

**PERMANENT STRUGGLE, TEMPORARY SOLUTIONS:  
CONTRACTING OUT AMERICA**

By

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# PERMANENT STRUGGLE, TEMPORARY SUCCESS: CONTRACTING OUT AMERICA

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## EXECUTIVE SUMMARY

**This report documents emerging trends in the contingent labor world.** In the last decade the use of temporary workers, day laborers, and other low-wage contingent workers has mushroomed—in both the private and public sectors. The level of abuse workers experience on the job has also mushroomed, yet this area remains largely unregulated, and existing laws remain unenforced.

- **Since 9-11 economic conditions have made the plight of low-wage, contingent workers even worse.** Temp agencies have made dramatic reductions in their staffing numbers, leaving thousands of workers stranded without access to unemployment insurance or a safety net.
- **Since welfare ‘reform,’ the connection of welfare to temp agencies has grown tremendously.** Federal welfare dollars are squandered as welfare and workforce agencies place recipients in temp jobs, allowing the temp agencies to collect federal tax credits for hiring ‘disadvantaged job seekers.’
- **Many welfare recipients have been forced to seek out temp work on their own.** Under pressure of sanctions, time limits, and other requirements, welfare parents are denied access to training or education that would prepare them to qualify for permanent employment.
- **Within the last year, we have witnessed cases of immigrant worker deaths on the job or while being transported unsafely to work.** This past Valentine’s Day a day laborer was crushed to death by a forklift at an unsafe worksite in Nassau, Long Island. Yet the federal government has shown a complete lack of interest in this mounting crisis.

### **The federal government must take action to stop this worsening trend.**

Seemingly reputable companies are hiding behind the lawless behavior of temporary agencies, day labor companies, and subcontractors—allowing employers to cut labor costs and evade workers’ rights laws. Law-abiding businesses cannot compete financially with these bottom-feeding employers.

**Meanwhile, workers are paying dearly for it—with their livelihoods and their lives.** This report shows the many faces of exploitation in workers’ own words and stories. It also demonstrates the pitiful response on the part of federal enforcement agencies.

Fortunately, community groups, unions, legal aid centers, immigrant groups, and advocates around the country are **organizing workers and helping them fight for their legal rights.**

**This report highlights many compelling local campaigns and models**—from state legislation to worker centers to direct employer intervention.

This report makes the following **policy recommendations** to Congress:

- **Increase enforcement of federal labor protections covering health and safety, discrimination, and wage and hour.**
- **Conduct research on subcontracting of informal industries and the growing informal economy.**
- **Revise guidelines for Workforce Investment Act programs.**
- **Revise the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Credit guidelines.**
- **Support innovative community-based programs.**
- **Create laws to hold client companies liable for hiring from agencies and contractors that exploit workers.**
- **Reform unemployment insurance to cover temporary workers.**
- **Eliminate ‘employer sanction’ laws.**
- **Eliminate Social Security no-match letters to employers.**
- **Expand the Memorandum of Understanding between Department of Labor (DOL) and Department of Immigration and Naturalization Service (INS).**
- **Create laws and/or regulations prohibiting collaboration between INS and other federal agencies that focus on labor protections.**
- **Establish a system of liability for work-related deaths occurring during transportation to and from a worksite.**
- **Create new whistleblower protection laws to protect low-wage workers who file complaints against their employers for workplace violations.**
- **Enact immigration reform.**

## PREFACE

### The National Campaign

**The National Campaign for Jobs and Income Support** is a national movement seeking to end poverty by building grassroots power. Our 1000 grassroots organizations, networks, and allies represent poor, working class and middle class people and people of all colors in urban, suburban and rural areas in 40 states around the country. We are joining together to change how the media and policymakers think and act with respect to entrenched poverty and income inequality in the United States.

We believe it is unacceptable that in the twenty-first century low wage workers cannot earn enough to support their families, welfare reform has increased poverty, people of color still face discrimination, and immigrants receive unequal treatment. We demand a new social compact that provides income support to meet our basic needs, living wage jobs, racial and gender equity, parity in services for immigrants, a balance of work and family life, and investments in low-income communities.

**The Day Labor/Contingent Work Committee** of the National Campaign is most concerned with issues affecting low-income non-traditional workers, many of whom are immigrants and former welfare recipients. **The organizations in this committee have come together to draw attention to the many abuses these workers face on the job, and to the poor government enforcement that persists, despite legal protections.** Our organizations, described below, are well-suited to document the difficult conditions these workers face, and to recommend solutions. We have a track record of organizing workers, and engaging in advocacy, legal support, social services, and other strategies to empower and protect the most vulnerable members of our society.

**9to5**, founded in 1973, demands fair treatment for contingent workers. The organization conducts employment testing to reveal illegal practices, and promotes a code of conduct for temporary agencies. 9to5 works with many women on welfare in Milwaukee who are shunted into temporary jobs by for-profit welfare agencies.

**Anti-Displacement Project**, founded in 1988, is a multi-issue, membership-based organization in Western Massachusetts that organizes low-income families to achieve resident control of affordable housing, promote cooperative economic development, and fight for social and economic justice. A-DP leaders recently won a campaign that replaced a for-profit one-stop career center with a locally controlled non-profit, increased funding for job training, and improved access for low-income job seekers. A-DP is organizing contingent and low wage workers to create a worker's center.

**Casa de Maryland**, founded in 1985, sponsors programs for immigrants in the areas of leadership development, education, housing, employment, legal, health, and social services. Casa now runs a center where day laborers can go to secure work from

area employers, who in turn must specify their wages. The Center serves all workers, whether immigrants or citizens, from any country.

**Coalition for Humane Immigrant Rights of Los Angeles** works to advance the human and civil rights of immigrants and refugees in LA. In 1987 CHIRLA started working with day laborers and domestic workers because of rampant abuses and exploitation. Now CHIRLA, in partnership, manages several day laborer sites, has a justice and dignity campaign for domestic workers, and supports other organizing efforts of low-wage workers like the **Garment Worker Center**.

**Day Labor Organizing Project** is sponsored by the Chicago Coalition for the Homeless and Jobs with Justice, and is steered by a bilingual, multi-racial committee of U.S.-born and immigrant day laborers. The Project is using direct action, community pressure, audits of day labor agencies, a city ordinance campaign, and testing linked to class actions to hold agencies and client companies accountable for day labor abuses.

The **Los Angeles Chapter** of the National Campaign for Jobs and Income Support is a coalition of community, labor and other grassroots groups fighting for the rights of workers, immigrants, and poor communities in LA. The **Garment Worker Center** and **Pilipino Worker Center** are both members of the chapter. The LA Chapter has challenged the County's 'work first' welfare strategy, which places participants in low-wage temp jobs, while temp agencies collect welfare-to-work tax breaks.

**Merrimack Valley Project**, a member of the **InterValley Project**, is a coalition of congregations, unions and community organizations working for economic justice in Massachusetts. MVP has developed an association of day laborers and temp workers. They have developed a 'Temporary Workers Bill of Rights' and are seeking endorsement of it by employers and public officials.

**Michigan Organizing Project**, founded in 1992, is an organization of churches, neighborhood groups, and low-wage worker associations. In Grand Rapids and Muskegon, MOP has found that immigrant workers are being exploited by temporary agencies and employers. MOP is organizing the workers to address these issues.

**National Training and Information Center (NTIC)**, founded in 1972, serves as a training and resource center for **National People's Action (NPA)**, made up of over 300 grassroots organizations in the U.S. NTIC's mission is to build grassroots leadership and strengthen neighborhoods through issued-based community organizing. NTIC and its grassroots partners have focused low-wage worker organizing on: holding the Dept of Labor accountable in enforcement of labor laws, investigation of abusive employers, and increased investment in training of under/unemployed workers; and creating community based worker centers. A-DP, MOP and DLOP are affiliates of NTIC/NPA.

**Voces de la Frontera** is a grassroots immigrant worker organization based in Milwaukee. VF engages in education and advocacy regarding labor laws and the rights of undocumented workers. VF seeks government accountability to these workers' issues,

and advocates for immigration reform that would grant workers legal permanent residency in the U.S.

**Workplace Project** was founded in 1992 on Long Island, New York. In 1999 the Project began a day labor organizing project in response to rising community violence, workplace exploitation, and legal restrictions aimed at Long Island's day laborers. The Project aims are to help day laborers secure control of their own hiring sites and conditions, and unite them with other low-wage workers to fight exploitation.

Our organizations represent one slice of the contingent workers' rights movement. There are many other organizations, unions and networks with innovative efforts underway. These include the building and construction trades, other AFL-CIO unions, the National Alliance for Fair Employment and its affiliates, the National Coalition for the Homeless and its members, the National Employment Law Project, the National Immigration Law Center, independent groups, and municipally-sponsored day labor programs. Many of these allies have contributed their ideas to this report.

## **Report Goals**

**The exploitation of contingent workers exists in communities all across the country—from big cities like Chicago and Los Angeles to small communities in Grand Rapids and Hempstead, LI.** For the foreseeable future employers—from big corporations to individual homeowners—will rely on temporary workers and day laborers to help them do their work. In fact, many well-known companies—like the Chicago Tribune, Marshall Fields, and Levi Strauss—exploit contingent workers, yet they hide behind the mask of temporary staffing agencies. These workers are an invisible but necessary part of the economy. In fact, their undervalued labor allows companies to reap billions in profits every year. While we cannot control the market forces that create demand for such employment, we must ensure that all workers are treated fairly and equitably in the workplace.

A moving example of the pervasive use and abuse of contingent workers can be found at Ground Zero, the former site of the World Trade Center. **The Associated Press recently reported that several hundred immigrant day laborers have performed thousands of hours of work to remove debris from office buildings and apartment houses near the site of terrorist attacks on September 11, 2001.** Police officers and firefighters involved in recovery and clean up have risked exposure to toxic pollutants. These day laborers also have been exposed to toxins—they work without adequate protective gear, putting them at risk for respiratory and other health problems. Yet, unlike our public servants, they receive on average \$60 for an eight-hour day from building owners, are not protected by a union, and have no health insurance.

**In our experience, low-wage contingent workers fall through the cracks of the labor laws and enforcement systems that are meant to protect workers against abuses.** These laws and enforcement mechanisms must be strengthened so that all workers can seek recourse when faced with abusive hiring and employment practices.

Moreover, federally funded tax credits, welfare and training programs should not be used to subsidize such practices. Rather, these programs should offer welfare recipients and low-wage workers alternatives that lead to quality jobs with living wages and benefits.

This report will describe the contingent workforce that is the focus of our concern. It will document the range of abuses that are heaped on workers by temporary agencies, day labor agencies and employers. The report will tell the stories of real workers whose experiences largely fall below the radar screen of politicians and the press. It will describe how grassroots organizations are addressing these problems in their local communities. Finally, the report will make specific recommendations to federal policy makers that, if adopted, will ensure more equitable and fair treatment of workers.



## INTRODUCTION

### The Low Wage Contingent Work Force

Consider the following facts:

- At Labor Ready, the largest day labor agency in the U.S., workers have a one in four chance each day of workplace injury, and one in two workers are homeless.
- On June 18, 2001, a Lan Staffing Company 15-passenger van carrying 19 day laborers hit a gasoline tanker, killing five workers and injuring the rest.
- The apparel industry in California generates \$30 billion in revenue a year; yet garment workers are owed \$80 million each year in unpaid wages.
- On any given payday up to 50% of day laborers who do the heavy delivery work at the Chicago Tribune report their checks are missing pay for hours and/or whole shifts worked. Typically, the temp agency that employs them---Elite Labor Services---makes them wait three days for the missing money--if they are paid at all.
- On Long Island last year two jornaleros were lured to a warehouse expecting work, and were beaten nearly to death.
- Gender discrimination at Chicago day labor agencies is so blatant that some agencies post notices for men-only and women-only 'work tickets'.
- As we entered the new millennium, Manpower surpassed General Motors as the largest employer in the country.

According to the National Alliance for Fair Employment<sup>1</sup>, nearly three in every ten workers in this country do *not* hold full-time permanent jobs. They are called **contingent workers**. National People's Action lists the types of contingent work: part-time workers, independent consultants, workfare workers, contract employees, prison labor, guest workers, leased workers, on-call workers, day laborers, and temp workers. **This report in concerned with certain types of contingent work that are low-wage and exploitative—such as temporary work, day labor, and garment work.**

**Temporary workers** secure their employment through a temporary agency. It may be a large multinational agency, like Manpower, or it may be a small local agency. Temp workers are hired for a range of jobs—not just office work, but construction, manual labor, and other jobs. The job may be for a day, a month or a year (often temps work for years at the same employer, but never get permanently hired). Some employers hire temps to do the same work that their full-time workers do, but for less pay and no benefits. Often there is confusion regarding who legally employs the temp worker—the agency, or the employer that used the agency to secure a worker. This makes it difficult to curb abusive practices and organize workers. Women and workers of color are highly represented in the temp industry.

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<sup>1</sup> Much of the data in this section comes from the 2001 NAFFE report "Contingent Workers Fight for Fairness," available on the web at [www.fairjobs.org](http://www.fairjobs.org).

**Day laborers**, who can be considered a subset of temp workers, secure their work in a number of ways. Some wait on designated street corners or in parking lots. Others wait at a center established for this purpose, or go through a day labor agency, such as Labor Ready. Sometimes each laborer must negotiate his wage directly with the employer. Other times there is an intermediary that does this. Benefits are never included. The employer may be a big construction company, or a wealthy suburban homeowner who needs landscaping. Day laborers may be hired for a day or longer. Many day laborers are immigrants. They may have limited English skills or lack documentation. These circumstances allow employers and agencies to take advantage of them.<sup>2</sup>

**Garment workers** are contingent workers who are usually paid by the piece, and often are employed seasonally. For the most part they are immigrants who work in sweatshops, cutting and sewing clothing for fly-by-night factory owners who subcontract with major labels, such as Levi Strauss, Sears, and Speedo. Because factories pay by the piece, workers are routinely denied minimum wage and overtime pay. If workers file claims against a factory, the owner will shut it down and reopen later, under a different name. This makes it difficult for workers to collect unpaid wages. Los Angeles, California has the largest concentration of garment factories, with over 160 thousand garment workers.

**Undocumented workers** may be any of the above, but their situation is complicated by the fact that they lack legal residency status in the U.S. Undocumented workers have unique problems not faced by others—their employer can hold the threat of job loss and deportation over their heads, thereby weakening the workers' position and bargaining power. Many employers prefer to hire undocumented workers for this reason. The employer can easily exploit such workers, and can evade the payment of taxes and other legal requirements, operating in an underground economy.

### **Problems with Contingent Work**

The majority of low-wage contingent workers would like to have regular employment with a salary and benefits. The barriers mentioned above make it difficult for them to find such jobs. Other barriers are homelessness, lack of skills, discrimination, and legal obstacles. Many women on welfare are funneled into temp jobs and cut off of their benefits. They cannot access training or education, and must support their children. Yet they are denied permanent jobs with health care that would help them escape poverty.<sup>3</sup>

As NAFPE points out, the growth of contingent work is not just bad for contingent workers; it is bad for all workers. Regular workers live with the fear that their job may be terminated and replaced with a temp, thereby reducing their bargaining power

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<sup>2</sup> The Building and Construction Trades Department, AFL-CIO notes that Labor Ready, the largest day labor agency, locates its offices in poor urban neighborhoods with high Latino and African American populations.

<sup>3</sup> According to NAFPE only 13% of temp jobs are converted into full-time positions.

and allowing employers to depress wages or scale back benefits. In sectors that have strong union representation, use of temporary and day labor allows employers to bypass the union and its contract protections for workers. This explains the dramatic rise of construction temp agencies during the 1990s. It is much harder to organize contingent workers into a union under current labor law. As contingent work rises over time, employers assume fewer of the costs of employment, and workers assume more—from health care costs to payroll taxes to pension contributions.

While the average American may have benefited from the longest economic expansion in history, temp workers and day laborers did not. Their wages stagnated; they were not given stock options and pension plans. **NAFFE reports that contingent workers are more than twice as likely as regular workers to receive poverty-level wages; one in four temp workers lives in poverty.** And now that we face an economic downturn, they are the workers most vulnerable to layoffs. Already employers have noticeably scaled back their use of temp agencies in the last year. Yet low-wage contingent workers have little access to the supports that other workers use in recessionary times. Unemployment insurance rules in most states restrict access to all but permanent, full-time workers. Since the 1996 welfare law was enacted, immigrants have virtually no access to safety net programs. Many women who went off welfare into temp jobs cannot reapply, or have exhausted their lifetime limit.

### **Available Data on Low Wage Contingent Work**

For the most part federal and state census and labor statisticians do not track these categories of work. Therefore it is hard to paint a comprehensive picture of this workforce—their numbers, their wages, their race and gender, their working conditions, their employers. Academics and reporters in some major cities have tried to fill the void by doing their own research. Local advocates and organizers are beginning to do their own surveys of workers, and of agencies, to try to quantify this growing trend and capture the workers' experiences.

A review of surveys done in the temp industry reveals that 90 percent of U.S. companies use temp services.<sup>4</sup> **Two of the top three reasons employers give for using temps are: lower labor costs (wages); and reduced expenses related to labor regulations (unemployment insurance and workers' compensation).** The unique 'triangular employment relationship' of the worker, temp agency, and employer allows both the employer and the agency to reduce their costs by displacing them onto the worker in the form of low wages and high fees. Temporary work also gives firms flexibility to deal with market and economic fluctuations. The temp industry nationwide let go more than 387,000 workers between September 2000 and April 2001.

Research done nationally by the Building and Construction Trades Department (BCTD), AFL-CIO examines the day labor industry as a subset of the temp industry. The BCTD learned that the three largest day labor companies claim to have employed around

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<sup>4</sup> Mehta, Chirag et al, "Day labor, low-wage work, and immigrant employment opportunities in Chicago." Center for Urban Economic Development, University of Illinois at Chicago, October 2001.

one million workers in 2000. On a daily basis, at least 200,000 day laborers are dispatched from day labor agencies (not including the informal hiring that occurs on street corners). The largest day labor agency in the country is Labor Ready, and its record is not good: **roughly 10,000 Labor Ready workers experience workplace injuries each year, and half of its workers are homeless.**

In 1999 the UCLA Center for the Study of Urban Poverty did an extensive day labor survey. The Center randomly surveyed 481 day laborers at 87 different sites throughout LA and Orange counties.<sup>5</sup> (It is estimated that there are roughly 22,000 day laborers in LA, the largest day labor population in the country.) The researchers learned that the workers, or *jornaleros*, are overwhelmingly Latino males, from Mexico. They tend to be either recent arrivals, or have been in the U.S. for more than ten years. Half are single, and half support a spouse or other family members. Their average schooling is seven years, with a third having more than nine years of education. The average wage is just under \$7 an hour, but monthly wages vary depending on the season, demand, and the state of the economy. **According to this report, monthly wages for day laborers can vary on average from \$350 to \$1000.**

Day labor is not a stepping stone to regular employment—a quarter of the surveyed workers in LA have been doing day labor for more than six years. The barriers they cite to regular jobs are: lack of English proficiency, poor labor market conditions, discrimination, lack of transportation, and lack of documents (although 40 percent believe they meet legal residency requirements). The majority of employers are either private individuals (homeowners) or subcontractors. Employer abuses include: non-payment or less-than-agreed payment of wages; abandonment at work site; bad checks; no food or water at worksite; no breaks; and violence, robbery and threats. **Day laborers in California experience workplace injuries at almost twice the rate of all workers in the state.** In addition to employer abuses, day laborers are harassed by police, local merchants, and residents on the street corners where they wait for work. Recent laws have attempted to restrict or forbid day laborers from seeking work in public.

During 2001, CHIRLA conducted its own informal survey of domestic employment agencies in LA. These agencies place domestic workers in private homes. CHIRLA found more than 9,000 such agencies in five counties throughout Southern California. This industry is very poorly regulated. **There are few legal requirements to opening a domestic employment agency, and no oversight process to ensure that the agencies comply with the law.** It is unclear which government agencies are responsible for enforcement. Based on CHIRLA's survey of 53 agencies concentrated in one geographic area, the group found that they all charge an application fee to domestic workers. In addition, 80 percent of the agencies keep the first week of salary; if a job is less than a week, they keep a day's pay. Weekly pay averages \$150 with 6 days of work, most of the time in direct violation of the wage and hour public housekeeping industry law. The employer is charged a fee as well, ranging from \$150 to \$3000. The agencies all fail to inform the workers of their basic workplace rights, and violate minimum wage and

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<sup>5</sup> Valenzeula, Abel, "Day Laborers in Southern California: Preliminary Findings from the Day Labor Survey." UCLA Center for the Study of Urban Poverty, 1999.

overtime regulations for domestic workers. If a worker is injured on the job or becomes pregnant, she is fired, and neither the employer nor the agency offers worker's compensation. If problems arise with the employer, none of the agencies will represent the worker or mediate the dispute. Rather, they replace the worker with a new one. When workers complain about working conditions, they agency verbally abuses them, threatens them, and sometimes even physically abuses the workers.

Last year the *Village Voice* did an in-depth report on day laborers in New York City.<sup>6</sup> On its own, the journal found at least 24 sites hosting roughly 3000 workers in the city proper, but that number swells to 12,000 when estimates for Long Island, Northern New Jersey, and Westchester are included. A minority of the workers are African-American. The rest are undocumented immigrants from places as diverse as Ecuador, Poland, and India. Polish women clean homes in Brooklyn; Sikh men do brickwork in Queens; and Mexicans do yard work in Staten Island. Despite the laborers' efforts to maintain a decent wage floor, constant competition—and desperation for work—drives wages down. According to *Newsday*, New York now has the highest rate nationally of immigrants killed in the workplace.<sup>7</sup>

The temporary and day labor industries in Chicago have been examined by the Center for Urban Economic Development (CUED) at the University of Illinois at Chicago. In conjunction with the Day Labor Organizing Project, CUED did a survey of 510 homeless men and women in four shelters in October 1999, to find out more about the extent of day labor among the homeless.<sup>8</sup> The researchers found that 75 percent of those surveyed had worked day labor in the past year, mostly in warehouses and factories. **The majority sought work on a full-time basis, but earned minimum wage or less, which explains why they remain homeless despite being employed.** A full 82% of those surveyed reported earning less than \$5.50 an hour. A third are still so poor after working that they qualify for public income support. The overwhelming majority would prefer regular work, but day labor was all they could find.

Despite the term 'day labor,' most homeless workers receive assignments that last a week or more, and three-quarters work alongside regular, permanent workers—suggesting that employers are replacing their permanent workforce with temps simply to reduce labor costs. In fact the City of Chicago, either directly or through its contractors, is a major employer of temps. **Almost a third (27%) of the homeless laborers had worked on City projects, and in all likelihood were not paid the living wage of \$7.60 an hour required by city ordinance.** The day laborers experienced a range of employer abuses, including nonpayment of wages and safety concerns. Most workers reported their safety concerns to the agency or employer, but usually no action was taken, and one-quarter were terminated from their job after complaining.

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<sup>6</sup> Kamber, Michael, "On the Corner: New York's Undocumented Day Laborers Fight for their Piece of the Big Apple." *Village Voice*, July 31, 2001.

<sup>7</sup> Vargas, Theresa, "Forklift Operator Crushed to Death." *Newsday*, February 15, 2002

<sup>8</sup> Theodore, Nikolas, "A Fair Day's Pay?: Homeless Day Laborers in Chicago." Center for Urban Economic Development, University of Illinois at Chicago, February 2000.

Much hand wringing occurs among politicians about the existence of sweatshops on our own soil, yet the problem proliferates. California is the nation's largest garment center, generating revenues of \$30 billion a year. It is estimated that L.A.'s multibillion dollar garment industry employs 140,000 men, women and children. Of the 5,000 garment factories in the L.A. area, 4,500 can be characterized as sweatshops. In a 2000 survey of the L.A. garment industry, U.S. DOL found that garment workers earn well below the minimum wage. **DOL's survey revealed that 67 percent of garment factories violate wage or overtime laws, and 98 percent violate health and safety laws.** This finding does not take into account the garment shops that do not register with the state of California, which if included would raise the 67 percent figure to 85 or 90 percent. Also, garment workers lose over \$80 million each year in unpaid wages. For the time period under investigation, DOL found nearly \$900,000 in minimum wage and overtime back pay owed to more than 1400 workers.

### **The Regulation of Contingent Work**

Unfortunately, as companies have restructured to respond more flexibly to global economic changes, federal laws pertaining to workers have not been modernized. Most labor-related laws were written sixty years ago when the profile of a worker was a white male U.S. citizen who worked in a permanent, full-time job. The diversification of the workforce and the rise of contingent work have not been factored into these laws. Unemployment compensation is one example. The federal government has allowed each state to develop its own eligibility requirements. States have generally done little to broaden access to part-time, temporary, seasonal workers, and former welfare recipients, who often do not have long-term stable employment histories.

At one time the temporary staffing industry was subject to greater regulation. They lobbied to have these regulations weakened, and to create loopholes. As a result, there are a multitude of federal laws relating to employment that use different definitions of "employee" and "employer." According to the National Employment Law Project (NELP), "A worker may be an 'employee' for purposes of minimum wage and overtime coverage but not an 'employee' for purposes of having the right to bargain collectively. Similarly, a temp agency and the worksite or user business may be 'employers' for purposes of providing family and medical leave, but not 'employers' in a dispute involving retaliation for engaging in concerted activity."<sup>9</sup> These legal inconsistencies give employers wiggle room to avoid meeting their legal responsibilities, and create confusion among workers seeking redress. For temporary workers, including day laborers, the biggest hurdle often is determining who is legally the employer, when there is usually an agency that assigns the worker as well as a worksite supervisor.

In the last decade low-wage contingent work has mushroomed enormously, and is virtually unregulated. While prominent companies maintain a worker-friendly façade, the middlemen—temporary and day labor agencies and subcontractors—have proliferated as a renegade part of the economy. They allow employers to keep costs down, and can break

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<sup>9</sup> Ruckelshaus, Catherine and Bruce Goldstein, "The Legal Landscape for Contingent Workers in the United States." NELP and the Farmworker Justice Fund, Inc., 2001.

the law with impudence because they face no repercussions. This system creates a perverse system of rewards for bad employers, who can be more competitive than employers who obey laws and treat workers fairly. Ultimately, the cost of lax oversight is paid by workers in the form of unpaid wages, discrimination, injuries, and even death.

Transportation is one example of the price workers pay due to lack of regulation. Workers who cannot afford their own car—and even those who have transportation—are forced to travel in unsafe agency vans to their worksite. These vans are frequently overcrowded, with workers forced to stand or crouch on the floor. The drivers have no regard for the safety of their passengers. On July 18, 2001 five day laborers died in a van crash in Delaware; the next day 19 day laborers were injured in the Midwest when the agency van crashed into a tractor trailer in the fog. Some states and localities, under pressure from worker advocacy groups, have begun to regulate various aspects of contingent work. Illinois is one state that tried to regulate the transportation problem by holding employers accountable. The employers got around the law by subcontracting the transportation service to a third party. Massachusetts and California recently passed laws that hold both employers and van subcontractors responsible.

There is no question that more state oversight is needed in the area of contingent work. Yet the federal government and Congress need to re-regulate the temporary industry, and develop more consistent laws that are appropriate to the new workplace. And, as this report will discuss, greater enforcement of existing laws is also necessary.

## IN THEIR OWN WORDS: STORIES OF ABUSE WORKERS FACE DAILY

Every day several million temps, garment workers, and day laborers go to work. Their labor fuels the economy and allows companies to reap huge profits. Yet, unlike many American workers, they face a myriad of abusive experiences as a matter of routine. Because they are desperate for income, they are reluctant to tell their stories, much less to take action. But, with the support of their communities, thousands of workers are no longer afraid, and have come forth to tell the truth, and to seek justice.

### Wage and Hour Violations

**Carlos Reyes:** *Once I and another worker were hired to do demolition work in a Mall in San Diego. We had to start working at 6:00 am and stop at 3:00 pm; then we rested and came back at 8:00 pm to dump the debris left by the demolition done during the day, working until 3:00 or 4:00 am. We worked for five days, and when payday came, the employer paid us only for 40 hours of work each. We argued with him that we worked some days up to 17 hours, and his response was “Well, I do not pay overtime.” We asked him, “Then, why did you let us work so many hours?” and he responded: “I do not pay overtime and do whatever you want to do.” He also kept some money because of the boots he gave us to wear during the demolition. And that was not the end, he also left us abandoned there, and we had to take a Greyhound bus to come back to L.A. When we returned from San Diego, we tried to contact him but unfortunately, he was just an “enganchador” meaning he was just a “middle man,” not the real boss, and had disappeared.*

**Walter Buchanan:** I’ve been a day laborer in Chicago for about a year-and-a-half. I’m homeless because I don’t earn enough for my own place. Almost all jobs at the day labor agencies in Humboldt Park pay minimum wage and none of them pay overtime. They give you one check for forty hours and a second one for any hours over forty. This is to disguise the fact that they’re not paying overtime. Their favorite excuse to us for not paying overtime is that a worker has to work more than forty hours at the same company to make overtime. If you work more than forty hours through the agency, but split that time between two or more places, you don’t get overtime. But if that’s legal, why do they hide with the two-check system?

**Alice Vargas** is a naturalized U.S. citizen from the Philippines. She lives in L.A. and, although a senior citizen, works to support her large family back home. Like many Pilipino immigrants, she is a home health aide. She found her last job caring for a wheelchair-bound man through word of mouth. She worked from 8 am to 11 pm with only three half-hour breaks and no overtime or days off. If she took a day off she had to pay for her substitute. She cooked, cleaned, lifted and transported the patient, and provided companionship. Her pay was often weeks late and eventually she was not paid at all. Her patient said the employer, his son, gambled in Vegas and that was why he had nothing left over for her. Her last three months of employment she received no pay and even had to provide food for the patient out of her own pocket. Finally she left the patient in the



*care of another of his children. With help from the Pilipino Workers' Center, she filed a wage and hour claim with the Department of Labor, and is awaiting resolution.*

My name is Mrs. **Lin Ma**. I came to the U.S. from China three years ago. I currently work in the garment industry. The factories are always dirty, with poor circulation, and the wages are always very low. We are paid by the piece, from 2 to 10 cents per piece. If you don't sew enough pieces per hour to make minimum wage, you simply don't get paid the minimum wage. Many places pay both in cash and check, sometimes even personal check. Although they don't report taxes, they still deduct 5-10% for taxes. Factory owners also regularly punch out timecards for us so the cards don't show we worked overtime. One year ago, for three months, I routinely worked at one factory from 8 am until 12 am every day, 16 hours, seven days a week. Then I would sometimes have to take work home to sew until 3 in the morning. I never received the minimum wage or overtime in my time at the factory. I am owed over \$6000 just in unpaid minimum wage and overtime for those three months. I have submitted this claim to the Labor Commissioner's office and I hope it is resolved soon.

*My name is **Juan**, and I worked for the Fil-Coil company, for 26 months, in Suffolk County, at 901 Motor Parkway—they don't have a telephone number now due to a maneuver of the company to avoid being contacted. Beginning in the middle of 2001 my coworkers' pay checks began to be rejected by the banks due to lack of funds or company bank accounts being cancelled. Unfortunately, the problem kept growing. After one week of delay in payment it grew to two, three, four and up to seven weeks in the majority of cases. Even today there are still some workers waiting for their payments, but they are reluctant to give testimony for fear of being dismissed. At the end of December I decided to protest, and I was "temporarily laid off." I asked if I was going to get my back pay, but got no clear response. With much persistence on my part, and with the help of the Chase Manhattan Bank in Hauppauge, whose staff were very familiar with our situation, I managed to recover my wages in January 2002. So now I tell workers to go to the Workplace Project right away as soon as this problem happens.*

**Elsa Escamilla** is from El Salvador and has lived here for 20 years. She depends on domestic employment agencies to secure her work. Her English is limited, and she believes that the agencies take advantage of it. She came to CHIRLA for help after a problem with her employer. The agency sent her to work for a nurse. After the second two weeks the woman gave Elsa a bad check. To Elsa's frustration, the woman at the employment agency told her that the agency could not do anything for her, that she would have to take action on her own. Elsa filed a complaint with the Labor Commission, but twice hearings were scheduled and the employer failed to show. There is nothing more the Commission can do, as there is no accurate address for the employer. To add to Elsa's injury, she had to pay the employment agency \$500 from the fraudulent check, plus bank charges of \$70.

## **Race, Gender and Age Discrimination**

*My name is **William Tyler**. I have tried to work day labor out of the Trojan agency many times in the past, and can testify from personal experience to the discrimination that goes on here. Often I arrive at dispatch when it opens, about 5:00 am. Many times, even when we are the first ones to sign the dispatch list—we are not sent out to work, or we are sent out last, or only to certain jobs. We sit and watch Latinos come in after us and be sent out to work first. It happens all the time. I have nothing against people of other races; I just want an equal chance. One time I approached the dispatcher and complained because the African-Americans weren't being sent out to work. This is what she said: "You people don't want to work." I asked who "you people" was. She said "You know what I mean." I told her, "My name is Will Tyler. I am an individual. I am not "you people." It's obvious to us that Trojan is as prejudiced as many of its clients.*

**Walter Buchanan:** The discrimination at the agencies is almost in your face. I went to work a few weeks ago at Labor Temp, Inc. The manager said I could work at Embassy Suites to wash dishes if I got a state I.D. I came back with a state I.D. and they told me I could choose someone to go with me, as long as they were "clean shaven." A black guy heard this and asked if he could go. The manager and the dispatcher started to tell me that he couldn't go with me, that Embassy Suites wouldn't accept him. I asked why, since he was clean shaven, but we all knew why. The black guy got really steamed, but he stayed quiet, because he needed to work.

*My name is **Tony Donaldson**. I worked at Trojan for about six months, taking employers' orders for workers, soliciting new customers, and other office work. While I was at Trojan I regularly took discriminatory requests from companies when they called us for workers. In fact, I was taught by management to ask companies, when they called, the following set of questions: How many workers? Male or female? Spanish or English? When companies discriminated they would usually ask for all Spanish or no blacks. By Spanish, they meant non-black, because we were not allowed to send out black Spanish speakers to companies that ask for Spanish workers. Some companies only ask for males or females. I would see black workers sit in our dispatch room all day while Latinos went out, and I would complain to management. But I was always told that it was our job to "give the customers what they want."*

**Maria Gonzalez:** They don't send women to the McCormick Place Convention Center. Only men. The work is not hard, but they clearly told me 'only men'. I asked some of the men if the work they were doing was heavy or hard to do and they said that it was not. The dispatcher I spoke with is an Anglo short woman of about 50 years of age. She told me in English 'no women'. She repeated twice 'puros men'. Even though she was primarily English-speaking, she knew 'puros men', so she must use it often on her job. Very soon after this I was at Ron's again when a request came in from Newsweb, which prints 'The Reader', a Chicago weekly newspaper. They wanted people to come and clean the building. Again Ron's asked for men to go from the dispatch room. I said I could go, but they told the company wanted only men. This was frustrating, because women can clean as well as men. Sometimes factory supervisors request only women and

then you have to watch yourself, because some supervisors discriminate like this because they sexually harass the women.

***Advocate:** I know of a sexual harassment case in which a female worker was propositioned on a daily basis and sent to do heavier work when she refused the supervisor's propositions. She is a Latina immigrant working at a factory. She was locked in a freezer later on for refusing to sleep with this particular supervisor. When she complained, her supervisor fired her. When we sent a delegation of religious leaders to talk with the owner he reinstated her but refused to fire the supervisor. This case is currently being investigated by the EEOC.*

**Anonymous:** Working day labor is sometimes difficult for middle-aged people, because the dispatchers and company supervisors are very quick to get rid of us if they don't think we are as fast as younger workers. Sometimes they make a snap judgment by just looking at us. At one place I was sent by an agency, the supervisor told me that they didn't allow anyone over fifty to work on the first shift. Sometimes after a group of workers is dropped off at the worksite, the company will make the agency driver come back to take back a worker who "can't do this job". This is hard on older people because they are not yet eligible for Social Security but they need to work. At a paper place where I was packing, one older lady was with her daughter. They didn't even give her a chance to catch on to the work. They sent her back and she was crying.

### **Transportation Abuses**

My name is **Arnoldo Avila** and I'm from Guatemala. I have worked for some years as a temp worker. The temp agencies charge between \$25 and \$30 a week for transportation. I think they are overcharging, especially when the drivers are very irresponsible. Sometimes the agency calls you at 4 am to say there is work but the drivers don't pass by to pick you up, and they charge money for the ride anyway. They also put far more people into the bus than its capacity. The buses are generally very small and uncomfortable, in bad condition, unsafe, and don't meet the requirements for transporting people. In addition, the drivers are vulgar and disrespectful. At times, they don't know the way to workers' houses, so everyone arrives at work, or back home, late. When we get to work late the company send us back home; neither the company nor the agency pays us—but they still charge us for the transportation.

***John:** I worked for the Temp Up agency. They charged me \$25 per week for transportation even though I had my own means of transport. Later, sick and tired of paying this fee, and in order to take advantage of the 10 hours of overtime per week, and to avoid driving around in circles in the agency's van, some coworkers and I decided to use our own means of transportation and break with the impositions of the agency. Two weeks later the agency told us that we were obliged to use their transportation. We therefore decided to leave the job, but first we consulted with the supervisor of the company. He told us that we were doing good work and he would see if we could be hired*

*permanently. Then the manager told us that he couldn't hire us permanently until 90 days had passed.*

## **Immigrant Exploitation**

**Reyna:** We are approximately 103 workers at a company that makes hospital products. In May the company gave 53 Latino and Filipino workers a letter asking us to bring our social security numbers again. The company said they had received a Social Security No Match Letter from Social Security Administration and our information was incomplete. This led to an initial re-verification of the SSA numbers of only the Latino and Filipino workforce. In reality, this was a form of intimidation so that people would quit given that we had 24 hours to provide corrected information or we would be fired. By luck, one of our co-workers knew a volunteer at Voces de la Frontera. They gave us a letter explaining to the human resources department that what they were doing was wrong. A few days later the company ordered pizza for us in the cafeteria—for the first time—and told us not to worry, everything was going to be fine. But then we filed a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) and the Equal Rights Division. Then the company threatened to fire us again if we did not complete a new I-9 form.

*An undocumented Mexican worker at China Star restaurant in Muskegon got into an altercation with the manager over his refusal to pay the worker for his hours worked. When the police were called, they asked for a Spanish translator, who turned out to be a MOP leader. After resolving the immediate situation, the leader talked to the worker and discovered gross abuses of worker rights occurring at the restaurant, for undocumented Mexicans and Chinese. No records were being kept of worker hours or pay. All workers were required to live in a company-provided house, and to travel to and from work in a company van, only when the manager released them. Deductions were taken for lodging and transportation, but no account given. All workers knew that they worked 16 hour days, 6 days a week, and earned only \$400 a month. Every time they complained they were threatened with being reported to the INS.<sup>10</sup>*

## **Health and Safety Violations**

My name is **Juan Cortez**. I worked through Elite Labor Services in Chicago at Lakewood, making box fans and heaters. One time I was running a machine that joined the radiator foils of the electric heaters, when the machine jammed and a piece of metal fell on my hand. The agency sent me to St. Mary's Hospital, where Elite's worker comp clinic, JobMed, is located. The JobMed doctor looked at my injured hand, took some X-rays, put me on some medication, and told me to come back in a week. Then he made me come back another week and another. All this time the back of my hand had swollen up

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<sup>10</sup> As reported in the Spanish language newspaper Exito, this restaurant is part of a widespread network across several states that trafficks new immigrants, who are forced to work long hours in restaurants and are given no freedom of movement.

to double its normal size. Finally I went back because there was an ugly bulge where my index finger and back of my hand were joined. Another doctor happened to be there. He looked at my hand and admitted me right away. I had surgery the next day and was in the hospital for a week. The specialist told me my hand was infected, that the infection was very bad and dangerous. I felt like if the second doctor, who was not with JobMed, had not looked at my hand, I might have become very sick and died. I was making \$5.15 an hour. Minimum wage is not worth your life.

**Carlos Reyes:** *I live here in L.A. with my family. I am from Mexico and came here in 1965. I have done day labor work for two years, after a doctor advised me to quit my job as a car painter. There are many abuses. Sometimes an employer offers a job, let's say to unload a truck, but when I get there the job is much more; for example to work inside of the warehouse, and the employer just wants to pay the same money. Sometimes you have no choice—you are stuck there, so you have to do the job. Loading or unloading a truck may last two or three hours, we work under a lot of pressure from the employer who wants the job done quickly. So the work is really, really "heavy", and the money is so little. The employers do not provide any job safety equipment, like back support belts, gloves, and others. So if we want to protect ourselves we have to bring it along. Some abuses take the form of having to do a two-person job. In this situation, the employer says, "Go ahead it is easy, it is light" but in reality it is very easy to get hurt, and for the employer it is very easy to get rid of us and get lost.*

**Maria Flores:** One time Tandem, the day labor office, took us to a gum factory, but upon arriving there instead of a factory, it was a huge, dirty cellar. The bathrooms and everything was incredibly dirty. But the most incredible thing was to have to pack candy without anything hygienic covering our hands. To think how many children were going to eat these candies, because they were packed very beautifully, without knowing who packaged them. I worry as a worker, but also as a mother. But the worst was that we arrived at the day labor agency at one in the afternoon to work. They would take us to the worksite at two o'clock, and we would start at 3:30 and end at twelve midnight, without the right to a break—not even a bathroom break. We arrived home at one in the morning. It didn't matter to the drivers. Sometimes it was raining and raining and they just left us there, even though they charged us for the ride.

**Rosa:** *I am from Mexico, have lived in the U.S. for 22 years, and I am a U.S. citizen. I work at a paper production factory. The conditions are horrible. No worker is paid to clean the bathroom and cafeteria. There is no first aid equipment. Because there is no ventilation in the plant, paint chemicals are causing workers to experience vomiting, headaches, dizziness, and body aches. Dust from the paper also causes health problems. The masks that the company provides are not enough for all the workers and don't fit properly. To make things worse, there is no air conditioning in the summertime. The company does not train workers on the equipment, so there are many injuries to workers' hands and arms. One young man, 18 years old, filed a complaint with OSHA after he became permanently disabled when his arm was caught in a machine. His coworkers finally had to release him from the machine because management was more interested in not breaking the equipment than in what was happening to his arm.*

## **Workers Compensation**

**Juan Cortez:** After I got hurt at Lakewood, I went to the Day Labor Organizing Project at San Lucas. Elite Labor Services didn't tell me what benefits I was eligible for; neither did Lakewood. The Project helped me understand the system so I got the workers compensation that was owed me. But still I only get \$113/week, and I am on the edge of becoming homeless. The agencies like to push you around if they think you're alone and they can get away with it, so it's good to be connected to an organization. One thing that I'm involved with at the Project is organizing information about the place I worked at and other dangerous jobs, because the day labor agencies do a lot of business with companies like that. The day labor agencies are not going to stick up for people who have problems at the job, because they want the business. They just look the other way or ignore you.

## **Extortion and Rip-offs**

***Tony Donaldson:** When I worked at Trojan, discrimination was tied up with extortion and rip-offs, organized by the dispatcher, Carmen. Because the dispatcher controls who works, she has a lot of power, and abuses it. For example, people who were Colombian immigrants, like Carmen, were sent to work on the condition that Carmen would get every other pay check. In effect, these workers were working for half the minimum wage. Other immigrant workers, most often Mexicans, had their pay stolen from them. The dispatcher would tell them that their documents were phony, so they weren't eligible to be paid. The client companies were still billed, but Carmen ended up with the money. Carmen let everyone know, regardless of race, that they had to pay for the opportunity to work in some way. Some folks were made to give or sell her their 'Link' Food Stamps cards for the chance to work. Workers were also stealing merchandise from stores where they worked, and giving the stolen goods to Carmen for her to sell. Carmen told one woman that she expected that woman to give Carmen \$200 from her own tax return. I believe the reason Carmen was never fired or disciplined, even though top management know about this, is because Trojan doesn't really care about people's rights. They are happy as long as she gets the kind of workers that clients want. It's like she's their pimp.*

## **Union-Busting Practices**

Advocacy for temporary workers, especially immigrant temporary workers, is essential when employers use them as strikebreakers. Voces de la Frontera was able to intervene in September 2000 on one occasion when a company used a local temporary agency, Milwaukee Temps, to provide immigrant temp workers to break the strike and destroy the Bakery Workers Union Local 205. VF intervened, and despite threats from the temporary business owner of retaliation—physical violence against the advocates—VF convinced the temp agency owner to stop sending more employees to break the strike. Following this victory, Local 205 helped provide transportation for people participating in the

Chicago rally for amnesty later that month. Our modest intervention successfully turned a potentially negative response on the part of the union into an act of solidarity.

## **Fighting Back**

*My name is **Jesus Martinez**. I was born in Texas and raised in Mexico. I live in Chicago with my wife and my 2 year-old daughter. There are all kinds of rip-offs at day labor agencies, but one of the worst things is that they don't pay hours and even days of work to the workers. After a couple of job assignments with Ron's day labor agency, I had several problems getting paid. My wife and I have a very tight budget, and this set us back. I went back about 3 times to try to get my check but they kept ignoring me. I got in contact with the Day Labor Organizing Project. Within a few weeks, they organized a visit to Marshall Fields to demand that they make Ron's accountable to their workers. About 40 people went to Marshall Fields' warehouse to speak with management. Marshall Fields called Ron's and demanded that I and two other workers get paid immediately. Marshall Fields also agreed to not send "no return" notes without an explanation.<sup>11</sup> It wasn't until I brought a group of people with me to the client company that they paid attention to me.*

**Walter Buchanan:** Discrimination is one of the main reasons I got involved with the Day Labor Organizing Project in Chicago. We are fighting for a day labor ordinance that would make the day labor agencies give a receipt to everyone who applies, so people could keep track of how many times they didn't get sent out on a job. We are also talking to employment testing experts, who are going to help us document all the discrimination by race and sex that there is. Also the Project helped organize audits of the day labor places, and this resulted in refunds on some of the rip-offs. We also do a lot of actions and press around abuses, which helps get some people the money that's owed them. Then the agency owners talk to us, but after a while they just invent some new way to screw us over. The government has become more tuned into what is going on, but they are not very aggressive.

***Anonymous:** I am a Mexican immigrant. I have been in this country for 2 years, since I lost my job in Mexico, and I have worked in day labor agencies during that time. Often I have been sent out to work in overcrowded vans. The transportation that some day labor agencies provide is humiliating and dangerous. One day, we were sitting in the van—some were actually standing because of lack of seats—ready to go to our assignment. One worker called the Day Labor Organizing Project's organizer and a leader, who were talking to the workers in the agency, to see how crowded we were. "See, we are not lying. They treat us like cattle." The organizer and the leader told the driver that it was illegal to transport people in that way. We all got out of the van to demand that we be sent in two vans rather than one. The driver got furious and went to call the dispatcher. Reluctantly, the dispatcher agreed to send two vans instead of one. Yes, we did it! A*

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<sup>11</sup> "No return" refers to the practice of companies of writing down in the work ticket, next to the worker's name, "no return". This means that that particular day labor worker is not wanted back in that company. Many of the no returns are based on racial and other types of prejudices, with no explanations given.

*small, organized group of workers changed the routine in that day labor agency that day. If we want change, we have to fight for it ourselves.*

My name is **Mr. A** and I have worked in the garment industry for 20 years, 10 years in El Salvador, and 10 years in Los Angeles factories. I demand that the State Labor Commissioner inspect factories more regularly. Why? Because the owners pay miserably and do not comply with minimum wage laws. The Labor Commissioner should inspect timecards and ask workers if they themselves punch the cards or if the owners or secretaries do it. A garment worker experiences many abuses from the owner, the managers, helpers, or checkers. The Labor Commissioner should assure that these people do not physically abuse the workers and that they do not abuse women by making passes and advances at them. The Labor Commissioner should look into piece rates so that workers can work for their wages with ease, and not under pressure. These are the things we are fighting for with the help of the Garment Worker Center.

***Olegario:** I'm an immigrant worker like the majority of workers in this country. I work for a company north of Milwaukee. My work consists of operating machinery for casting metal sheets. There are about 25 Latino employees working there. In April 2001 the Social Security Administration sent a letter to the company requesting a verification of the Social Security numbers and names of their employees because they did not match the information that the SSA had. The head of Human Resources called us in one by one to his office and gave us letters notifying us that we had two weeks in which to verify our information. The company would then forward this information to SSA. From that day on we were all worried that we would lose our jobs. Someone then suggested that we contact Voces de la Frontera. They told us that there was a packet of information on the Social Security no-match letters, prepared by lawyers in California, which had been used to educate people regarding these letters and to prevent these people from being fired. A week later we met with the employers and Voces staff explained the basic information contained in the packet. The owners understood the information contained in the packet. They also agreed to write a letter to the SSA requesting that in the future the letters should not be sent to the company, but directly to the employees. Thanks to the organization, we continue working at the same company.*



## FEDERAL AGENCIES: THE FAILURE OF ENFORCEMENT

As the many stories in this report attest, employers are blatantly violating workers' rights on a daily basis. Whether it's wage and hour violations, health and safety concerns, race and gender discrimination, anti-immigrant activity, or union-busting—companies are getting away with it, while reaping profits on the backs of vulnerable workers. Yet all of these abuses are illegal under federal law, and federal agencies are ultimately responsible for ensuring that the laws are enforced. The Department of Labor (DOL) Wage and Hour Division has oversight of minimum wage and overtime issues. The Occupational Safety and Health Administration (OSHA) has jurisdiction over workplace health and safety issues. The Equal Employment Opportunity Commission (EEOC) is responsible for investigating discrimination in the workplace. The National Labor Relations Board (NLRB) enforces laws relating to worker organizing and union formation. In addition, all of these agencies are responsible for maintaining firewalls with the Immigration and Naturalization Service (INS), so that undocumented workers can report employer abuses without fear of job loss and deportation.

However, workers and advocates around the country have found these agencies extremely lacking in their enforcement roles. **Time and again grassroots organizations provide vivid documentation of employer abuses, only to have the federal agencies drag their feet when it comes to cracking down on bad companies.** From the perspective of any local organizer, the federal enforcement agencies are all but irrelevant; thus advocates tend to focus on state agencies instead. According to CHIRLA, DOL prioritizes cases where there are a large number of employees, rather than individual cases. Also, collaboration between DOL and INS makes immigrant workers nervous about filing claims.

The experience of one Chicago area workers' rights group is typical. Worker advocates in Chicago have documented numerous cases of discrimination—based on age, race and gender. Yet when advocates file a case with the EEOC, frequently a month later the complaint gets lost somewhere in the bureaucracy. In one example, a discrimination case was filed, and it didn't reach the investigator's desk until eleven months later. By then, the plaintiff had moved on and couldn't be found. Therefore the case had to be dropped. In Los Angeles, advocates complain that the EEOC tends to fall behind on cases, and sometimes the backlog causes the statute of limitations to expire on a case, leaving the worker with no other legal recourse. Often the employer defendant has moved on in the interim, or closed up shop with no forwarding address. The federal agencies are ill equipped to handle their caseloads, and are poorly trained to deal with non-traditional employers.

The example of Alice Vargas is characteristic. The Pilipino home healthcare worker filed a wage and hour claim with DOL after working for three months with no pay. The claim was rejected due to being 'incomplete', so Vargas went with the Pilipino Workers' Center to the local DOL office. The DOL worker behind the counter said that live-ins were not entitled to any overtime claims. After consulting with her supervisor regarding the laws for live-in workers, the DOL staffer realized that in fact the claim was

complete and correct, and agreed to process the case. Meanwhile, DOL incompetence caused unnecessary delays and wasted the plaintiff's time.

### **DOL's 'No Sweat' Initiative: Bad Employers Shouldn't Sweat It**

DOL's "No Sweat" initiative is a perfect illustration of federal ineffectiveness. DOL has made the elimination of sweatshops a high priority in the last decade—conducting investigations, issuing fines, and publishing reports. Yet their high-profile efforts have had minimal impact. A DOL comparison of compliance surveys in garment manufacturing shows that the percentage of firms in compliance with labor laws (such as minimum wage and overtime) in Los Angeles reached a lowly peak of 39% in 1996 and 1998, only to slide back down to 33% in 2000. *After a decade of effort by DOL, only one in three LA garment factories complies with federal laws.* The long term trends are equally disappointing in New York and San Francisco.

In Chicago, an effort has been made to improve federal oversight through the unique creation of a partnership of government agencies—the Chicago Area Workers' Rights Initiative (CAWRI). The initiative was formed after a damning 1999 Taylor Institute report on sweatshops in the Chicago area. It brought together the EEOC, OSHA, DOL and Illinois DOL (IDOL), for the purpose of working more closely with community groups to gain information about sweatshops. **CAWRI set up a process by which grassroots organizations can file complaints on behalf of anonymous individuals, using only one form directed to all four agencies.** To some extent this collaborative government-community partnership is a model that has improved enforcement. For example, the Day Labor Organizing Project (DLOP) was able to work with the Chicago EEOC office so that an EEOC investigation launch was timed to a DLOP organizing campaign against the same agency. The local branch of the day labor agency was forced to shut down after its discrimination against African-Americans was made public. Meanwhile, the agency's national office is still defending itself in the EEOC case.

CAWRI has also served as a stick to make the state DOL more responsive in communities most affected by abuses. DLOP got IDOL to do across-the-board audits at day labor agencies with documented wage violations. **The audit resulted in refunds to workers totaling \$200,000.** In addition, DLOP put pressure on IDOL at CAWRI meetings to induce the state agency to start attending community meetings, where they can discuss ongoing wage and hour violations. Having the federal agencies there to put pressure on state enforcement agencies is critical. In other places, like Los Angeles, the state labor commission has very lax enforcement, with only a handful of investigators for the whole region. The majority of complaints filed with the CA agency result in no negative action taken against the employer, and no recouping of lost wages for workers.

On the other hand, the CAWRI experience has been a mixed bag, as the federal agencies' internal cultures maintain a strong bias against workers. This has become even more pronounced since the change in presidential administrations. **Now, unless DOL can confirm a violation through the employer's own records, workers' allegations and**

**evidence are often dismissed.** This approach is threatening to undermine the whole community-based complaint process developed by CAWRI.

**In addition to lax enforcement, federal agencies have failed to offer immigrant workers sufficient reassurances that they will not be reported to the INS.** All workers have certain rights, regardless of their immigration status. On paper, government agencies that enforce worker rights are supposed to maintain the privacy of whistleblowers. Toward that end, advocates are engaged in ongoing efforts to get agencies to develop guidance for their investigative and field staff. The INS prepared guidance for its field offices in 1996 regarding reports of undocumented workers. The guidance instructs INS staff to determine whether the information on workers' immigration status is being provided in order to interfere with or undermine a union organizing effort, or otherwise thwart workers' attempts to correct workplace abuses. The EEOC has also issued revised policy guidance to clarify that it is unlawful for anyone to report or threaten to report a worker to the INS because a worker opposed discrimination or participated in anti-discrimination proceedings. In such an instance the worker is entitled to damages. However, if the worker has been fired, she cannot be reinstated unless she has proper immigration documents. In 1998, DOL and INS signed a joint memorandum of understanding to ensure that workers in abusive work situations can file complaints with DOL without fear of deportation.

Yet once the guidance exists on paper, it is another challenge to get the agencies to actually implement it. In reality, undocumented workers that report employer abuses and seek corrective action still place themselves at risk of being fired or deported. The experience of Milwaukee advocates with OSHA exemplifies this problem. The Wisconsin Committee on Occupational Safety and Health (WISCOSH) was one of several groups around the country that received a federal grant to educate workers on their OSHA rights. The grant agreement affirmed that OSHA would follow a policy of *not* sharing information about a worker's immigration status with the INS. Prior to conducting its activities under the grant, WISCOSH met with OSHA officials to ensure that this policy was in effect. **Instead, OSHA representatives told the advocates that, while there is a written policy that OSHA will not share information with the INS, in practice OSHA does not prevent individual investigators from sharing information with the INS.** OSHA believed it could not interfere with its investigators' individual rights. This pronouncement had a chilling effect on the advocates' efforts to enforce workplace safety and health laws. Perhaps it is not surprising that while overall workplace death rates have declined, death rates for immigrant workers have increased by 17 percent nationwide.

The Social Security Administration's (SSA) use of Social Security No Match letters indirectly undermines enforcement and illustrates the acute problem of weak firewalls. When SSA has a high percentage of incorrect worker social security numbers reported by one employer, the agency attempts to contact both the employee and the employer to get the information corrected. Often the employee never gets the letter because SSA does not have current contact information, so the employer is the only one to receive this information. In many cases employers misinterpret the letter as implying

that the workers have falsified their SS information or may be illegal immigrants. Employers may mistakenly fear that they will be sanctioned for providing false information or for hiring undocumented workers. **Many employers threaten to fire workers, do fire them, or sit on the information until workers challenge employer abuses, and then use the letters to intimidate them.** Advocates have made strides by educating employers about these letters, but ultimately believe that the SSA should only send the letters to the employees, and not to the employers.

Added to the problems of poor federal enforcement and weak firewalls between agencies is the challenge of interpreting a range of different legal definitions of “employee”, “employer” and “independent contractor”. **Federal laws are inconsistent and sometimes vague in their definitions, leaving it up to the courts to decide who is even covered under a given statute.** For example, if a temporary worker is assigned a job by an agency and finds safety violations at the worksite, which is the employer responsible to correct the violations? In some cases, the courts have ruled that under OSHA *more than one entity* may be the employer of record, and therefore they are individually and jointly responsible for workplace safety. Yet other cases have resulted in assigning *only one entity* as employer, even if another entity actually hires and pays the worker.<sup>12</sup>

The last section of this report contains recommendations to federal agencies and Congress that would help strengthen enforcement of worker rights and better protect immigrant workers from employer retaliation.

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<sup>12</sup> For a full discussion of these issues see Ruckelshaus, Catherine and Bruce Goldstein, “The Legal Landscape for Contingent Workers in the United States.” NELP and the Farmworker Justice Fund, Inc., 2001.

## DEFENDING WORKER RIGHTS: LOCAL CAMPAIGNS AND MODELS

The member organizations of the Day Labor/Contingent Work Committee and other groups around the country have engaged in successful campaigns to defend workers' rights and improve their working conditions. Many have developed innovative model programs, laws and structures in an effort to create more systemic, long-term solutions to the problems outlined in this report. Whether urban, rural or suburban—these experiences together offer compelling guidance to local, state and federal policy makers.

**Voces de la Frontera (VF)** has been active at all levels of government. VF initiated a state-wide effort to support national legalization of undocumented immigrants—the Wisconsin Coalition for a Just and General Amnesty. This broad coalition includes faith-based groups, unions, and Latino organizations. At the local level, VF has tackled the issue of Social Security No-Match letters. VF developed an outreach plan to Milwaukee-area employers so that they would understand the legal rights of workers and not fire them simply because of a perceived error in SS information. **In a four month period in 2001, VF intervened at 16 companies, and prevented 112 workers from being wrongfully terminated.** The group next assisted workers who suffered wage and hour violations. VF also sponsored a series of community meetings with federal officials from the EEOC, SSA, DOL Wage and Hour division, and Office of Special Counsel (OSC) to look at systemic solutions to these problems. VF's model for SS No Match intervention has been shared with other organizations whose members face this issue.

**Casa de Maryland** started out assisting new Latino immigrants as they arrived in the U.S. Gradually their focus shifted to worker issues. Suburban Maryland communities complained about the day laborers that congregated in public to seek employment. In 1990, Casa negotiated with police and the county to get a facility where workers could wait for employers. From there, Casa created the Center for Employment and Leadership. The center offers social services, English classes, legal advice, and leadership development to help workers fight employer abuses. The center both markets the day labor workforce to employers and mediates the labor exchange process. Employers must complete a form for each job that indicates the job particulars and wages. If an employer fails to pay the stipulated wages, this form serves as a legal document used to recoup the wages. **The Center's lawyers once helped 50 workers recoup \$180,000 in unpaid wages from a demolition site.** The Center also tries to overcome the common practice of employer discrimination. By their own design, workers enroll each morning in a lottery, and hiring occurs equitably among the Latino and non-Latino workers. The worker center that Casa created over a decade ago is a model that organizations around the country emulate.

**Merrimack Valley Project (MVP)** has been working on employment issues in the immigrant communities of Lawrence and Lowell, Massachusetts. Research indicates that at peak times, the region's 82 temp agencies employ more than 15,000 workers—many of them day laborers. MVP surveyed 51 immigrant workers and discovered a high

percentage of wage and transportation abuses. **Workers were being charged as much as 15 percent of their take home pay for transportation costs, even if they didn't require van service to reach their job site.** MVP organized workers to win a state law to prevent temp agencies from gouging workers with mandatory transportation fees. This legislation, which limits fees to 3 percent of daily wages, was recently signed by Acting Governor Jane Swift, and will take effect in Massachusetts in May 2002. MVP also sought and obtained commitments from the state attorney general to beef up enforcement efforts, especially regarding wage violations. This commitment was secured at an assembly attended by more than 400 people from MVP member congregations, unions, and other groups, including at least 75 temp workers. Advocates in other states are seeking similar legislation to curb transportation abuses by temp agencies.

Worker outrage over temp agency abuses in Chicago led to passage of what is probably the best statewide day labor law in the country. However, since the law became effective in January 2000, the targeted agencies have largely ignored it. **The Day Labor Organizing Project (DLOP)** has been organizing to get state agencies to enforce the law's provisions. DLOP organized complaints that prompted the Illinois Department of Labor (IDOL) to investigate illegal paycheck deductions by day labor agencies. **Five audits resulted in reimbursements totaling \$200,445 to 5,259 workers.** DLOP is also pushing for a city day labor ordinance—based on a comprehensive code of conduct—to address ongoing discrimination, transportation costs, unfair deductions, and workplace safety concerns. Neighborhood organizations around the city have been meeting with their aldermen to secure support for the bill, and a hearing was held at City Hall where DLOP members pushed for stronger provisions. Meanwhile, the Project is going to engage in more formal testing to better document the pervasive problems both at the agencies and at the worksites. DLOP is particularly interested in directing attention to the role of the employers themselves, and exposing their relationships with the temp agency middlemen. In addition to local and state activism, the Project has been instrumental in getting Rep. Luis Gutierrez to introduce the only day labor bill in the U.S. Congress.

**The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)** has taken a holistic approach to immigrant worker issues, frequently partnering with other organizations in the process. CHIRLA became involved in the plight of day laborers with a two-pronged approach. Coalition organizers visit the day laborers at their street corners to build relationships with them and learn their concerns, with the long-term goal of creating a day laborers union. In partnership with the Institute for the Development of Popular Education in Southern California (IDEPSCA), CHIRLA is working to improve the conditions of the day labor sites. CHIRLA and IDEPSCA now manage six different sites, where they have a system of job distribution, offer services to workers, and develop leadership among the day laborers. Yet CHIRLA's vision expands beyond LA—**the Coalition has taken the lead in developing a National Day Labor Organizing Network, composed of 18 organizations from around the country.** The Network held its first convening in July 2001 in LA. CHIRLA is also looking beyond day laborers to other exploited immigrant workers, such as domestic workers. CHIRLA recently surveyed conditions at local domestic employment agencies, and has an ambitious plan to educate and organize domestic workers, and to crack down on abusive agency practices.

CHIRLA has banded together with several other immigrant rights organizations to take on the garment industry sweatshops. The **Asian Pacific American Legal Center, CHIRLA, the Korean Immigrant Worker Advocates, and Sweatshop Watch** established the **Garment Worker Center of Southern California** last year. The Center has already begun to build a base of organized garment workers, launch a retailer accountability campaign, and influence current policy debates regarding labor law enforcement. In just one year, **the Center collected \$140,000 in back wages and has already settled another \$60,000.** Worker advocates were successful in getting a state law passed in 1999 that created a ‘wage guarantee’ of minimum wage and overtime for garment workers. Although manufacturers and label retailers are accountable under the law, the state agency responsible for enforcement has been slow to take action. Because the majority of garment workers are immigrants, they are fearful of speaking out against abuses that will result in job loss. Thus the Garment Worker Center has made both enforcement of labor laws and legalization of undocumented workers its two top priorities. Workers testified at a state Assembly hearing on enforcement, and the Center has pushed for increased state funding for enforcement. For the Center, corporate accountability is also a key strategy to ensure enforcement of labor rights. The Center recently launched a public boycott campaign with 19 garment workers against a popular retailer, Forever 21. An important aspect of the Center’s work is its efforts to unite Latino and Asian workers across language and cultural barriers.

The **Workplace Project** has found itself at the heart of the struggle over the future of immigration policy in this country. Anti-immigration groups such as American Patrol are battling to shut down day labor sites in Long Island, and using their campaign as a model to fight immigration nationwide. Meanwhile, violence against day laborers in L.I. has garnered national media attention. To take on this challenge the Project is organizing day laborers into an association—La Union de Jornaleros de Long Island (UJLI). So far UJLI has reached out to 400 workers in two towns, organized more than 200 in protests and legislative events, and involved 100 in ongoing activities. **UJLI has defeated many local pieces of anti-immigrant and anti-day labor legislation, and has brought mayors and legislators to the table with day laborers.** This outreach has resulted in winning key allies to support the creation of worker-run worksites. Without these sites, day laborers experience harassment as they wait on street corners for work. The most promising site prospect is in Freeport, where UJLI has a close relationship with the local Catholic Charities. Once the first model worksite is developed, UJLI plans to win worksites in Farmingville, Farmingdale, and Hempstead.

**Michigan Organizing Project** has spent that last several years uncovering exploitation of immigrant workers and trying to organize workers to improve conditions. Last year MOP learned about the abuses suffered by undocumented Mexican and Chinese workers at China Star restaurant in Muskegon. As MOP began organizing these workers, the organization discovered that the immigrants were being brought to Muskegon by an international employment agency based in Atlanta. In fact, until 9/11 this agency was under FBI investigation for illegal trafficking of workers. The agency rotated workers at such frequency that it was impossible to organize them at one worksite. Given the

difficulties of organizing the workers, MOP leaders from Muskegon churches decided to confront the local employer directly. They started with a picket line of pastors and church leaders in front of the restaurant at dinner time. This prompted the manager to negotiate with MOP leaders. **An agreement was reached that granted a broad range of rights to workers, and even granted MOP status as a representative of the workers.** Conditions have greatly improved as a result of this agreement, which is still in place. It remains a challenge for MOP to monitor the situation as workers are continually rotated in and out of the workplace.



## THE GRAVY TRAIN: GOVERNMENT PROGRAMS AND TEMPORARY WORK

In 1996 Congress passed sweeping legislation that changed welfare as we know it. States were given enormous new flexibility in their administration of safety net programs, in exchange for agreeing to strict work participation requirements. The states were given \$16 billion in block grant funds to do as they pleased. Most states adopted a ‘work-first’ philosophy that pushed women on welfare into a job, any job. Single parents seeking assistance were diverted and also were required to look for employment. This policy, as well as a booming economy, meant that caseloads dropped dramatically, leaving states with huge welfare surpluses. Not surprisingly, for-profit companies, including temp agencies, were first in line to feed at this government trough.

In Milwaukee, Wisconsin, this corporate greed was fed by a state decision to allow private companies to actually run the welfare benefits offices. These agencies are allowed to keep any funds they don’t spend on services, creating a perverse incentive for them to serve as few clients as possible. Maximus is a for-profit company that runs a welfare program in Milwaukee, as well as in 23 other states. In Milwaukee, Maximus also set up its own temporary agency, where it places women on welfare.

**9to5**, a national organization with chapters in dozens of cities, has done extensive on-the-ground research into the welfare-temp work connection in Milwaukee. **9to5 found that Maximus was discriminating against women by paying them less than their male counterparts.** One worker, Tracy Jones, discovered that she was getting \$1.12 less an hour than a man doing the same work. Maximus alleged that she was paid less because she was in a welfare pilot program for women who lacked job experience and skills. In fact, Ms. Jones was not on welfare and had significant job experience and skills. She had not even received any training from Maximus. Once this case was brought before the EEOC, the Commission ruled in her favor. 9to5 is trying to have the Maximus contract with the state terminated.

9to5’s research and advocacy extends beyond Maximus to other temp agencies in Milwaukee. **9to5 did employment testing at 25 temp agencies, and uncovered unfair, discriminatory practices at two-thirds of them.** A second round of testing revealed that 6 in 10 agencies were discriminating based on race. The EEOC has vowed to step up its enforcement to end these practices. 9to5 also further pursued the link between welfare and temp agencies. **In the first year after welfare reform was implemented in Wisconsin, 42 percent of welfare recipients resorted to temp agencies for work—**despite the fact that the jobs are temporary or short-term, and offer no health insurance. 9to5 recently surveyed 50 women who had been on welfare, and found that close to half (47%) had been employed by a temp agency, earning on average \$7.34 an hour. Half the women had been charged by the agency for use of its van service. The most revealing survey result was that only eight of the women had ultimately found permanent employment. Welfare reform in Wisconsin consists of funneling women into temp jobs that offer little prospect for permanent employment at a family-supporting wage. The tragedy is that when women are pushed off of welfare into a temp job, and that temp job

ends, they have a very hard time getting back onto welfare. Twenty-one of the women 9to5 surveyed were unemployed again and/or trying to receive some sort of income support from the welfare system.

Meanwhile, the temp agencies are profiting off the welfare system. They are eligible for federal tax credits for each welfare recipient or low-income person they place in a job—as long as the person is employed 400 hours. Under the Welfare-to-Work Tax Credit and Work Opportunity Tax Credit (WOTC) a temp agency can receive up to \$8500 per placement. **There is no federal tracking or oversight of this program to determine how long placements are employed, how much they earn, or how effective the tax credit is at actually helping those with barriers secure jobs.** It is purely a federal handout to corporations with no questions asked.

**The Los Angeles Chapter** of the National Campaign for Jobs and Income Support (NCJIS) has also found a close connection between welfare and temporary work in LA. Los Angeles County, like Maximus, has its own temp agency where it places welfare participants. Welfare clients are sent to other for-profit temp agencies as well. **In fact, personnel supply service firms (including temp agencies) are the largest employer of welfare workers, accounting for 13 percent of all welfare workers in LA in 1997.** The industry’s share of welfare employment has more than doubled in the last decade. The LA County Department of Social Services (DPSS) is itself a big user of temps, thereby denying some of its own workers regular wages and benefits. There are currently several lawsuits pending against the County for its use of temps.<sup>13</sup> The LA Chapter believes that, although the County’s reliance on a welfare-to-temp strategy is not illegal, it constitutes bad policy—by squandering public resources and denying low income parents access to permanent, family-supporting jobs. The LA Chapter has tried, through several channels, to gain information about which temp agencies receive the federal tax credits for placing welfare clients. This information is considered confidential, so the group hopes to at least find out how many agencies receive the credit, and the total amount of credits received county-wide.

9to5, and now the LA Chapter, are trying to get temp agencies in their respective cities to adopt a code of conduct, developed by the National Alliance for Fair Employment (NAFFE). The code would forbid discrimination and make the agencies forego receiving the welfare-to-work tax credit, unless they actually place a client in a permanent job. On behalf of NAFFE, 9to5 is currently in negotiations with Manpower, one of the largest agencies internationally, to establish such a code.

In addition to welfare, the workforce development system also has close ties to the temp industry. On the heels of welfare reform, Congress passed the Workforce Investment Act (WIA) in 1998, to overhaul the federal job training system. Many states decided to build on the ‘work first’ approach of welfare by expanding it to workforce programs as well. This was facilitated by the fact that WIA eliminated income-eligibility

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<sup>13</sup> Several class action lawsuits have been filed, contending that the County has illegally misclassified employees, using such labels as “contract employee,” to avoid paying basic health, pension, and other benefits since at least the late 1980s.

requirements, now requiring ‘universal access’ to services. At the same time, WIA offered no increase in funding to serve the broader population. The bottom line is that many localities have failed to set aside funding for actual skills training. Instead, job seekers who go to a one-stop center are told to look for any job, and are often referred to temp agencies for work. Some one-stop centers even allow temp agencies to co-locate with them at the same site.

**National People’s Action** is working to hold the Department of Labor (DOL) to its mission, which is to prepare American workers for new and better jobs and enforce current labor laws. NPA groups and other NCJIS members have undertaken a testing project to document what really happens to job seekers when they enter one-stop centers. So far, the project has shown that from city to city, people are not getting any access to training. In some cases, as with welfare reform, workforce changes have provided an opportunity for private companies to suck up government resources. For example, testing in Springfield, MA revealed that at the one-stop roughly 60% of the jobs posted were for temp and day labor agencies. **NPA is challenging the federal Department of Labor to provide better enforcement of labor laws, better training programs, and funding for community-based worker centers.** In response, DOL Secretary Elaine Chao has made it clear that she prefers ‘educating’ employers rather than enforcing compliance. Chao also has no intention of strengthening oversight of the Welfare-to-Work tax credit or WOTC. Rather, she wants to expand tax credits to businesses that hire ‘disadvantaged job seekers,’ even if only for short-term, low-wage jobs with no advancement.

**The Anti-Displacement Project (A-DP)** conducted an undercover testing project at FutureWorks, a one-stop career center that was being run by the for-profit ETI Associates, a well-known union busting company based in New Jersey. A-DP issued the results of the testing project in a report, “Roadblocks to Success,” which highlighted the failure of the one stop to provide training to a single low-income tester. As a result, the City of Springfield terminated the contract with the for-profit company and replaced it with a locally controlled non-profit board of directors. **A-DP also secured commitments to set aside 50% of all federal funds for job training, provide full disclosure to all one stop customers of their rights to job training, and to refer job seekers to full time permanent jobs instead of temporary work.** A-DP next plans to take on the temp agencies themselves, documenting health and safety abuses, as well as ‘churning’ and the welfare-temp connection. A-DP leaders have found that, under the welfare agency’s ‘Next Steps’ welfare-to-work program, a welfare recipient is referred to the FutureWorks one-stop, which then refers the client to a temp agency. The client is sent to the temp agency with the welfare-to-work tax credit form in hand, so that the temp agency can easily collect the credit. In addition, the welfare agency gets a bonus payment for every job placement, even though it is only a temporary one. The cycle repeats itself as workers are ‘churned’ through the system. A-DP would like to set up a worker center that offers low-wage workers an alternative to temp agencies.

The profitable relationship between the private sector and government safety net programs is all the more insidious in the wake of the recent economic downturn. Even during the booming economy, many parents pushed off the welfare rolls either did not

find employment or found work that paid poverty wages. As documented in Milwaukee and Los Angeles, many former welfare leavers were channeled into temporary positions with no benefits or stability. **While this system benefited corporations, it failed to help families escape poverty or develop useful skills and job experience that would lead to better employment down the road.** Now that there is a national recession, the picture is even bleaker for these families. The temp industry—and its low-wage workforce—has been one of the hardest hit by the recession. Manpower reported dropping 20,000 temp workers from its payroll in the last year. According to the American Staffing Association, the national trade group for temp agencies, employers reduced their use of temporary and contract workers by 16 percent in 2001, the worst drop in industry history.<sup>14</sup>

In the past, the welfare system served as a safety net for low wage parents in recessionary times. Not this time around. According to a recent report by the National Campaign (NCJIS), welfare caseloads are not growing at a rate comparable to unemployment rates. In *The Weakening Link: Unemployment and Welfare Caseloads*, NCJIS compared unemployment figures and welfare caseloads in the 1990-91 recession to the current recession. In 1990-91, 41 of 42 states that had rising unemployment also had rising welfare caseloads. **In 2001, however, while 47 states experienced rising unemployment, only 32 of those states saw an increase in welfare caseloads. Alarming, 14 states with increased unemployment actually had a significant drop in welfare caseloads.** This weakening link can be explained in part by states' diversionary tactics to keep people off the rolls, welfare time limits and sanctions, and denial of benefits to most immigrants. It cannot be explained by increased access to unemployment benefits. On the contrary, states have done little to broaden eligibility for unemployment insurance to contingent workers.

The denial of benefits to immigrants who arrived in the country after August 22, 1996 created hardships for immigrant families even before the current recession. A new study by the Urban Institute documents the harms caused by 1996 federal changes in welfare and immigration law.<sup>15</sup> **Despite the fact that most immigrants work and pay taxes, their access to safety net programs has been extremely curtailed.** Between 1994 and 1999, there were major declines in usage of benefits: TANF (-60 percent), Food Stamps (-48 percent), SSI (-32 percent) and Medicaid (-15 percent). The many immigrant workers profiled in this report work long hours and suffer abuses in the workplace in order to make a few dollars a day, but still live in poverty. They have no safety net to help them avoid homelessness, hunger, and poor health.

**As Congress considers measures reauthorizing welfare and stimulating the economy, it should seize the opportunity to strengthen the safety net for poor families.** In addition to the recommendations regarding contingent work in the next section, NCJIS asserts that benefits should be restored to all legal immigrants, regardless of when they entered the country. Welfare funding should be increased, time limits

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<sup>14</sup> Ross, Sherwood, "Temporary staffing firms set for upturn." Boston Globe, February 10, 2002, Page K1.

<sup>15</sup> Fix, Michael and Jeffrey S. Passel, "The Scope and Impact of Welfare Reform's Immigrant Provisions." Urban Institute, January 2002.

should be eliminated, and funding should be earmarked for education and training. A public jobs program should be created that will provide wages and training support for low-income parents in areas of high unemployment.

## FEDERAL POLICY RECOMMENDATIONS

The Day Labor/Contingent Work Committee of the National Campaign for Jobs and Income Support makes the following recommendations to the President and Congress. These recommendations are grounded in our collective experience organizing workers and helping them seek justice in the workplace. Congress' delay in taking action not only perpetuates abuse against workers, but continues to reward the most unscrupulous employers. Law-abiding businesses that treat workers fairly cannot compete financially with bad companies that routinely cut costs by violating worker rights.

### Recommendations

- **Increase enforcement of federal labor protections covering health and safety, discrimination, and wage and hour.**

Federal wage and hour, health and safety, and discrimination laws protect low-wage workers, regardless of immigration status. Yet these laws are ineffective if there are no resources to enforce them. Government agencies responsible for enforcing these laws have seen their budgets cut drastically during recent years.

Congress should allocate more resources to labor enforcement to assure labor protections for low-wage workers. The discriminatory treatment of undocumented immigrant workers imposes a great human cost on all workers. The absence of good employment practices in worksites with undocumented workers ends up diluting employment practices for all workers. Federal labor enforcement agencies should focus substantially more attention and resources to improving workplace conditions for low-wage workers in the informal underground economy.

The statutory fines and penalties of these laws do not reflect the changing face of exploitation in the workforce today. Congress should act to increase the fines and penalties for labor and health and safety violations if these laws are to have any meaningful enforcement.

- **Conduct research on subcontracting of informal industries and the growing informal economy.**

Despite the strong increase in contingent work, the nation's employment laws have not kept pace with the growth in contingent work, especially in the informal economy. Federal agencies must work with community organizations and advocates to research the workings of the growing informal economy, its relationship to the formal economy and the nature of the interdependence between the formal and informal sectors. Of major importance is research on the increasing trend towards subcontracting low-wage immigrant workers in the different industries within the informal economy. Contingent workers have become a fixture in today's economy. Federal laws provide very little protection for this new emerging workforce.

Consequently, contingent workers lack some of the most basic protections of labor and employment laws that apply to permanent, full-time employees.

- **Revise guidelines for Workforce Investment Act programs.**

Department of Labor guidelines relating to WIA funding should be revised to include an expansive monitoring process to ensure that applicants who participate in WIA funded job training/job placement programs are placed in employment that provides living wages and affords them the opportunities to move up the economic ladder. Similarly, the DOL guidelines must be integrated with the Temporary Assistance to Needy Families (TANF) guidelines so that participants in Welfare-to-Work programs can be fully integrated into living wage jobs with benefits.

A major goal of Workforce Investment Act programs is to place applicants into quality jobs with sustainable wages and benefits that allow the opportunity for career advancement. Therefore the DOL guidelines for the make up of local and state Workforce Investment Boards should be revised to prohibit from participation representatives of any temporary staffing agency or entity that provides the same type of service.

- **Revise the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Credit guidelines.**

A fundamental purpose of the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work (WtW) Credit is to move temporary low-wage workers and welfare recipients into jobs that will lead to full-time permanent employment. Current regulations and policies on providing tax credits to temporary agencies contradict this fundamental purpose. By providing generous tax credits to temporary agencies, the system is rewarding them for keeping low-wage workers in contingent work. Current regulations and policies must be revised to create at least a 6-month employment period requirement at one worksite to be able to receive tax credits for job placement.

The current tracking requirements in the WOTC guidelines is inadequate and insufficient to address the increasing abuses of low-wage workers being placed in “dead end” jobs with unlawful working conditions. The IRS or other appropriate federal agency should report annually to Congress on WOTC and WtW tax credit placements, including average wages, tenure of employment, and other relevant data to ensure that low-wage workers are placed in jobs that provide for sustainable wages, benefits, and upward mobility.

- **Support innovative community-based programs.**

Community-based organizations around the country are successfully working at the ground level with low wage and contingent workers. These organizations have established effective programs that are improving working conditions by: educating workers about their rights; confronting the abuses of low-wage workers; providing

meaningful job training programs; creating innovative workforce development programs, and moving low- and no-wage workers into living wage work by establishing community job centers and engaging in sectoral interventions.

Congress and the Department of Labor should establish a pilot program to partner with these community organizations. The Pilot Program should identify established and emerging community projects led by low- and no-wage workers, develop a best practices model, and fund this innovative and successful work at the local community level.

- **Create laws to hold client companies liable for hiring from agencies and contractors that exploit workers.**

Day labor agencies and other types of formal and informal subcontracted arrangements have emerged to form the new economy in the United States. Contingent work accounts for the majority of jobs in many industries. This emerging economic change has created a ladder of exploitation that begins with client companies hiring contingent workers from contractors and agencies that knowingly discriminate against and exploit low wage workers. Congress must create laws that would allow federal agencies to hold these client companies accountable for doing business with staffing agencies and contractors that violate health and safety laws and labor laws.

- **Reform unemployment insurance to cover temporary workers.**

States have done little to broaden eligibility for unemployment insurance to contingent workers who lack a long-term history of full-time employment. With contingent work comprising a majority of the workforce in many low-wage industries, the need to extend unemployment insurance benefits to cover temporary workers has become an economic emergency due to the worsening economic recession that they are facing today. Congress must create laws or change regulations that would redefine eligibility for unemployment insurance to reflect the growing transition from full-time employment to contingent work in many sectors of the U.S. economy.

- **Eliminate ‘employer sanction’ laws.**

In 1986 Congress passed the Immigration Reform and Control Act (IRCA), which legalized many immigrants who had been in the U.S. since 1982. IRCA also made it illegal for employers to knowingly hire workers who were not authorized to work in the U.S. To comply with these laws, known as ‘employer sanctions’, employers are required to verify the identity and employment eligibility of all employees hired after November 6, 1986.

Employer sanctions have resulted in the violations of discrimination laws and the civil rights of low-wage immigrant workers. Countless reports and data show that



employer sanctions have provided a weapon for employers to repeatedly fire and threaten low-wage immigrant workers who try to organize a union or engage in federally protected concerted activity to address workplace violations. Employer sanctions have made immigrant workers vulnerable to exploitation and unsafe working conditions. These discriminatory acts by the employers create an exploitative workplace environment that has the same impact and chilling effect on U.S. native born workers. The elimination of this failed policy is important to increase labor protections for all low-wage workers.

- **Eliminate Social Security no-match letters to employers.**

Each year, the Social Security Administration (SSA) sends an estimated 50,000 letters to certain businesses that submitted reports containing no-match records. These no-match letters have caused much confusion among employers and in immigrant communities. In many cases, employers have used the no-match letter to retaliate against workers who exercise their rights under the laws.

The Social Security Administration (SSA) should eliminate its policy of issuing SS “no-match” letters to employers. When employers receive no-match letters, they often mistakenly believe they are receiving notices of immigration violations. This has resulted in a high number of immigration related unfair employment practices. The number of cases of employers using the SS no-match letter to undermine or eliminate organizing activity to address workplace violations has increased tremendously since the SSA initiated its policy of issuing no-match letters. The purpose of the no-match letter is to provide information to the employee about how the discrepancy can affect his/her benefits. Therefore, SSA should send the letter directly to the employee’s last known current address or to the workplace under seal of confidentiality to prevent employer access to the information.

- **Expand the Memorandum of Understanding between Department of Labor (DOL) and Department of Immigration and Naturalization Service (INS).**

The DOL and INS Memorandum of Understanding that was signed in 1998 was a step forward in recognizing that labor law enforcement must protect all workers, regardless of immigration status. However, it did not go far enough. The provisions of the MOU for information-sharing between the DOL and the INS draw on a technical distinction between different types of complaints that will be difficult for many immigrant workers to understand. Since the DOL will continue to share information with the INS in some cases, many immigrant workers will remain reluctant to file complaints against employers. The current MOU should be expanded to include all DOL investigations regardless of whether they are generated by individual worker complaint or by a DOL investigator.

- **Create laws and/or regulations prohibiting collaboration between INS and other federal agencies that focus on labor protections.**

In the same approach that the DOL and the INS took to develop their MOU, Congress should enact laws and/or regulations that would prohibit collaboration between the INS and federal agencies that focus on labor protections—Department of Labor, Occupational Safety and Health Administration, Equal Employment Opportunity Commission, etc. These laws would ensure that there will be no information sharing of investigations and complaints generated by a respective agency or an individual worker. All workers must not feel any fear or threat in reporting workplace abuses to these agencies. Laws and/or regulations prohibiting the sharing of information with INS are one approach to addressing this issue.

- **Establish a system of liability for work-related deaths occurring during transportation to and from a worksite.**

Within the past two years, there has been a tremendous increase in the number of work-related deaths resulting from temporary low-wage workers who travel in overcrowded and mechanically unsafe vans that employment agencies provide for these workers. Because this type of transportation is through an informal arrangement with a middle person or subcontractor, agencies are able to shield themselves from liability from cases of injuries or deaths of workers who use this form of transportation. The Department of Transportation and/or other federal agencies that cover this type of transportation issue must enact regulations that target formal and informal employment agencies that place mostly immigrant workers in this hazardous form of transportation. Regulations must also directly target the worksite employer, who is ultimately accountable for the working conditions of its workers.

- **Create new whistleblower protection laws to protect low-wage workers who file complaints against their employers for workplace violations.**

The efforts of workers, advocates, and prosecutors fighting sweatshops and abusive working conditions are often hampered by fears of deportation. Frequently, employers threaten to call in the INS to silence low-wage workers who complain about workplace violations and abusive conditions. While there are laws that make it illegal to take retaliatory acts against employees for exercising their workplace rights, they fail to address the issues relating to immigration status, and they provide little comfort for immigrant workers who are willing to come forward and speak out. There needs to be a new visa or special protected status for immigrant workers willing to speak out about workplace conditions and assist the federal agencies that enforce labor protections.

- **Enact immigration reform.**

The Immigration Reform and Control Act of 1986 (IRCA) was the last major legalization legislation that was enacted by Congress. This legislation, which received bi-partisan support, provided a limited amnesty program where an estimated 3 million immigrants were able to apply for Legal Permanent Residency status. Today's reality dealing with the plight of the estimated 8 million undocumented immigrants in this country calls for Congress to consider and implement changes in immigration laws to allow opportunities for these immigrants to obtain legal permanent residency (LPR) status for their contributions to the U.S. economy.