked Questions: Deferred Action For Workers in Labor Disputes: https://www.nilc.org/wp-content/uploads/2023/03/2023_March-NIPNLG-NILC-Worker-FAQ.pdf
 - Spanish version/en español: National Immigration Project of the National Lawyers Guild (NIP-NLG) y National Immigration Law Center, Preguntas Frecuentes: Acción Diferida para Trabajadores Implicados en un Conflicto Laboral: https://www.nilc.org/wp-content/uploads/2023/03/2023_March-NIPNLG-NILC-Worker-FAQ-ESP.pdf
- National Council for Occupational Safety and Health (National COSH), Fact Sheet: New Protections for Immigrant Workers to Defend their Workplace Rights: <https://nationalcosh.org/sites/default/files/documents/new-protections-immigrant-workers.pdf>
 - Spanish version/en español: National Council for Occupational Safety and Health (National COSH), Hoja de Información: Nuevas Protecciones para que Trabajadores Inmigrantes Defiendan sus Derechos Laborales: <https://nationalcosh.org/sites/default/files/documents/nuevas-protecciones-para-que-trabajadores-inmigrantes.pdf>

Videos:

- Service Employees International Union (SEIU) iAmerica Explainer: DHS's Guidance to Protect Immigrant Workers: <https://www.youtube.com/watch?v=aWvcg8wpu40>
 - Spanish version/en español: Service Employees International Union (SEIU) iAmerica Explicación: Guía del DHS para Proteger a los Trabajadores Inmigrantes: <https://youtu.be/NFXsckFvaS4>

Sur Legal Collaborative TikTok Series:

- #1 Temporary Protection for Immigrant Workers Fighting Labor Abuse: https://www.tiktok.com/@surlegal_atl/video/7190512731697614126
 - Spanish version/en español: #1 Protección Temporal para Trabajadores Inmigrantes Combatiendo el Abuso Laboral: https://www.tiktok.com/@surlegal_atl/video/7190529302994242862
- #2 Getting a Letter of Support from a Labor Agency: https://www.tiktok.com/@surlegal_atl/video/7196041390432800043
 - Spanish version/en español: #2 Obteniendo una Carta de Apoyo de una Agencia Laboral: https://www.tiktok.com/@surlegal_atl/video/7196064047706541355
- #3 What to Include in your Deferred Action Application: https://www.tiktok.com/@surlegal_atl/video/7200011803164986670
 - Spanish version/en español: #3 Que Incluir en su Aplicación de Acción Diferida: https://www.tiktok.com/@surlegal_atl/video/7200013757937126702

Endnotes

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2. Thomas A. Kochan et al., “Workers and Employers at a Crossroads: A Summary Report from a Multistakeholder Dialogue on U.S. Worker Voice and Representation” (Worker Empowerment Research Network, March 16, 2023), <https://mitsloan.mit.edu/centers-initiatives/institute-work-and-employment-research/workers-and-employers-a-crossroads-report-published>; Henry S. Farber et al., “Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data” (National Bureau of Economic Research, May 2018), https://www.nber.org/system/files/working_papers/w24587/w24587.pdf.
3. “Union Membership Rate Fell by 0.2 Percentage Point to 10.1 Percent in 2022,” TED: The Economics Daily (US Bureau of Labor Statistics, January 24, 2023), <https://www.bls.gov/opub/ted/2023/union-membership-rate-fell-by-0-2-percentage-point-to-10-1-percent-in-2022.htm>.
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 11. See Appendix 1, page 44, of the [Practice Manual: Labor-Based Deferred Action](#) (referred to throughout this guide as the “Immigration Practice Manual”) for an overview of this history. Mary Yanik, Jessica Bansal, Ann Garcia, and Lynn Damiano Pearson, “Practice Manual: Labor-Based Deferred Action”, March 24, 2023, https://www.nilc.org/wp-content/uploads/2023/03/2023_24March-labor-deferred-action-advisory.pdf.
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48. The DOL maintains a [list of state labor agencies](#). It also provides a [comparison of state minimum wages to the federal minimum wage](#). There are times when the employer has violated both state and federal wage and hour laws. In those cases, both the state agency and the DOL WHD could

- investigate and enforce the violations falling under their respective jurisdictions.; DOL WHD, “State Labor Offices,” DOL, January 2023, <http://www.dol.gov/agencies/whd/state/contacts>; DOL WHD, “State Minimum Wage Laws,” DOL, July 1, 2023, <http://www.dol.gov/agencies/whd/minimum-wage/state>.
49. See the following: OSHA, “OSH Act of 1970,” 29 USC § 654, accessed August 14, 2023, <https://www.osha.gov/laws-regs/oshact/section5-duties>; OSHA, “OSHA Workers Rights and Protections: Employer Responsibilities,” DOL, accessed August 14, 2023, <https://www.osha.gov/workers/employer-responsibilities>.
50. See, for example: OSHA, “Top 10 Most Frequently Cited Standards,” DOL, accessed August 14, 2023, <https://www.osha.gov/top10citedstandards>; OSHA, “Employer Responsibilities.” OSHA, “Heat Illness Prevention Campaign,” DOL, accessed August 14, 2023, <https://www.osha.gov/heat>; OSHA, “Heat – Water. Rest. Shade,” accessed August 14, 2023, <https://www.osha.gov/heat-exposure/water-rest-shade>.
51. The OSH Act and its corresponding regulations also have reporting requirements for employers, including reporting workplace deaths to OSHA within eight hours, reporting hospitalizations caused by workplace injury within 24 hours, and recording workplace injuries and/or illnesses that require medical attention beyond first aid in a record known as an OSHA 300 Log, which both current and former employees are entitled to. See OSHA, “OSHA Injury and Illness Recordkeeping and Reporting Requirements,” DOL, accessed August 14, 2023, <https://www.osha.gov/recordkeeping/>; OSHA, “Other OSHA Injury and Illness Recordkeeping Requirements: Employee Involvement,” Code of Federal Regulations, National Archives, accessed August 14, 2023, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.35>.
52. OSHA, *OSH Act of 1970*.
53. OSHA, “OSH Act of 1970: Sec. 9 Citations,” 29 U.S.C. § 658, accessed August 14, 2023, https://www.osha.gov/laws-regs/oshact/section_9.
54. OSHA, “Fact Sheet: Filing Whistleblower Complaints under Section 11© of the OSH Act of 1970,” April 2018, <https://www.osha.gov/sites/default/files/publications/OSHA3812.pdf>.
55. OSHA, “Workers’ Rights” (DOL, 2023), <https://www.osha.gov/sites/default/files/publications/osha3021.pdf>.
56. The DOL maintains a [list of state workers’ compensation agencies](#). To date, we are not aware of any workers’ compensation agency providing an SOI. Office of Workers’ Compensation Programs, “State Workers’ Compensation Officials,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/owcp/wc>.
57. For more information on state sick-leave laws, see Molly Weston Williamson, “The State of Paid Sick Time in the U.S. in 2023” (Center for American Progress, January 5, 2023), <https://www.americanprogress.org/article/the-state-of-paid-sick-time-in-the-u-s-in-2023/>.
58. DOL, “Sick Leave,” accessed August 14, 2023, <http://www.dol.gov/general/topic/benefits-leave/sickleave>.
59. DOL WHD, “FMLA Frequently Asked Questions,” accessed August 14, 2023, <http://www.dol.gov/agencies/whd/fmla/faq>.
60. For an overview of these states, see Molly Weston Williamson, “[The State of Paid Sick Time](#).”
61. See, for example: EEOC, “Employees & Job Applicants,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/employees-job-applicants>; DOJ Civil Rights Division, “Types Of Discrimination,” Department of Justice, August 6, 2015, <https://www.justice.gov/crt/types->

- discrimination; Office of Federal Contract Compliance Programs, “Veteran Resources,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/ofccp/veterans/resources>.
62. EEOC, “EEOC Enforcement Guidance on National Origin Discrimination,” November 18, 2016, <https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination>.
63. EEOC, “Employees & Job Applicants.”
64. EEOC, “Laws Enforced by EEOC,” accessed August 14, 2023, <https://www.eeoc.gov/statutes/laws-enforced-eeoc>. The EEOC also enforces a relatively new anti-discrimination law, the Pregnant Workers Fairness Act (PWFA). For more information on this and other laws that protect pregnant people’s rights in the workplace, including to reasonable accommodations related to their pregnancies and the PUMP Act (enforced by WHD DOL), see “What You Should Know About the Pregnant Workers Fairness Act,” EEOC, accessed August 14, 2023, <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>.
65. The Office of Federal Contract Compliance Programs (OFCCP), a sub-agency of the US DOL, and the Immigrant and Employee Rights Section (IER), an agency within the U.S. Department of Justice, enforce other federal workplace anti-discrimination laws. Visit their websites for more information.
66. EEOC, “Time Limits for Filing a Charge,” EEOC, accessed August 14, 2023, <https://www.eeoc.gov/time-limits-filing-charge>.
67. EEOC, “Time Limits for Filing a Charge.”
68. EEOC, “Overview,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/overview>.
69. NLRB, “Employee Rights,” accessed August 14, 2023, <https://www.nlr.gov/about-nlr/b-rights-we-protect/your-rights/employee-rights>.
70. NLRB, “Employee Rights.”
71. NLRB, “Frequently Asked Questions - NLRB,” accessed August 14, 2023, <https://www.nlr.gov/resources/faq/nlr>.
72. See, for example, Massachusetts Department of Labor Relations, “Massachusetts Public Employee Collective Bargaining Law Guide,” June 14, 2018, <https://www.mass.gov/handbook/massachusetts-public-employee-collective-bargaining-law-guide>; State of California, “California Agricultural Labor Relations Act (Labor Code Sections 1140-1166.3),” accessed August 14, 2023, <https://www.alrb.ca.gov/statutes-regulations/statutes/>.
73. See, for example, Tsedeye Gebreselassie, Nayantara Mehta, and Irene Tung, “How California Can Lead on Retaliation Reforms to Dismantle Workplace Inequality” (National Employment Law Project, November 2, 2022), <https://www.nelp.org/publication/how-california-can-lead-on-retaliation-reforms-to-dismantle-workplace-inequality/>.
74. NLRB, “Employee Rights.”
75. For examples of retaliation under the FLSA, see DOL WHD, “Retaliation: The Wage and Hour Division Is Here to Protect Your Rights,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/whd/retaliation>.
76. EEOC, “Fact Sheet: Retaliation Based on Exercise of Workplace Rights Is Unlawful,” December 10, 2015, <https://www.eeoc.gov/fact-sheet-retaliation-based-exercise-workplace-rights-unlawful>. For short sample fact patterns of retaliation under laws enforced by DOL WHD, see DOL WHD, “Retaliation,” <https://www.dol.gov/agencies/whd/retaliation>.
77. One-party and all-party consent rules refer to how many people need to consent to a conversation being recorded for this recording to be legal. Law.justia.com has compiled a [list of state laws on this issue](#), which you should double check for accuracy with the laws in your jurisdiction. Justia,

“Recording Phone Calls and Conversations: 50-State Survey,” October 2022,
<https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/>.

78. Whether backpay will be awarded to an undocumented worker depends on the governing law in your jurisdiction and the underlying facts and type of legal violation at issue. For example, see *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (precluding the NLRB from awarding backpay to an undocumented worker because of his status); *Torres v. Precision Indus., Inc.*, 995 F.3d 485, 494 (6th Cir. 2021) (holding a worker’s immigration status is irrelevant to non-economic and punitive damages but limiting the worker’s backpay award to the period after he had obtained work authorization); *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219 (2d Cir. 2006) (holding worker’s undocumented status did not preclude a backpay award where the award stemmed from a personal injury due to the employer’s violation of health and safety laws); *Salas v. Sierra Chem. Co.*, 59 Cal. 4th 407 (2014) (holding undocumented workers can be awarded backpay if the award corresponds to periods prior to when the employer “discovered” their undocumented status).
79. For example, see Cal. Lab. Code § 1198.5 (California), Colo. Rev. Stat. Ann. § 8-2-129 (Colorado), 820 Ill. Comp. Stat. §§ 40/1 to 40/12 (Illinois), Nev. Rev. Stat. Ann. § 613.075 (Nevada), Mass. Gen. Laws Ann. ch. 149, § 52C (Massachusetts).
80. Requesting a personnel file may alert the employer to a worker’s involvement in a potential labor dispute. Consider worker confidentiality considerations and retaliation risks before making this request.
81. For a sample request for an OSHA 300 Log, see Sur Legal Collaborative, “[Rights of Employee Representatives in OSHA Proceedings.](#)”
82. Again, backpay here refers to wages for work an employee would have done if they hadn’t been illegally fired.
83. For example, see: *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (prohibiting the NLRB from awarding backpay to an undocumented worker because of his status); *Torres v. Precision Indus., Inc.*, 995 F.3d 485, 494 (6th Cir. 2021) (holding a worker’s immigration status is irrelevant to non-economic and punitive damages but limiting the worker’s backpay award to the period after he had obtained work authorization); *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219 (2d Cir. 2006) (holding worker’s undocumented status did not preclude a backpay award where the award stemmed from a personal injury due to the employer’s violation of health and safety laws); *Salas v. Sierra Chem. Co.*, 59 Cal. 4th 407 (2014) (holding undocumented workers can be awarded backpay if the award corresponds to periods prior to when the employer “discovered” their undocumented status). Backpay in this context refers to pay for work the worker has not yet done but would have done if the employer had not illegally fired them.
84. EEOC, “Commissioner Charges and Directed Investigations,” EEOC, accessed August 14, 2023, <https://www.eeoc.gov/commissioner-charges-and-directed-investigations>.
85. DOL WHD, “Information You Need to File a Complaint,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/whd/contact/complaints/information>.
86. See below noting that “[a]ll complaints are confidential; the name of the worker and the nature of the complaint are not disclosable; whether a complaint exists may not be disclosed.” DOL WHD, “Fact Sheet #44: Visits to Employers,” DOL, January 2015, <http://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers>. For cases addressing this issue, see, for example: *In re Perez*, 749 F.3d 849, 855 (9th Cir. 2014) (discussing “informants privilege” and holding it applied to employees who reported violations to US DOL before and after US DOL initiated the litigation). But see *In re*

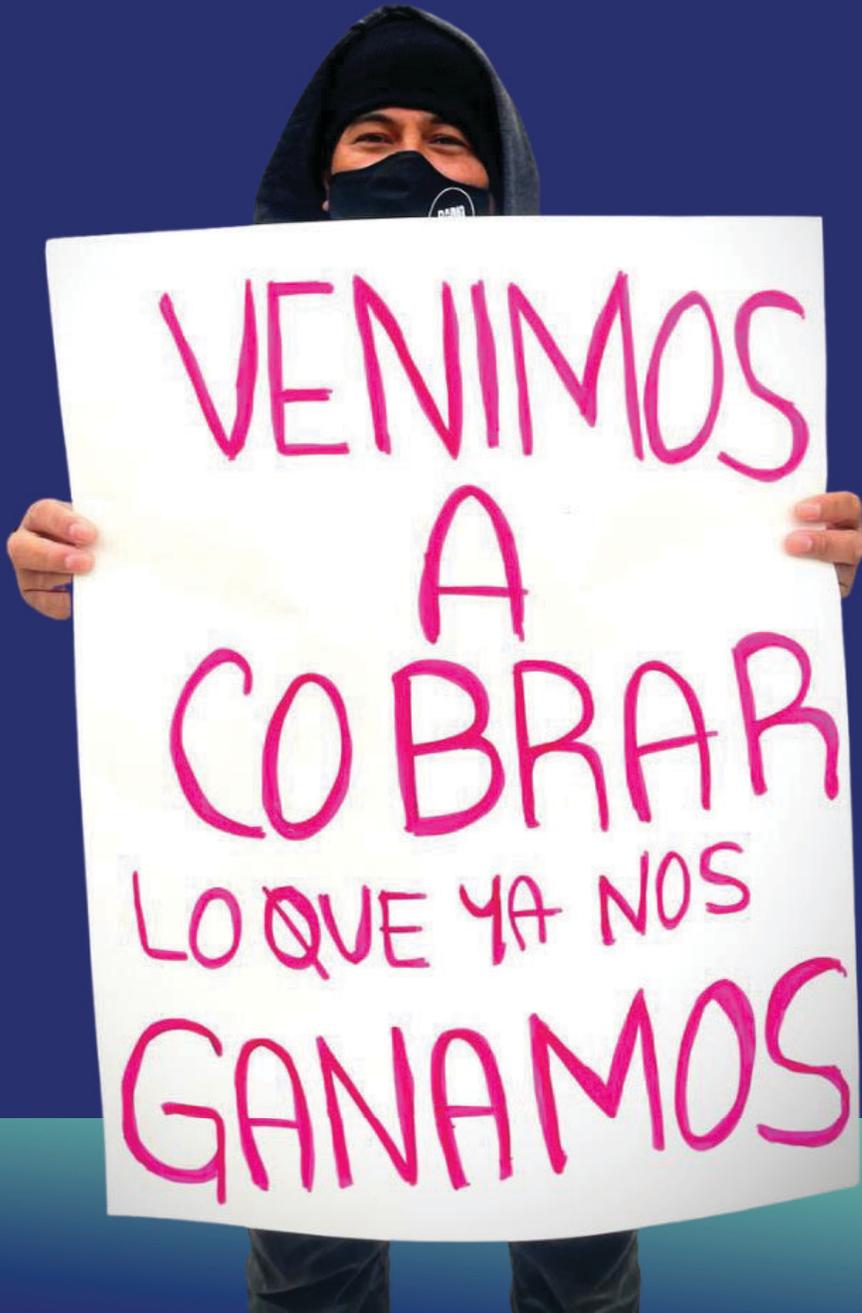
- Walsh*, 15 F.4th 1005, 1011 (9th Cir. 2021) (upholding a district court order requiring the Secretary of Labor to disclose the identity of witnesses who will testify at trial and their unredacted witness statements by a certain date prior to trial).
87. DOL WHD, “How to File a Complaint,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/whd/contact/complaints>.
 88. DOL WHD, “Frequently Asked Questions: Complaints and the Investigation Process,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/whd/faq/workers>.
 89. OSHA, “File a Complaint,” accessed August 14, 2023, <https://www.osha.gov/workers/file-complaint>.
 90. OSHA, “Federal OSHA Complaint Handling Process,” accessed August 30, 2023, <https://www.osha.gov/workers/handling>.
 91. OSHA, [Federal OSHA Complaint Handling Process](#).
 92. OSHA, [Federal OSHA Complaint Handling Process](#).
 93. OSHA, “OSHA Worker Rights and Protections,” accessed August 14, 2023, <https://www.osha.gov/workers>. For more information on employee representatives’ rights, see Sur Legal, “[Rights of Employee Representatives in OSHA Proceedings](#).”
 94. 29 U.S.C.A. § 658 (citations), 29 U.S.C.A. § 666 (penalties). See here for more information: OSHA, “Penalty Payment,” accessed August 14, 2023, <https://www.osha.gov/penalties/payments>.
 95. OSHA, “Fact Sheet: OSHA’s Whistleblower Protection Program,” August 2022, <https://www.osha.gov/sites/default/files/publications/OSHA3638.pdf>.
 96. For more information, visit the OSHRC’s website at <https://www.oshrc.gov/about/how-oshrc-works/>.
 97. OSHRC Rules of Procedure, § 2200.20 Party status, <https://www.oshrc.gov/rules/#:~:text=%C2%A7202200.20%20Party%20status.&text=The%20electi on%20shall%20be%20accomplished,not%20timely%20filing%20the%20notice>.
 98. OSHRC, “How OSHRC Works,” accessed August 30, 2023, <https://www.oshrc.gov/about/how-oshrc-works/>.
 99. EEOC, “Filing A Charge of Discrimination with the EEOC,” EEOC, accessed August 14, 2023, <https://www.eeoc.gov/filing-charge-discrimination>.
 100. EEOC, “How to File a Charge of Employment Discrimination,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/how-file-charge-employment-discrimination>.
 101. EEOC, “[Filing a Discrimination Charge](#).”
 102. EEOC, “[Filing a Discrimination Charge](#).”
 103. For an overview of these potential steps in the EEOC process, see EEOC, “What You Can Expect After a Charge Is Filed,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/employers/what-you-can-expect-after-charge-filed>.
 104. A note on terminology: in the NLRB process, a worker complaint is referred to as a “charge,” and if the NLRB determines it has merit, it is then referred to as a “complaint.”
 105. For more information, see NLRB, “Investigate Charges,” accessed August 30, 2023, <https://www.nlr.gov/about-nlr/what-we-do/investigate-charges>.
 106. For an overview of these potential steps in the NLRB process, see NLRB, “[Investigate Charges](#).” See also, General Counsel Memo 22-02, February 1, 2022, on the NLRB’s practices of seeking this type of injunction where employers have made threats during union organizing campaigns: General Counsel Jennifer Abruzzo, “Seeking 10(j) Injunctions in Response to Unlawful Threats or Other

- Coercion During Union Organizing Campaigns,” February 1, 2022, <https://apps.nlr.gov/link/document.aspx/09031d4583683bd0>.
107. See General Counsel Jennifer Abruzzo, “Ensuring Rights and Remedies for Immigrant Workers Under the NLRA,” February 1, 2022, <https://apps.nlr.gov/link/document.aspx/09031d45835cbb0c>.
108. NLRB, “The NLRB Process,” n.d., <https://www.nlr.gov/resources/nlr-process>.
109. While this may meet a worker’s identified goals regarding resolving a labor violation, this pathway may not allow for a request for deferred action protections, given that these protections exist in relation to labor agency enforcement interests.
110. Janice Fine, “New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships between Government and Civil Society Are Showing the Way Forward,” University of Chicago Legal Forum, Vol. 2017, Article 7 (2018), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1594&context=uclf>; Tanya L. Goldman, “The Labor Standards Enforcement Toolbox Tool 4: Introduction to Strategic Enforcement” (Rutgers Center for Innovation in Worker Organization, Center for Law and Social Policy, August 2018), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/CIWO/2018_introductiontostrategiceenforcement.pdf.
111. As a labor enforcement tool, deferred action protections are one form of inter-agency deconfliction between labor agencies and DHS. The purpose of inter-agency deconfliction is to ensure that civil immigration enforcement does not undermine labor agencies’ work to enforce labor standards. Within this context, the SOI is the way the labor agency notifies DHS of its labor enforcement interests. For other examples of deconfliction tools, see the 2011 Deconfliction Memorandum of Understanding between DHS and the US DOL and the 2016 addendum expanding the MOU to include the EEOC and NLRB: Director of USCIS John Morton and Solicitor of Labor M. Patricia Smith, “Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites,” December 7, 2011, (https://www.dol.gov/sites/dolgov/files/OASP/DHS-DOL-MOU_4.19.18.pdf); USCIS Director Sarah R. Saldaña et al., “Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites” (NILC, May 6, 2016), NILC, https://www.nilc.org/wp-content/uploads/2021/11/MOU-Addendum_4.19.18.pdf.
112. DHS, “DHS FAQ’s.”
113. OSHA, “Whistleblower Protection Program: U & T Visa Certifications,” accessed August 14, 2023, https://www.whistleblowers.gov/ut_visa.
114. Principal Deputy Assistant Secretary James S. Frederick, “OSHA Instruction,” March 19, 2021, https://www.osha.gov/sites/default/files/enforcement/directives/CSP_02-00-004.pdf. OSHA, “State Plans,” DOL, accessed August 14, 2023, <https://www.osha.gov/stateplans>. You can submit a complaint to federal OSHA if you think your state plan is inadequate. See this [FAQ](#) for more information. OSHA, “State Plan Frequently Asked Questions | Occupational Safety and Health Administration,” DOL, accessed August 14, 2023, <https://www.osha.gov/stateplans/faqs>.
115. NLRB Office of Public Affairs, “General Counsel Jennifer Abruzzo Releases Memo on Ensuring Rights and Remedies for Immigrant Workers,” November 8, 2021, <https://www.nlr.gov/news-outreach/news-story/general-counsel-jennifer-abruzzo-releases-memo-on-ensuring-rights-and>; NLRB, “Immigrant Worker Rights, Request for Statement of Interest in Support of Deferred Action”

- accessed August 30, 2023, <https://www.nlrb.gov/guidance/key-reference-materials/immigrant-worker-rights>.
116. NLRB, “Request for Statement of Interest in Support of Deferred Action.”
117. California Department of Industrial Relations Labor Commissioner’s Office, “Frequently Asked Questions on LCO’s Role in Supporting Immigration-Related Prosecutorial Discretion,” April 2023, https://www.dir.ca.gov/dlse/dhs_deferred_action_FAQ.htm. California Department of Industrial Relations Cal/OSHA, “Frequently Asked Questions on Cal/OSHA’S Role in Supporting Immigration-Related Prosecutorial Discretion,” April 2023, https://www.dir.ca.gov/DOSH/dhs_deferred_action_faq.htm; “Frequently Asked Questions on ALRB’s Role in Supporting Immigration-Related Prosecutorial Discretion,” ALRB, n.d., <https://www.alrb.ca.gov/wp-content/uploads/sites/196/2023/03/ALRB-PD-FAQs-English.pdf>.
118. Illinois Department of Human Rights (IDHR), “Deferred Action for Labor Enforcement FAQs,” accessed August 14, 2023, <https://dhr.illinois.gov/legal/faq-deferred-action.html>; Illinois Department of Labor, “Deferred Action,” accessed August 14, 2023, <https://labor.illinois.gov/laws-rules/legal/deferredaction.html>.
119. Illinois Department of Human Rights (IDHR), “Deferred Action for Labor Enforcement FAQs.”
120. New York State DOL, “Prosecutorial Discretion,” accessed August 14, 2023, <https://dol.ny.gov/prosecutorial-discretion>.
121. New York State DOL, “Prosecutorial Discretion.”
122. Massachusetts Commission Against Discrimination, “Notice of Meeting and Agenda” (July 18, 2023), <https://www.mass.gov/doc/notice-of-mcad-public-meeting-agenda-july-18-2023/download>.
123. NLRB, “Employee Rights,” accessed August 14, 2023, <https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights/employee-rights>.
124. NLRB, “Employee Rights.”
125. Centro Comunitario de Trabajadores, C.C.T. et al., “Toolkit: Immigration Legal Clinics for Labor-Based Deferred Action,” September 2023, https://www.nilc.org/wp-content/uploads/2023/09/NILC_WorkersRightsToolkit_09-06-23-B.pdf.
126. DHS, “DHS FAQ’s.”
127. USCIS, “Victims of Human Trafficking: T Nonimmigrant Status,” DHS, October 20, 2021, <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-t-nonimmigrant-status>; USCIS, “Victims of Criminal Activity: U Nonimmigrant Status,” DHS, March 20, 2023, <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>.
128. DOL WHD, “U and T Visa Certifications,” DOL, accessed August 14, 2023, <http://www.dol.gov/agencies/whd/immigration/u-t-visa>; OSHA, “Whistleblower Protection Program: U & T Visa Certifications,” accessed August 14, 2023, https://www.whistleblowers.gov/ut_visas; EEOC, “EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases,” EEOC, accessed August 14, 2023, <https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc>; NLRB, “Immigrant Worker Rights,” accessed August 14, 2023, <https://www.nlrb.gov/guidance/key-reference-materials/immigrant-worker-rights>.
129. USCIS, “Victims of Criminal Activity: U Nonimmigrant Status”; USCIS, “Victims of Human Trafficking: T Nonimmigrant Status.”
130. OSHA, “Whistleblower Protection Program: U & T Visa Certifications,” accessed August 14, 2023, https://www.whistleblowers.gov/ut_visas.

131. USCIS, “Victims of Criminal Activity: U Nonimmigrant Status.”
132. See USCIS, “National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions,” September 23, 2021, <https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions>.
133. USCIS, “Processing Times,” accessed August 31, 2023, <https://egov.uscis.gov/processing-times/>.
134. USCIS, “Victims of Human Trafficking: T Nonimmigrant Status.”
135. Another benefit unique to T visa applicants is eligibility for Continued Presence (CP) designation, which confers similar benefits to labor-based deferred action, such as protection from deportation and two-year work authorization, but also provides eligibility for federal benefits such as Medicare and food stamps. CP can only be issued by ICE's Center for Countering Human Trafficking (CCHT) on behalf of a requesting law enforcement agency, typically Homeland Security Investigations (HSI), the branch of ICE that investigates human trafficking. Some labor agencies will refer cases to HSI, but otherwise pursuing CP will involve advocates assisting workers in reporting the trafficking to the local HSI field office. Even then, the decision to request CP on behalf of the worker will be at the discretion of HSI. For these reasons, CP will typically be a more difficult path to an EAD than applying via the new deferred action process. For additional information about this process, see CCHT, “Continued Presence Resource Guide,” <https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf>.
136. USCIS, “Processing Times.”
137. For example, see EEOC, “Mediation,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/mediation>.
138. EEOC, “Central Station Casino To Pay \$1.5 Million In EEOC Settlement For National Origin Bias,” US EEOC, July 18, 2003, <https://www.eeoc.gov/newsroom/central-station-casino-pay-15-million-eeoc-settlement-national-origin-bias-0>.
139. For example, once the EEOC issues a Right to Sue Letter, the worker has only 90 days within which to file a lawsuit. EEOC, “Filing a Lawsuit,” US EEOC, accessed August 14, 2023, <https://www.eeoc.gov/filing-lawsuit>.
140. Some agencies, such as the EEOC, have indicated that they would consider requests for SOIs based on private litigation on a case-by-case basis. The EEOC enforces, among other laws, Title VII, which requires workers to first file an agency complaint before going to court (known as an “administrative exhaustion requirement”). It is unclear under what circumstances the EEOC, or another agency, might grant an SOI request based on private litigation.
141. Rossana Cambron, “Court Orders El Super to Reinstate Fermin Rodriquez, Fired Organizer,” *People's World*, August 3, 2015, <https://www.peoplesworld.org/article/court-orders-el-super-to-reinstate-fermin-rodriquez-fired-organizer/>.
142. Jeniffer Solis, “Homeland Security Formalizes Process That Won Immigrant Workers a \$3 Million Settlement,” *Nevada Current*, January 18, 2023, <https://www.nevadacurrent.com/?p=203113>.
143. Rafael Sanchez-Cruz, “Immigrant Workers Fighting for Deportation Relief after Reporting Labor Abuse,” WUSA9, September 28, 2022, <https://www.wusa9.com/article/news/politics/immigrant-workers-fighting-for-deportation-relief-after-reporting-stolen-wages/65-113b2de1-fc60-430f-8753-91d74c576740>.
144. Blanca Juárez, “EU Otorga Visa Humanitaria a Trabajadores Migrantes Cuya Lucha Laboral Fue Reprimida,” October 20, 2021, <https://www.economista.com.mx/capitalhumano/EU-otorga-visa>

- [humanitaria-a-trabajadores-migrantes-cuya-lucha-laboral-fue-reprimida-20211019-0112.html](#).
145. Kevin Gosztola, “ICE, Homeland Security Accused of Targeting Outspoken Migrant Worker for Deportation,” *The Dissenter*, May 17, 2023, <https://thedissenter.org/ice-homeland-security-accused-of-targeting-outspoken-migrant-worker-for-deportation/>.
146. *Empleados de ‘El Milagro’ logran acuerdo con la compañía tras denunciar condiciones inseguras y abusivas*, 2023, <https://www.univision.com/local/chicago-wgbo/empleados-de-el-milagro-logran-acuerdo-con-la-compania-tras-denunciar-condiciones-inseguras-y-abusivas-video>.
147. David Roeder, “El Milagro Workers Praise Settlement of Labor Charges,” *Chicago Sun-Times*, July 20, 2023, <https://chicago.suntimes.com/business/2023/7/20/23802079/el-milagro-workers-praise-settlement-labor-charges>.
148. Armando Carmona, “Complaint From Immigrant Workers and NDLOM Leads to OSHA Investigation and \$100,000 Fine for Serious Safety and Health Violations,” *NDLOM* (blog), August 2, 2016, <https://ndlom.org/complaint-from-immigrant-workers-and-ndlom-leads-to-osha-investigation-and-100-000-fine-for-serious-safety-and-health-violations/>.
149. NDLOM, “Meet the Workers & Advocates of the Blue Ribbon Commission on Protections for Immigrant Workers,” *DALE Campaign* (blog), accessed August 31, 2023, <https://ndlom.org/dale-campaign/>.



On January 9, 2023, an Unforgettable Coatings, Inc. (UCI) worker rallied outside the Las Vegas Federal District Courthouse during one of the settlement conferences in Walsh v. UCI.
Credit: Arriba Las Vegas Worker Center