

## Chapter 6

# Rebuilding Job Quality for Latinos and All Workers



As this report has shown, the Latino workforce as a whole faces immense disparities in job quality compared to their peers. Indeed, much consideration and policy debate must be devoted to raising the level of employer-based health and retirement plan coverage among Latinos.<sup>1</sup> Yet by focusing on protecting the wages and the workplace safety of low-wage and immigrant workers, it is possible to take steps to improve job quality for all workers. The following are essential to improving the quality of the jobs Latinos hold:

- **Improve compliance with existing laws.** Holding employers accountable for adhering to existing labor laws requires credible deterrents: adequate penalties and empowered workers.
- **Modernize legal protections to cover marginalized workers.** Labor protections must adapt to new realities in order to protect workers in an increasingly complex labor market. Comprehensive immigration reform is central to improving job quality for all workers.
- **Bolster federal outreach and enforcement.** Strong protections for workers rely on adequate backing from the federal government, whose efforts can be strengthened by cooperating with entities at the local level.

#### IMPROVE COMPLIANCE WITH EXISTING LAWS

The job quality impasse facing Latino workers could be narrowed significantly if employers simply follow the laws on the books and workers are better prepared to safely assert their rights.

**Make the punishment fit the crime for employers who break the law.** It is clear from the high frequency of labor law violations that many employers in a handful of American industries treat fines and citations as a cost of doing business rather than as deterrents against breaking the law. Compliance with the Fair Labor Standards Act (FLSA) and the Occupational Health and Safety Act (OSH Act) could be strengthened—especially in low-wage workplaces—by authorizing long-overdue increases in fines for violators. Legal remedies can also be stronger; for instance, the U.S. Department of Labor (DOL) should be allowed

to seek additional damages—beyond payment of back wages—in wage and hour cases.<sup>2</sup> In addition to legal penalties, egregious and repeat violators of workplace regulations could also be subject to restrictions. Proven deterrents include stop-work orders or restricted eligibility for government contracts for employers who fail to comply with wage and hour laws or who refuse to carry a workers' compensation plan.<sup>3</sup>

As a tactic for reducing occupational injuries and fatalities, the case for raising the civil and monetary penalties in the occupational health and safety arena is incontrovertible. Quite simply, the penalties must reflect the true costs of breaking the law: workers' lives. An employer whose "willful" violation results in a worker's death should be charged with a felony rather than a misdemeanor. Not only would this stronger penalty be more consequential for employers charged with violating health and safety laws, it would function as a warning to other businesses by increasing the likelihood that prosecutors would take up worker fatality cases.<sup>4</sup> These changes would help to rein in the unacceptably high fatality rates among immigrant Latino workers.

#### Support community-based organizing structures for nonunionized and nontraditional workers.

Throughout its history, the labor movement has enabled workers to organize for positive change in their workplaces by compelling employers to abide by the law and strive to improve job quality. Given the documented benefits to compensation that unionized Latinos experience, it is clear that improving opportunities for Latinos to join unions is an important way to elevate job quality for Latino workers. One essential step toward raising the Hispanic unionization rate is better outreach from unions to Latino and immigrant workers. Additionally, policies to strengthen protections for workers who choose to form unions, such as the "Employee Free Choice Act" (H.R. 1409/S. 560), can help more Latinos organize in the workplace.

These tactics alone will not suffice unless they address the growth of nontraditional employment

structures, which have challenged conventional union organizing. The shift from traditional single-site workplaces with long-term employees to multiple work sites, nontraditional arrangements, and contingent work—all of which are especially common among Hispanic workers—demands new ways of organizing workers. Various strategies have been proposed and tested; some campaigns target workers in specific occupations, such as dressmakers, while others attempt to organize entire production or subcontracting chains, such as the garment industry. Geographically based campaigns, which target low-income neighborhoods, are also gaining popularity.<sup>5</sup> In nearly all of these examples, community-based organizations (CBOs) play a central role. One community-based model that has seen tremendous expansion in recent years is the worker center, which typically serves low-wage, predominantly immigrant workers. In addition to offering a safe place for workers to gather, which is especially vital for day laborers,<sup>6</sup> most worker centers offer a wide range of resources, including worker rights information, worker advocacy activities, health and safety training, English-as-a-second-language classes, and other social services.<sup>7</sup>

It is important to note that while these new organizing models sometimes arise in the absence of unions, a community-based approach does not necessarily exclude union involvement. In fact, the success of such campaigns often depends on funding and support from unions. Unions have an important stake in the outcome of community-based organizing, since workers involved in nontraditional campaigns often go on to become union organizers themselves.<sup>8</sup>

**Actively protect all whistleblowers, regardless of immigration status.** Widespread violations of workers' rights will persist in Latino- and immigrant-dominated workplaces as long as substantial segments of the workforce are prevented from coming forward with formal complaints. The Department of Labor should allow anonymous complaints from workers as a way of opening up the grievance process to

immigrant and other vulnerable workers. The Occupational Safety and Health Administration (OSHA) and the Department of Labor's Wage and Hour Division should be obligated to follow the same steps for pursuing anonymous complaints as they do under the current grievance process.<sup>9</sup>

In addition, federal agencies must send a strong signal to immigrant workers and their employers that the enforcement of immigration laws should never undermine the enforcement of labor laws. In 1998, the Department of Labor and U.S. Immigration and Customs Enforcement (ICE) signed a memorandum of understanding that discourages immigration enforcement activities in workplaces where labor law investigations may be underway.<sup>10</sup> However, recent immigration enforcement raids at workplaces with illegal labor practices have underscored the need to strengthen this agreement.<sup>11</sup> DOL and ICE should publicly reaffirm their commitment to keep their operations separate and bolster oversight of field offices to ensure that this guidance is followed in all communities.

#### **MODERNIZE LEGAL PROTECTIONS TO COVER MARGINALIZED WORKERS**

In order to guarantee basic standards of job quality for workers, policymakers must reform the federal worker protection framework. The dual objectives of these changes should be to eliminate outdated *de jure* exclusions and cover workers in emerging employment arrangements.

**Correct historical inequities in wage and hour laws.** The rampant exploitation of agricultural and domestic workers is no longer hidden from the public eye. Advocates have been active at the state level to achieve modest legal standards to protect domestic workers, and indeed some state laws have more comprehensive coverage than federal laws.<sup>12</sup> However, absent federal reform to the FLSA, court cases in defense of domestic workers have been met with strong resistance.<sup>13</sup> Congress must seriously consider extending reasonable legal protections to domestic workers, especially as the number of workers in this occupation grows.



Strengthening protections for farmworkers is another priority that is long overdue. While the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) applies specifically to agricultural workers and employers, farmworkers continue to labor in some of the worst jobs in the labor market. Legislation that shores up protections for these workers, including the expansion of FLSA and National Labor Relations Act (NLRA) rights to farmworkers, is particularly crucial in the face of lobbying efforts by some agricultural employers to further weaken existing AWPA provisions.<sup>14</sup>

**Strengthen policies to protect workers in nontraditional arrangements.** As described in the previous section, contractor arrangements allow for various abuses of the current worker protection framework. Several policy interventions could help prevent abuses of contractor arrangements and protect workers in those categories. First, Congress should pass legislation to close the tax loophole that provides a safe harbor for employers who misclassify workers as independent contractors. One model bill from the 110<sup>th</sup> Congress is the “Employee Misclassification Prevention Act” (S. 3648/H.R. 6111). This bill would require stricter recordkeeping by businesses that employ contractors and higher penalties for those who deliberately misclassify workers. The “hot goods” provision of the FLSA is another important first step toward challenging employer exploitation of contractor arrangements to shield abuses against workers. This model should be thoroughly evaluated and its successful aspects expanded to the service sector. Other forms of multiple employer accountability, such as joint employer arrangements, should also be tested.

**Uphold the rights of all workers through comprehensive immigration reform.** By any measure, the largest and most vulnerable group of marginalized workers is the undocumented population. Yet immigrants are not the only workers who suffer at the hands of unscrupulous employers. As long as immigrants are prevented from fully exercising their rights in the workplace,

and as long as some employers escape punishment for actively subverting workers' complaints, job quality declines for *all* workers.

The first step toward leveling the playing field in the labor market is to fix the nation's broken immigration system. A comprehensive approach to immigration reform, which addresses the source of the problem instead of attacking the symptoms, must deter employers from seeking to hire and exploit undocumented workers. Above all, any reform must legalize the nearly 12 million undocumented individuals in the U.S. Adjusting the legal status of foreign-born workers and increasing avenues for legal entry will help restore balance to the labor market.

The immigration system must also be updated to better respond to labor market pressures, thereby transforming an illegal flow of immigrants into a legal flow. Together with equal protections for incoming workers, these broad guidelines would restore and maintain order in the immigration system as well as uphold the rights of all workers. Although the current economic environment has decreased the need for workers, the demand will return as the economy recovers. Thus, the current environment provides a good opportunity to structure a system that better responds to economic needs while protecting workers. These actions would significantly reduce the size of the undocumented population, thereby freeing up resources to focus enforcement efforts on employers who hire undocumented workers to shield their unlawful labor law practices. Numerous national polls and multiple election cycles have demonstrated that the American public supports these measures as essential elements of reform.<sup>15</sup>

Clearing the path to citizenship for eligible immigrants is another important step toward safeguarding legal immigrants' rights in the workplace. Of course, the acquisition of citizenship is also critical to the full integration of individuals in their local communities. For these reasons, efforts to reform the immigration system must be accompanied by a more streamlined

naturalization process that is accessible to eligible applicants. This requires a stronger commitment from the federal government to integrate immigrants rather than erect more hurdles on the road to citizenship. Specifically, additional funding must be made available for U.S. Citizenship and Immigration Services to reduce the backlog of citizenship applications, lower the naturalization application fee, and establish structured immigrant integration initiatives. More resources must also be made available for community-based delivery of English classes. In addition, the change to the citizenship exam presents the agency and key stakeholders with an opportunity to enhance prospective applicants' knowledge of the naturalization process and prepare them to obtain citizenship through improved outreach in immigrant communities.

Finally, a comprehensive reform package should provide employers with a reliable employment verification system that addresses the problems with the E-Verify system and makes strong investments in the infrastructure on which such a system rests. For example, improving the current E-Verify system would require a tremendous increase in resources for the Social Security Administration (SSA). The Government Accountability Office (GAO) has warned that these measures are critical to ensuring that SSA has the capacity to address existing backlogs, fix data inaccuracies, and handle the estimated 63 million inquiries annually from employers verifying new hires.<sup>16</sup> SSA has estimated that expanding the current E-Verify program to all employers would require SSA to hire 700 new employees between 2009 and 2013.<sup>17</sup> In addition, adequate resources for compliance assistance for employers, as well as enforcement of the program's rules, must accompany any mass adoption of a verification system. Detailed rules to prevent discrimination must include strong protections against national origin discrimination to ensure that lawfully present immigrants and recently naturalized

citizens are not disproportionately harmed.

#### **BOLSTER FEDERAL OUTREACH AND ENFORCEMENT**

The third strategy to improve job quality for Latinos is to restore government accountability for protecting workers. The Department of Labor must be given adequate funding to assist workers and businesses with compliance and to police rogue employers. However, since no amount of resources will ever enable DOL to monitor every workplace, DOL must be equipped to make smart decisions about where to focus its limited time and attention. Reaching the most vulnerable workers will require DOL to develop creative ways of gathering information from at-risk populations and community-based advocates.

#### **Increase funding for OSHA and Wage and Hour, with special emphasis on hiring bilingual personnel.**

As noted above, the government agencies responsible for carrying out enforcement and compliance are woefully underfunded. Federal budget allocations for DOL must be restored to adequacy in order to more effectively tackle growing complexities of the labor market. The President's 2010 budget currently requests an additional \$228 million devoted to hiring an additional 288 full-time employees dedicated to the enforcement of wage and hour standards.

Within a general funding increase, policymakers should target resources toward hiring and training inspectors who can communicate with workers whose primary language is not English. Bilingual investigators should be required to be present during an investigation in a workplace in which a majority of employees are limited-English-proficient. This will strengthen DOL's ability to uncover cases of exploitation of immigrant and undocumented workers.

#### **Devote at least half of OSHA and Wage and Hour resources to targeting high-risk industries and work arrangements.**

While increased resources for DOL agencies is critical to improving its enforcement capacity, the sheer volume of OSHA and Wage and Hour caseloads calls for concentrated efforts. These agencies must be prepared to target the "types" of employers—whether by occupation or employment arrangement—who have shown egregious

violation of labor laws. At least 50% of OSHA and Wage and Hour resources should be devoted to planned initial and follow-up inspections in workplaces in high-risk industries.<sup>18</sup> The high-risk industries described earlier in this report, including agriculture, construction, leisure and hospitality, retail trade, and manufacturing, offer a preliminary sketch of the areas of workplaces where OSHA and Wage and Hour Division could target inspections in their annual plans.

**Work with community-based observers to identify high-risk workplaces and repeat violators.** Maximizing scarce resources to reach workers in the lowest-quality jobs requires DOL to construct an accurate and thorough picture of high-violation workplaces and at-risk workers. However, compliance data based on industry classifications may be too broad for effective targeting of specific tasks, employers, and occupations.<sup>19</sup> Furthermore, as discussed earlier, a host of barriers prevent some workers, especially Latino immigrants and low-wage workers, from filing formal reports of violations.

Community-based organizations could assist DOL in narrowing its focus. As trusted institutions providing education and resources to empower communities, CBOs have a unique “insider” perspective that qualifies them to serve as the voice for underrepresented workers. One possibility is for DOL officers to field complaints from workers off-site, using CBOs as a neutral meeting place for workers who are uninformed of their rights or are fearful of complaining on the job.

**Invest in innovative worker outreach and education models.** Latinos and other workers in high-risk occupations must be better prepared to identify hazards, avoid injuries, and participate in the reporting process at work. Since contingent work, language barriers, and low levels of literacy can compromise the effectiveness of traditional employer-based training schemes, it is necessary to develop and test new models on a national scale to deliver critical health and safety information to workers who face these barriers.

Many organizations also offer legal services and therefore actively track worker complaints. DOL should be required to formally consult with CBOs before designing their annual outreach and enforcement plans. DOL should also establish a process by which a CBO can issue a complaint on behalf of a worker.

OSHA has demonstrated some success by hosting health and safety fairs in Hispanic communities to offer trainings on fall protection and electrical safety, among other topics.<sup>20</sup> These events, however, lack continuity and are not readily adaptable to different industries. Community-wide outreach events should be supplemented by specialized outreach campaigns that empower community members to educate their peers in a manner that is comfortable, convenient, and culturally and linguistically appropriate. Such lay health educators, or *promotores de salud*, have successfully raised awareness in Latino communities about other topics, such as diabetes and heart disease.<sup>21</sup> Some community-based groups have applied a similar model in an occupational health and safety context.<sup>22</sup> These pilot efforts warrant additional investment for evaluation and expansion.

### Endnotes

<sup>1</sup> The National Council of La Raza has produced extensive research and policy recommendations on Latino health coverage and retirement security. Please visit [www.nclr.org/health](http://www.nclr.org/health) and <http://www.nclr.org/retirement> for information and publications on these topics.

<sup>2</sup> *Rebuilding a Good Jobs Economy: A Blueprint for Recovery and Reform* (New York, NY: National Employment Law Project, 2008), [http://nelp.3cdn.net/107e65168f65eacd6e\\_11m6ibpdr.pdf](http://nelp.3cdn.net/107e65168f65eacd6e_11m6ibpdr.pdf) (accessed November 2008).

<sup>3</sup> John Guilfoil, "State investigates underground economy," *New York Times*, October 26, 2008, [http://www.boston.com/news/local/articles/2008/10/26/state\\_investigates\\_underground\\_economy](http://www.boston.com/news/local/articles/2008/10/26/state_investigates_underground_economy) (accessed October 2008).

<sup>4</sup> David Barstow, "U.S. Rarely Seeks Charges for Deaths in Workplace," *New York Times*, December 22, 2003.

<sup>5</sup> Edna Bonacich and Fernando Gapasin, *Organizing the Unorganizable* (Los Angeles, CA: University of California Institute for Labor and Employment, 2001), <http://www.irle.ucla.edu/research/scl/pdf01/scl2001ch15.pdf> (accessed June 2008).

<sup>6</sup> National Day Labor Organizing Network, "History of NDLON," [http://ndlon.org/index.php?option=com\\_content&view=article&id=45&Itemid=73](http://ndlon.org/index.php?option=com_content&view=article&id=45&Itemid=73) (accessed January 2009).

<sup>7</sup> Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream* (Ithaca, NY: Cornell University Press, 2006).

<sup>8</sup> Edna Bonacich and Fernando Gapasin, *Organizing the Unorganizable*.

<sup>9</sup> *Rebuilding a Good Jobs Economy*.

<sup>10</sup> *Immigration Enforcement During Labor Disputes* (Los Angeles, CA: National Immigration Law Center, 2007), [http://www.nilc.org/immsemplymnt/IWR\\_Material/Advocate/labordispute\\_infobrief\\_2007-04-23.pdf](http://www.nilc.org/immsemplymnt/IWR_Material/Advocate/labordispute_infobrief_2007-04-23.pdf) (accessed August 2007).

<sup>11</sup> For example, more than a year after a federal immigration raid detained 389 workers at a meatpacking plant in Postville, Iowa, the state of Iowa is still seeking payment of penalties from the employer, Agriprocessors, Inc., for failure to pay its employees, one of many violations of labor laws levied against the company after the raid occurred. Nigel Duara, "Iowa to cut fines by \$9M against slaughterhouse," *Associated Press*, July 27, 2009.

<sup>12</sup> California law, for instance, requires employers to pay live-in domestic workers minimum wage and overtime compensation. Della Bahan and Puja Batra, *Seeking Justice for Trafficked Domestic Workers in American Courts* (Pasadena, CA: Bahan and Associates, 2005), [http://www.iwpr.org/PDF/05\\_Proceedings/Bahan\\_Della.pdf](http://www.iwpr.org/PDF/05_Proceedings/Bahan_Della.pdf) (accessed October 2008). See also Testimony from Domestic Workers before the New York State Assembly Committee on Labor, *Public Hearing on Domestic Employment Conditions in New York State*, November 21, 2008, <http://domesticworkersunited.org/static/testimony> (accessed January 2009).

<sup>13</sup> National Women's Law Center, "Supreme Court Rules Minimum

Wage, Overtime Protections Don't Apply to Home Care Workers," news release, June 11, 2007, <http://www.nwlc.org/details.cfm?id=3059&section=newsroom> (accessed September 2008).

<sup>14</sup> Farmworker Justice, "Labor Law and Legislation," [http://www.fwjjustice.org/Immigration\\_Labor/Labor%20Law.htm](http://www.fwjjustice.org/Immigration_Labor/Labor%20Law.htm) (accessed October 2008).

<sup>15</sup> In one national poll, 57% of respondents favored "a comprehensive approach that secures the border, cracks down on employers who hire illegal immigrants, and requires all illegal immigrants to register and meet certain requirements to become legal" over "we need to secure our border, stop giving taxpayer funded benefits to illegal immigrants, and make sure that those who broke our laws by entering this country illegally are forced to leave." Memorandum, "What the 2008 Elections Mean for the Future of Immigration Reform," January 2009, Frank Sharry, America's Voice, Washington, DC, [http://amvoice.3cdn.net/e8ba7ee2f71fca6c6a\\_xam6i6bv.pdf](http://amvoice.3cdn.net/e8ba7ee2f71fca6c6a_xam6i6bv.pdf).

<sup>16</sup> U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System*, Statement of Richard Stana, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008, <http://www.gao.gov/new.items/d08895t.pdf> (accessed June 2008).

<sup>17</sup> Senate Committee on Finance, *Social Security Administration Field Offices: Reduced Workforce Faces Challenges as Baby Boomers Retire*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008, <http://www.gao.gov/new.items/d08737t.pdf> (accessed May 2008).

<sup>18</sup> Testimony of Kim Bobo before the U.S. House of Representatives Committee on Education and Labor, *Is the Department of Labor Effectively Enforcing Our Wage and Hour Laws?*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2008, <http://edlabor.house.gov/testimony/2008-07-15-KimBobo.pdf> (accessed July 2008).

<sup>19</sup> *Safety is Seguridad: A Workshop Summary* (Washington, DC: National Academies Press, 2003), [http://books.nap.edu/openbook.php?record\\_id=10641&page=R1](http://books.nap.edu/openbook.php?record_id=10641&page=R1) (accessed January 2008).

<sup>20</sup> U.S. Department of Labor, "OSHA Hispanic Safety in Health Fair in Wichita, Kansas Saves Lives," Occupational Safety and Health Administration, [http://www.osha.gov/dcsp/success\\_stories/compliance\\_assistance/reg7\\_hispanic\\_safety.html](http://www.osha.gov/dcsp/success_stories/compliance_assistance/reg7_hispanic_safety.html) (accessed June 2009).

<sup>21</sup> Liany Elba Arroyo, "Assessing a *Promotores de Salud* Approach to Increase Awareness, Knowledge, and Actions Relating to Depression in Hispanic Communities" (Washington, DC: National Council of La Raza, 2006), <http://www.nclr.org/content/publications/detail/42651> (accessed September 2007).

<sup>22</sup> For example, see the Poultry Worker Project of the Center for Community Change: <http://www.communitychange.org/our-projects/waje/poultry-worker-project/?searchterm=None> (accessed September 2008).