Chapter 5
Major Issues Affecting Job Quality for Latinos

Photo by Francisco Pacheco

Absent effective, responsive immigration policy or significant strengthening of workers' rights at the federal level, the structural changes in the economy and employers' growing reliance on less-skilled—often immigrant—workers have eroded the quality of U.S. jobs. While millions of workers have been negatively impacted by these trends, Latinos have emerged as the workers who are most likely to hold jobs with low wages, insufficient benefits, and dangerous working conditions. This chapter explores the major issues that help explain the quality disparity Latinos face on the job. These issues can be grouped into three categories:

- **Labor law violations.** Latinos are concentrated in occupations with where labor law violations are prevalent.
- **Gaps in legal protections.** Many Latinos are partially or fully excluded from coverage under laws designed to protect workers.
- **Inadequate government outreach and enforcement.** Latinos bear a disproportionate burden of the federal government's failure to enforce fundamental labor laws.

LABOR LAW VIOLATIONS

Several low-wage industries are plagued by violations of the major federal labor laws that are outlined in Table 4.1. Anecdotal and empirical evidence suggests that the majority of the Latino workforce is employed in workplaces where wage, benefit, and working condition regulations are not met. The industries in bold in Table 5.1 are those with a high frequency of labor law violations. The most common types of violations and the affected industries are listed in Table 5.2.

The Occupational Health and Safety Administration (OSHA) has documented a 6.4% rise in violations of standards and regulations since 2003, including a rise in "willful" violations in which employers knowingly violate the law.[1] While OSHA credits these increases with better oversight and reporting, the rising toll of Latino worker deaths raises the probability that the incidence—not just the discovery—of willful violations is on the rise. At the heart of this trend is that the penalties for violating labor laws are generally too low to offset the financial incentives for unscrupulous employers to cut corners. In order to avoid detection, many employers fail to report serious workplace injuries and illnesses, allowing substandard conditions to persist.

Table 5.1
Employed Latino Workers by Industry, 2008

Industry	Percent of Total Employed Who Are Latino*	Latino Workers (in thousands)†
Manufacturing	**14.6%**	**2,323**
Education and Health Services	15.0%	3,040
Wholesale and Retail Trade	**13.8%**	**2,831**
Construction	**24.6%**	**2,701**
Leisure and Hospitality	**18.5%**	**5,664**
Professional and Business Activities	10.5%	2,144
Other Services	9.0%	1,197
Transportation and Utilities	14.6%	1,155
Financial Activities	10.6%	1,083
Public Administration	3.1%	631
Information	1.6%	317
Mining	0.6%	127

*NCLR calculation using U.S. Department of Labor, "14. Employed persons in nonagricultural industries by age, sex, race, and Hispanic or Latino ethnicity." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, ftp://ftp.bls.gov/pub/special.requests/lf/aat14.txt (accessed September 2008).
† U.S. Department of Labor, "14. Employed persons in nonagricultural industries."

Absent adequate health and safety training or the presence of a union, many Latino workers have little recourse in the face of widespread violations. The issue of employer noncompliance acutely affects workers employed in nontraditional arrangements, who often find it difficult to hold a single employer responsible.

Weak civil and monetary penalties. Depending on the laws that apply to certain categories of employees, an employer may be obligated to pay for an employee's salary, benefits, and personal protective equipment and training.[2] In many cases, however, the civil penalties for violating these laws are too weak to compel employers to fulfill their legal

Table 5.2
Most Common Labor Law Violations

Violation	Commonly Affected Industries
Wage theft. Employers' failure to pay workers their wages has serious implications for those who already earn low wages and are likely to be paid on an hourly basis. Refusing to provide any compensation and failing to pay minimum wage or overtime are all potential violations of the Fair Labor Standards Act (FLSA) and, for certain agricultural employees, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).	Agriculture
Poor recordkeeping. An employer who neglects to record all hours an employee works as required by the FLSA and the AWPA is likely to underpay the employee. While some recordkeeping errors are accidental, a common practice in the construction industry is to fail to record hours worked as overtime for employees who perform various tasks within one week for the same employer.	Construction
Youth employment violations. In addition to the standards of the FLSA and the AWPA, youth are subject to different employment restrictions depending on their age. One of the most common violations of youth employment law is to exceed the permissible number of hours a young person is allowed to work. According to a compliance survey of restaurants by the U.S. Wage and Hour Division, 47% of 14- and 15-year-olds employed in full-service restaurants were in violation of youth employment laws, most of them working more hours than permitted.[1]	Leisure and hospitality
Misclassification of employees as independent contractors. In 2005, 951,000 Latino workers identified themselves as independent contractors,[2] but due to the growing practice among employers to misclassify actual employees as independent contractors, this number is likely much higher. Misclassification, described in greater detail below, has serious consequences for workers who remain unaware of their tax obligations and legal vulnerability as self-employed workers.	Manufacturing
Inadequate sanitation, housing, and transportation. Several case studies have revealed the high incidence of violations of the AWPA and the Occupational Health and Safety Act (OSH Act), which require adequate drinking water and sanitation in the fields, among employers of migrant and seasonal farmworkers.	Agriculture
Scaffolding hazards. Occupational Health and Safety Administration regulations require that scaffolding be properly constructed to support workers on temporary elevated surfaces. In 2007, however, 88 workers died due to a fall from scaffolding. In fact, scaffolding standards were the most frequently cited rule violations in OSHA inspections during the fiscal year 2008 (October 2007 through September 2008).[3]	Construction, especially masonry, drywall, and insulation work
Inadequate fall protection. This was OSHA's second most frequently cited workplace safety violation in fiscal year 2008.[4] Based on 2006 fatal occupational injury data, Latinos are more likely than other workers to be killed by a fall on the job; 20.2% of Latino fatalities were caused by falls, compared to 14.8% of White fatalities and 7.6% of Black fatalities (see Figure 4.9).	Carpentry Construction, especially roofing, siding, and sheet metal work
Insufficient hazard communication. OSHA's hazard communication standard requires employers to provide clearly accessible information (such as labels and descriptions) about chemicals in the workplace and their hazards. Failure to appropriately warn workers about hazardous chemical substance was OSHA's third most frequently cited safety violation in fiscal year 2008.[5]	Construction, especially masonry, painting, and paper hanging

[1] NCLR calculation using U.S. Department of Labor, "14. Employed persons in nonagricultural industries by age, sex, race, and Hispanic or Latino ethnicity." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, ftp://ftp.bls.gov/pub/special.requests/lf/aat14.txt (accessed September 2008).

[2] U.S. Department of Labor, "14. Employed persons in nonagricultural industries."

[3] U.S. Department of Labor, "Most Frequently Cited Standards," Occupational Health and Safety Administration (OSHA), http://www.osha.gov/dcsp/compliance_assistance/frequent_standards.html (accessed January 2009).

[4] Ibid.

[5] Ibid.

obligations. For instance, employers found guilty of violating the FLSA are required to pay back wages to unpaid or underpaid workers—in other words, no more than the amount rightly due to the worker.[3] Fines for OSHA violations have not increased in nearly two decades. Even in the most egregious case—"willful" violations that result in a worker's death—the maximum fine is $70,000, far below fines leveraged for violations in other areas, such as environmental law.[4]

OSHA logs reveal that employers are not likely to pay the full fine levied against them. In fact, the median reduction in willful violations that result in a worker fatality is 58%, or $40,600. This is partially by design: OSHA guidance instructs investigators to reduce fines for certain types of employers, including small businesses.[5] Furthermore, since a willful violation is considered a Class B misdemeanor—with lower penalties than mail fraud—criminal charges are very rarely pursued. Between 2003 and 2008, OSHA deemed 237 fatality cases willful violations, but in only ten cases were employers prosecuted by the Department of Justice.[6] The main obstacles to court action are the low classification of violations, a general lack of evidence in fatality cases, and employers' tendency to seek alternative methods of making reparations to avoid public repudiation for being responsible for a worker's death.[7]

Employee intimidation and underreporting. Abnormally high rates of injury or illness can drive up an employer's workers' compensation premiums and can affect a business' chance of winning certain government contracts.[8] These considerations, coupled with the weak penalties discussed above, cause many employers to evade their legal obligation to accurately report serious incidents. Accounts from low-wage workplaces have exposed a wide range of tactics employers use to prevent workers' complaints from reaching supervisors and government enforcement agencies. These include blatant violations of whistleblower protections—such as firing an employee who disputes a paycheck—to low-level disciplinary tactics that are more difficult to detect, such as verbal harassment, assigning workers undesirable tasks or schedules, and passing up workers for bonuses and promotions.[9]

Even practices that appear to make positive investments in workers can inadvertently or deliberately discourage workers from issuing complaints. For example, employers who excessively reward "accident-free" workers with prizes or bonuses can maintain popularity with employees while still discouraging honest reporting. Another trend is to provide in-house medical care to workers who get sick or injured on the job. Especially in larger businesses, such as poultry-processing and meatpacking plants, some employers have instructed their in-house medical staff to downplay the severity of work-related injuries.[10] Since only injuries serious enough to merit "lost work time" show up on OSHA logs and nationwide surveys, this practice distorts the accuracy of official injury reports and blocks workers from accessing the workers compensation process.

Ineffective delivery and content of health and safety training. By law, employers are obligated to create a safe and healthy workplace. In addition to minimizing and eliminating hazards, it is their responsibility to train workers to protect themselves from injury and illness. However, many employers provide low-wage workers with little to no safety training. For instance, in a survey of restaurant employees in New York City, 52% of workers said they had not received any health and safety training.[11] When workers do receive training, it is often minimal, low-quality, or not delivered in a language or manner that enables them to fully comprehend it. In fact, several investigations into several cases of Hispanic worker deaths have concluded that inadequate training is a major cause of preventable deaths.

Language barriers often compromise the quality of vital safety training to Hispanic workers, particularly the foreign-born. Non-Spanish-speaking employers often fail to provide culturally and linguistically appropriate training to Spanish-speaking workers, in violation of their legal obligation to provide quality training.[12] OSHA

Workplace Discrimination and Harmful Employment Verification Measures

A discussion of Latinos' experience in the labor market cannot leave out the negative impact of racial, ethnic, and national origin discrimination on employment opportunities and job quality for Hispanic workers. Discrimination can be detrimental to all three core components of job quality: wages, benefits, and working conditions. One study found that "differential treatment explains one-fourth of the wage gap between foreign-born Latinas and white women even when human capital, broad occupational controls and neighborhood characteristics are included."[15] The failure of occupational distribution to fully explain disparities in workplace fatality rates may be partially explained by differential treatment of workers in the same occupation.[16] For instance, Latino or immigrant workers may be assigned inferior and more dangerous tasks than other workers with the same job title.

The proposed expansion of a flawed employment verification system threatens to reverse years of progress in combating workplace discrimination.[17] Decades after a congressionally mandated General Accounting Office* report found that employment discrimination spiked in areas with Latino and Asian populations following the enactment of the Immigration Reform and Control Act (IRCA) in 1986, these groups continue to be more likely than others to be harmed by employer misuse and abuse of the system, or by database errors that prevent authorized individuals from being automatically confirmed to work.[18]

According to evaluations of the latest electronic employment verification system, E-Verify, U.S.-born and foreign-born workers with "foreign-sounding" surnames, foreign-born workers who are naturalized U.S. citizens, and other lawfully present foreign-born workers are more likely than U.S. citizens to be incorrectly denied automatic confirmation due to errors in government databases. These workers face greater risk of adverse actions from their employers. In violation of the rules of E-Verify, 31% of employers screened job applicants and new hires before issuing their first paycheck, 21.6% restricted work assignments, 16% delayed on-the-job training, and 2% reduced pay of workers who were not immediately confirmed to have work authorization.[19] In other cases of abuse, some employers demand extra or "better" documents than legally required from people they believe to be immigrants. Others implement unlawful "citizen-only" policies to avoid a potentially longer and more costly verification for these "error-prone" workers.[20]

* Now the Government Accountability Office.

has developed extensive compliance assistance resources in Spanish. However, public health models have shown that the effectiveness of these materials rests on the quality of delivery of information. Evidence shows that such outreach materials are often impractical, instructing employees on practices irrelevant to their occupation, or insensitive to cultural differences.[13] Many employers remain unaware that limited-English-proficient (LEP) workers have not fully understood or benefited from training since soliciting employee feedback is rare. Instead, they may incorrectly assume that LEP workers understand safety instructions as long as they receive them in Spanish.[14] This assumption further excludes workers for whom Spanish is not their primary language, or for whom low literacy is a barrier.

The high incidence of violations of E-Verify rules, coupled with persistent error rates in the Social Security and U.S. Citizenship and Immigration Services (USCIS) databases, come at a significant cost to all workers, especially Latinos. Expanding such a system through a mandate on all U.S. employers would drive up workplace discrimination, further deteriorating job quality.

Declining union presence. Compared to 1973, when nearly one in three workers was covered by a collective bargaining agreement,[21] only 12.4% of workers were unionized in 2007.[22] The decline of unions eliminated an important watchdog figure in the workplace, leaving workers more exposed to

employer violations. In the midst of disappearing union jobs, several court interpretations of labor laws have further restricted workers' right to organize.[23] Furthermore, since the 1970s, there has been a documented rise in employer tactics to discourage workers from joining unions and recruit employees from outside the unionized workforce.[24] These efforts have succeeded in many industries, abetted by delays in union outreach to workers employed in the service sector. Although some unions have made progress recruiting immigrant and non-English-speaking workers, they continue to face challenges presented by complex contractor and subcontractor relationships, multisite operations, and nontraditional work arrangements.[25]

Job Quality Comes Full Circle: The Case of Meatpacking

The evolution of the meatpacking industry is one example of how changes in workplace governance have affected the employment and job quality of Latino workers. At the turn of the 20th century, the business of slaughtering, processing, and packing beef employed predominantly immigrant workers at poverty-level wages and under extremely hazardous conditions.[26] Upton Sinclair's 1906 novel *The Jungle* exposed the destitute conditions experienced by meatpacking employees both at work and at home. Accounts like Sinclair's raised public consciousness about the problems facing workers, which led lawmakers to set some industry standards affecting the packing process and working conditions. Significant progress was made between 1946 and 1968, when two unions—the Amalgamated Meat Cutters and the United Packinghouse Workers of America (UPWA)—successfully organized 95% of the hourly workers in plants throughout the Great Lakes region. Workers' wages rose dramatically during this time, despite the fact that the industry was dominated by only four companies. In 1947, meatpackers' average hourly wages were about 4% higher than hourly earnings of workers in nondurable goods, but by 1968 they were 26% higher.

In 1968, Iowa Beef Packers (IBP) entered the meatpacking market with a new product: boxed beef. This method of packing enabled IBP to lower its costs by locating its plants closer to the livestock in rural areas. In order to fill labor shortages in these locales, IBP and other large businesses began recruiting Hispanics and Asians, many of whom were immigrants, to work in the packing plants. In the meat products industry, Hispanics' share of workers increased from 9% in 1978 to 21% in 1991.[27] Immigrants, women, and minorities were all groups that unions had found difficult to organize.[28] Together with active resistance to strikes and other union activities, IBP and a few other new entrants to the industry pressured unions to make major concessions on workers' wages. As wages declined in the 1980s, the rate of job-related injury increased, eventually coming to resemble the unregulated, nonunionized poultry-processing industry of the 1960s.[29] In fact, in 1987, OSHA sought $2.6 million in fines against IBP for deliberately concealing the high incidence of occupational injuries and illnesses at its plant in Dakota City, Nebraska.[30]

Since the late 1980s, employers in meatpacking have continued to drive down wages. The average hourly wage in meatpacking declined from $13.22 in 1986 to $11.47 in 2006 while the disparity between meatpacking and manufacturing wages grew.[31] Meanwhile, in 2008, the U.S. beef industry was worth about $76 billion.[32] A relatively slim profit margin has prompted producers to implement other cost-cutting measures, such as faster production line speeds and longer hours, which have contributed to some of the highest serious occupational injury rates of any job in the country.[33] These conditions lead to extremely high employee turnover in meatpacking, often exceeding 100% per year.[34] Union activity has revived in the meat, pork, and poultry industries, often with the intent of organizing minority and immigrant workers to demand better wages and working conditions. However, heavy resistance from employers has slowed this process in many plants, such as the Smithfield Packing slaughterhouse in Tar Heel, North Carolina, which voted for a union in December 2008 after 15 years of organizing activities.[35] The uncertain future of job quality in meatpacking is especially critical to Latinos, who now represent 38.4% of butchers and other meat, poultry, and fish processing workers.[36]

Exploitation of independent contractors. One of the most prevalent and harmful practices affecting the quality of work at nearly every level of the pay scale is the misclassification of legitimate employees as independent contractors. True independent contractors are considered self-employed and are thus required to purchase their own equipment and benefits and pay their own payroll taxes. Employers are not responsible for paying workers compensation payments if an independent contractor is injured on the job. While many employers hire legitimate independent contractors, misclassification of regular employees as independent contractors is a practice that is spreading among employers seeking to avoid the responsibility and costs of employing workers. A study commissioned by the U.S. Department of Labor estimated in 2000 that 30% of businesses misclassify their workers as independent contractors.[37] Although misclassification happens across occupations, it is best documented among construction and extraction workers. In New York, for example, an estimated 14.8% of construction workers, about 45,474 individuals, are misclassified each year.[38] The costs of misclassification are widespread. Workers who are misclassified face a host of potential problems that tend to surface only when they seek to exercise their rights as legitimate employees. Data from the Internal Revenue Service (IRS) suggest that a significant portion of independent contractors are unaware of their tax obligations. As a result, workers lose out on a significant portion of their expected contributions to Social Security and state and federal governments lose significant tax revenue.[39] It is also likely that misclassified workers are unaware that they are excluded from rights under the FLSA, the OSH Act, the Employee Retirement Income Security Act (ERISA), the Family and Medical Leave Act (FMLA), and the Civil Rights Act of 1964. Even legitimate independent contractors may face confusion as to their status under the law, since different labor laws define independent contractor in different ways.[40]

Tackling the issue of misclassification is challenging because the practice is permitted under current law in certain circumstances. For instance, the IRS code provides a "safe harbor" for employers who misclassify workers as independent contractors, disqualifying employers from penalty for misclassification if this is a common practice in their industry.[41] The complexity of employer-contractor relationships adds to the difficulty of cracking down on employers who deliberately misclassify workers. For instance, as is the case with many of the violations listed in Table 5.2, the practice of misclassification is especially common in nontraditional employment arrangements and small businesses, where the lines of accountability between employees and employers are often obscured. The joint supervision of a contractor by multiple employers, rather than a single employer who takes sole responsibility for its workers, further complicates the problem. Recent attempts to regulate these types of arrangements, including the "hot goods" provision of the FLSA, which authorizes the Department of Labor to seize goods produced under substandard working conditions, have had some success. The intent of this regulation is to hold all employers in a production chain accountable for their labor practices.[42]

GAPS IN LEGAL PROTECTIONS

Millions of Latinos work without the full protection of federal labor laws.[43] Explicit exclusions in the law affect broad segments of the Latino workforce, including the 7.6 million Latino small business employees. Specific occupations, such as domestic workers, are also singled out for exemption, leaving hundreds of thousands of workers exposed to exploitation on the job. The following groups of workers risk working in low-quality jobs because they are not fully covered by the nation's labor protections.

Small business employees. Due to their higher representation as small business employees, Latinos are more likely than Blacks and Whites to be excluded from federal labor laws. In 2007, 36.2% of the Hispanic nonelderly labor force (about 7.6 million Latinos, native-born and foreign-born alike) worked for a firm employing fewer than 25 employees, compared to 29.1% of Whites and 21.4% of Blacks.[44] Minimum establishment size is a common measure of eligibility for coverage under federal labor laws.

For instance, Title VII of the Civil Rights Act only applies to establishments employing 15 workers or more. The FMLA is even narrower, applying only to federal contractors and subcontractors with at least 50 employees working within 75 miles of each other.

While these exemptions are designed to prevent small businesses from experiencing undue burdens in hiring workers, it is also a common practice to deliberately contract out work in order to remain small enough to be exempt from occupational health and safety regulations, antidiscrimination laws, and record-keeping requirements.[45] Multiple layers of contractors also tend to blur the lines of accountability between employer and employee, leaving some workers without any protections under federal labor laws.

Agricultural workers. Another segment of the Latino workforce that is explicitly excluded from legal protections is the 426,000 Latinos who work in agriculture, the majority of whom are immigrants. In 2008, Latinos composed nearly half (45.1%) of miscellaneous agricultural workers, or farmworkers.[46] Legal exclusions of agricultural workers have their roots in the New Deal era, when conservative Southern Democrats in Congress refused to extend the protections of the FLSA to domestic workers and farmworkers, who were predominantly Black.[47] Although the FLSA was amended in 1966 to expand minimum wage requirements to some farmworkers, the law continues to exclude farmworkers from overtime pay provisions and full protections for young workers. Furthermore, many farmworkers, particularly those on small farms, work without any minimum wage requirements. Under the National Labor Relations Act (NLRA), agricultural workers are not protected from employers who retaliate against workers who attempt to organize unions. Many states also exempt agricultural employers from paying workers' compensation.[48]

Domestic/household workers. Approximately 302,000 Latinos, the majority of them foreign-born, are employed in private households, usually as nannies, butlers, gardeners, and caretakers. In fact, Latinos make up 37.5% of domestic workers, which is likely to be an underestimate since many households fail to report employing individuals in their homes.[49] All domestic workers are explicitly excluded from the standards and whistleblower protections of the OSH Act and the NLRA. Despite the stability of the domestic workforce, the FLSA excludes "casual" babysitters and "companions" who care for the sick or elderly, which disadvantages workers whose hours and wages are not properly recorded by their employers. A study of New York City's domestic work industry found that 8% earn below minimum wage, 67% sometimes or never receive overtime pay (despite the fact that about half work overtime), and 33% have experienced abusive treatment by their employers, including verbal and physical abuse. The majority (59%) of workers interviewed were the primary earners for their families.[50]

Undocumented workers. In 2008, an estimated 8.3 million undocumented immigrants worked in the U.S., representing 5.4% of the labor force.[51] In 2009, the Pew Hispanic Center estimated that undocumented workers represent the following shares of these occupation groups:

- Farmworkers (25%)*
- Buildings, grounds keeping, and maintenance (19%)
- Construction (17%)
- Food preparation and service (12%)
- Production (10%)
- Transportation and material moving (7%)

*The National Agricultural Workers Survey estimates that 53% of farmworkers are undocumented. U.S. Department of Labor, Bureau of Labor Statistics, "Figure 1.4 U.S. Employment Eligibility," *National Agricultural Workers Survey*. Washington, DC, 2003, http://www.doleta.gov/agworker/report9/toc.cfm (accessed August 2009).

In 2006, more than 25% of workers in the following occupations were estimated to be undocumented:[52]

- Drywall installers, ceiling tile installers, and tapers
- Construction trade helpers
- Butchers and other meat, poultry, and fish processing workers
- Pressers of textiles, garments, and related materials
- Grounds maintenance workers
- Construction laborers
- Brick masons, block masons, and stonemasons

Although federal laws do not take into account a worker's legal status, recent legal developments have cast a shadow of uncertainty on whether workers with insecure immigration status are conferred the full rights and protections of labor laws. The 2002, the Supreme Court's decision in *Hoffman Plastic Compounds Inc. v. NLRB* denied back pay—virtually the only recourse for illegal employer retaliation under the NLRA and the FLSA—to undocumented workers.[53] Not only has the *Hoffman* decision produced confusion among employers and workers, it has also opened the door to a wave of legal efforts to deny **all** rights to undocumented workers, including compensation for discrimination and work-related injuries and illnesses. Although the outcomes of the cases have been mixed, the movement to deny certain protections to workers based on immigration status has created a hostile environment for all workers seeking to exercise their rights.[54]

Case Study:

Bosbely, a car wash worker, was fired after reporting dangerous working conditions to OSHA.

Bosbely worked at Vermont Hand Wash for nearly two years as a dryer and detailer. Bosbely and many of his coworkers suffered health effects from using acids and other toxic chemicals without protective gear such as goggles or gloves.

Bosbely reported the dangerous working conditions at the car wash to the California Division of Occupational Safety and Health and answered questions from the press when other workers were afraid to do so. He also joined his coworkers in taking legal action against the owners of the car wash for not paying minimum wage or overtime pay and not allowing workers to take meal and rest breaks.

Bosbely was one of the most outspoken union supporters in the car wash and took great personal risks to try to improve conditions for all workers there. In October 2008, management at Vermont Hand Wash fired Bosbely.

Source: Carwash Workers Organizing Committee, "Meet the Workers," Clean Car Wash Campaign, http://www.cleancarwashla.org/index.cfm?action=cat&categoryID=12d390a7-5282-4de5-b76b-bc6dc4a3b06a (accessed August 2009).

GOVERNMENT OUTREACH AND ENFORCEMENT

Government both assists employees and plays an enforcement role in protecting workers' rights to basic standards of job quality. The evidence is clear that labor law enforcement activities, whether planned or complaint-based, do in fact induce employers to correct violations.[55] Under certain conditions, employers seeking to avoid violations and proactively comply with the law are actually guaranteed protection from penalties for violations discovered by compliance assistance officers. Nevertheless, federal efforts to appropriately target high-risk industries and vulnerable worker populations have been met with significant obstacles. By and large, Latinos have not been well-served by government outreach and enforcement efforts in the workplace.

Insufficient resources for federal outreach and enforcement. The primary barrier to effective outreach and enforcement activities is declining funding for OSHA and the Wage and Hour Division

Case Study:

Guadelupe, a poultry worker, was encouraged by her company to lie to the doctor about her workplace injury. Then she was fired.

Guadelupe worked at the poultry processing plant where she was assigned to cut the bruised legs and wings from chickens as they came through the line on hooks. It took a lot of effort to hook and rehook the chickens with one hand because they came through the line so fast. The chickens were quite high, and she would have to scramble up a step stool to reach them. Her arm started to go numb and she had stabbing pains across her chest.

The company sent her to the hospital to have the pains checked out, and the doctor ordered 13 weeks of disability. She was diagnosed with a repetitive motion injury in her elbow and the doctor ordered that she was not supposed to lift more than five pounds. The company's human resources department told her that she could not work with that restriction and that she should go back to the doctor and report that she had no longer had pain. She went back to the doctor, who refused to discharge her. The company fired her.

Now Guadelupe can hardly sleep from the pain—she cannot lift her arm. She has trouble caring for her children because she cannot lift them. Without two incomes, her family is having difficulty paying bills.

Source: Guadelupe (last name withheld), interview by Sara A. Quandt, Ph.D., Wake Forest University School of Medicine, Winston-Salem, NC, and Francisco Risso, Western North Carolina Workers' Center, Morganton, NC, 2008.

of the Department of Labor in the federal budget. For instance, while the number of employees covered by OSHA grew from 3.9 million in 1975 to 8.7 million in 2006, the number of full-time OSHA employees has declined. As a result, each employee is responsible for 4,057 establishments, nearly four times the caseload of employees in 1975.[56] Similarly, the number of Wage and Hour investigators has dropped from 942 in 1997 to 732 in 2007.

As capacity declines, the quality of inspections performed by federal agencies suffers. For example, OSHA has consistently reduced the time it spends on each health and safety investigation.[57] The ability of investigators to reach high-risk work sites is also curbed by limited agency resources for targeted inspections. In 2007, only 23% of Wage and Hour resources went toward targeted enforcement of high-risk industries, compared to 30% of resources in 2000 and 60% in 1968.[58] Moreover, despite major research and exposure of health and safety violations in the meatpacking industry,[59] a Government Accountability Office report in 2004 found that only 1% of OSHA's inspections occur in meat and poultry packing plants.[60] Evidence shows that OSHA tends to focus its enforcement on unionized workplaces. OSHA's Enhanced Enforcement Program (EEP), which is meant to monitor establishments with a record of repeat violations, intentional violations, or fatalities has only followed up with 514 of the 7,968 EEP fatality targets since the program began in 2003.[61]

Insufficient data on high-risk industries and firms. Federal enforcement officials rely on secondary information to guide their decisions about where to target inspections and compliance assistance. In fact, the vast majority of OSHA's inspections are planned rather than based on complaints.[62] Bureau of Labor Statistics surveys, hospital medical records, workers compensation claims, and OSHA employer logs can help identify segments of the labor force with abnormally high rates of occupational injuries and illnesses.

As described earlier, the full scope of hazards and violations is likely skewed for much of the Latino workforce due to high rates of underreporting. While they are potentially useful in identifying populations with high rates of injury, medical records can also provide an inadequate estimate of risk because Latinos traditionally have lower access to clinical care than the general population, and many face language barriers that can inhibit communication with medical staff.[63] Ultimately, a mistaken understanding of vulnerable populations and high-risk industries directs scarce federal resources away from where they are needed most.

Conflicts with immigration enforcement activities. Over the past decade, immigration raids at workplaces throughout the country have served as evidence of the elevated presence of the Immigration and Customs Enforcement arm of the U.S. Department of Homeland Security in the workplace. In many cases, these raids have occurred at workplaces where the Department of Labor is conducting investigations of possible labor standards violations. In several cases, raids have disrupted these investigations by removing potential witnesses through the swift detention and prosecution of undocumented workers and, in some cases, U.S. citizens. Among the many consequences of immigration raids is the heightened fear among immigrant workers to report even serious employer violations to the government. In one particularly egregious case, in a raid at Seymour Johnson Air Force Base, Immigration Customs and Enforcement posed as OSHA officials to lure workers to a mandatory "safety meeting," where they arrested 48 workers.[64] Incidents like these breed worker distrust of all government entities and give employers greater leverage to pressure undocumented workers not to complain about violations. Finally, while raids have had a negligible effect on the size of the undocumented population, they have been widely criticized for harming individuals, their families, and their communities.[65]

Inaccessible grievance process. In addition to employer efforts and government intervention, workers themselves play an important role in maintaining a safe and healthy workplace, reporting work-related injuries and illnesses and issuing complaints to the government about violations of the law. Even with adequate information and training, however, significant portions of the Hispanic workforce do not have full access to the complaint-driven process that governs the workplace.

Immigrants in particular may be unfamiliar with the fundamental labor laws regarding wages, benefits, and working conditions.[66] For instance, the underrepresentation of Latinos in workers' compensation claims suggests that workers may view pain or injury as a personal cost of working in a hazardous job rather than a cause for redress.[67] Furthermore, even in cases in which workers successfully contact the Department of Labor, officials report that the quality of complaints—in terms of accuracy and adequate descriptions of the problems—is often lacking.[68]

Workers who are prepared to know what to look for and report violations are more likely to use government resources effectively. However, legal recourse for workers who are victims of unlawful employer retaliation can be an unrealistic option for Latinos with limited access to affordable, culturally and linguistically appropriate legal resources.

Case Study:

Gonzolo, a residential construction worker, was not paid for two months of hard work.

Gonzolo worked for a Minneapolis contractor to remodel a house. He worked six days a week, from 7:00 a.m. until 9:00 p.m., for two months gutting the home, painting it, doing tile work, and laying cement. This is Gonzolo's story:

"My employer kept promising to pay us later. 'I'll pay you tomorrow, Tuesday, Thursday…' I ended up being paid $300 total. He owes me $7,500—that's how much he stole from me.

"I took him to court. On the first court date, my employer didn't show up. He came to the second court date and told the judge that I hadn't worked the hours I claimed. The judge ruled in his favor since I didn't have paperwork to prove my case.

"When you are forced into poverty, you have to get used to it. We've had to buy a little bit less to eat. Can you imagine what it's like to do all this work and come home penniless?

Source: Gonzolo (last name withheld), interview by Ted Smukler, Interfaith Worker Justice, translated by Brian Payne, at Gonzolo's home in Minneapolis, August 2008.

Case Study

Candelario, Armenio, and other foreign workers who are legally present in the U.S. on H-2B visas endure numerous labor violations and offenses to their human dignity while planting trees in our national forests.

Many timber contractors utilize the H-2B temporary worker program to import workers from other countries when they can't find Americans willing to do the work. The occupation involves planting and thinning pine trees on our nation's public lands. The Southern Poverty Law Center has documented thousands of cases of abuse and exploitation of these workers, whom it calls "modern-day indentured servants." The following are direct quotations from these workers:

"[While working in the National Forest], we were forced to camp in the mountains as temperatures approached freezing. There were no sleeping pads, mattresses, or sleeping bags. The only drinking water came from the creek."
– *Candelario, H-2B forestry worker*

"We worked up to 12 or 13 hours and we could only plant 1,300 or 1,500 seedlings [because of difficult conditions]. Our pay would come out to approximately $25 for a 12-hour workday…"
– *Escolastico, H-2B forestry worker*

"What happens is the companies do not want to lose time. I cut my thumb while I was planting trees. I wrapped it up and worked two more days until I couldn't work anymore because of the pain. Seven days after the injury, they [the company] finally took me to the doctor because my thumb was infected. I was in the hospital for 14 days and they told me they wanted to cut off my thumb because the infection was so bad."
– *Enrique, H-2B forestry worker*

"They told me that I should be careful because some people could kill me because of the lawsuit that I have filed against the company…"
– *Margarito, H-2B forestry worker*

Source: Beneath the Pines: Stories of Migrant Tree Planters (Montgomery, AL: Southern Poverty Law Center, 2006), http://www.splcenter.org/images/dynamic/main/ijp_beneaththepines_web.pdf (accessed August 17, 2009)

BARRIERS TO EMPLOYER-SPONSORED BENEFITS COVERAGE

The range of human capital and historical factors discussed above has channeled many Latinos into jobs with wages at or below the poverty level. Given their extremely limited resources, employer-sponsored benefits are vital to helping Latino workers and their families meet basic health care needs, prepare for unforeseen economic strains, and save for retirement. Yet of the nation's 21.8 million Latinos who worked in 2007, only 8.6 million (39.3%) were covered by health insurance sponsored by their employer, and 10.9 million (49.8%) had access to an employer-based retirement plan.[69] The following factors contribute to the pervasive benefits coverage gaps between Latinos and other workers.

Dwindling benefits coverage. The disparities Latinos face in health and retirement coverage through their employers is the most recent chapter in a long-term trend. Hispanic workers lost 23.1 percentage points of employer-sponsored health insurance coverage between 1979 and 2006, compared to a 10.7 point drop for White and Black workers. Similarly, Latinos lost 15.5 points of employer-provided pension coverage over the same time period, compared to a 3.7 point drop for White workers and an 8.3 point drop for Black workers.[70] Dwindling access to basic health and retirement plans also bars many Latinos from employer-based disability insurance, life insurance, and paid leave, which tend to be offered only in conjunction with health insurance and pensions.

Participation gap. As Chapter 3 shows, Latinos are less likely than Blacks and Whites to work for an employer who offers health and retirement benefits to their employees. In addition to the offer gap, the rate of participation in a benefits plan is another important consideration, especially when examining trends in retirement plans. Of Latinos who worked for an employer that offered a pension plan in 2007, only 28.5% participated in the plan, compared to 52.2% of White workers and 43.4% of Black workers.[71] Participation is particularly low among foreign-born Latinos; in 2006, 18.9% of foreign-born, working-age Latinos participated in an employer-sponsored

retirement plan, versus 38.5% of their native-born counterparts.[72] Contrary to conventional explanations for this gap, including income, firm size, and age, low participation persists even among Latinos with the "right" job demographic and job characteristics.[73] The Survey of Income and Program Participation reveals a complex set of reasons explaining why Latinos do not participate in employer-sponsored retirement plans.

Involuntary nonparticipation. In 2006, more than 1.5 million Latino wage and salary workers were ineligible for their employer's retirement plan. Of those excluded, 26.7% had not worked long enough for the employer; 26.5% did not work enough hours, weeks, or months per year; and 14.4% reported that employees in their type of job were simply not offered the plan. These reasons are consistent with those reported by ineligible White and Black workers.[74] One explanation for these barriers to eligibility is that ERISA, the law governing employer-based retirement plans, allows employers to exclude some workers from their plans to qualify for certain tax provisions. Exclusions are usually based on the amount of time an individual has worked for an employer.

Voluntary nonparticipation. Latinos are slightly more likely than other workers to choose not to participate in a pension plan through their employers. A larger share of Latino workers (26.5%) say that lack of affordability is the primary reason they do not participate, compared to 22.7% of Black and 20.6% of White workers. Like all workers, Latinos identify solvency as the second biggest deterrent to putting money in a retirement savings account, saying that they "do not want to tie up money." Third, Latinos are more likely than other workers to say that they "have not thought about" saving for retirement; 10.5% of Hispanics cited this as a reason for nonparticipation.[75] Similarly, a 2003 survey of minority workers found that 43% of Hispanics had "no knowledge" of investing or saving for retirement, compared to 13% of Blacks.[76] Clearly, limited financial knowledge is a factor preventing Latinos from contributing to employer-based retirement plans.

Disparate benefits coverage is made more troublesome by the fact that public safety net programs do not adequately cover Latinos. Although Latino families are nearly 2.5 times more likely than Whites to qualify for Medicaid and the Children's Health Insurance Program (CHIP), federal restrictions enacted in 1996 deny eligibility for these programs to a significant portion of foreign-born Latinos.[77] The unemployment insurance program compensates workers who lose their jobs through no fault of their own, ensuring that workers continue to meet basic family needs during spells of unemployment. However, due to program restrictions regarding work history and income, Latinos receive unemployment insurance benefits at a rate about 25% less than that of other workers.[78]

The Social Security system, to which most workers and employers contribute through payroll taxes, is another public program on which Latinos rely as a source of disability insurance and retirement income. Despite its importance, however, Social Security coverage is unusually low among Latinos; only 76% of Latinos age 65 and older receive Social Security retirement benefits, compared to 89% of the general population age 65 and older.[79]

The greatest obstacle to Social Security coverage is an inaccurate or absent record of lifetime earnings, usually resulting from unreported or underreported wages. Improper wage reporting can lead to reduced retirement benefits or the exclusion from Social Security coverage entirely. Whether accidental or deliberate, improper reporting is most common in low-wage occupations that employ large numbers of Latinos and other minorities, including domestic employees, restaurant workers, and farmworkers. Low-wage independent contractors often do not realize that they have been classified as independent contractors and thus fail to self-report wages, thereby jeopardizing their future eligibility for Social Security coverage.

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