

ASKING THE RIGHT QUESTIONS



*A Human Rights Approach to Ending Trafficking
and Exploitation in the Workplace*

2016



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Envisioning a world in which every person lives with dignity, freedom, justice, equality, and peace, The Advocates for Human Rights believes that each one of us has a part to play in building respect for human rights and expanding the human rights movement. The Advocates implements international human rights standards to promote civil society and reinforce the rule of law.

An independent and nonpartisan nonprofit 501(c)(3) organization that was founded in 1983, The Advocates investigates and exposes human rights violations; represents people seeking asylum; trains and assists human rights defenders; and uses research, education, and advocacy to engage the public, policymakers, and children in human rights work. Holding Special Consultative Status with the United Nations and Observer status with the African Commission on Human and Peoples' Rights, The Advocates collaborates with human rights defenders throughout the world to bring information about human rights violations and make recommendations to international and regional human rights mechanisms.

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ASKING THE RIGHT QUESTIONS



EXECUTIVE SUMMARY

This report documents the problems of labor trafficking and labor exploitation in Minnesota. The Advocates for Human Rights used its human rights monitoring methodology to define the dynamics of these human rights violations and identify the breakdowns in law, policy, and practice that allow them to occur.¹ The report provides a series of recommendations to improve human rights conditions for workers in Minnesota and bring Minnesota into closer compliance with international human rights standards for worker protections.

Labor trafficking and labor exploitation are closely related. Trafficking victims are frequently victims of labor exploitation and other forms of abuse, including unpaid wages. Labor trafficking is a crime; labor exploitation is handled by administrative enforcement agencies. Protecting victims and preventing abuses depends on correctly identifying when trafficking and exploitation have occurred. Victims, service providers, and government agencies, however, all struggle with identification. Even when victims are identified, the help available to them falls short. This lack of identification and protection hampers prosecution of traffickers. Meanwhile, enforcement of laws against labor exploitation is limited by a lack of resources and a confusing system that workers have difficulty navigating.

> Chapter 1: Understanding Labor Trafficking and Labor Exploitation

Labor trafficking occurs when an employer² compels or tricks a worker into providing involuntary labor. The employer often uses violence, threats, manipulation of debt, blackmail, or fraud to compel victims to work. Typically, such work takes place in abusive conditions, such as an unsafe work environment, long hours without breaks, or work without pay.

Labor trafficking is a crime under both federal and Minnesota law. It is investigated by law enforcement agencies such as the Federal Bureau of Investigation (FBI) or local police, and prosecuted by federal prosecutors or county attorneys. Labor trafficking victims are also eligible for special protections and civil remedies under the law.

¹ The Advocates used qualitative research based on interviews and observations to analyze the problem of labor trafficking and exploitation in Minnesota. Qualitative data is particularly useful in uncovering systemic causes for the disparities often apparent in, but unexplained by, quantitative data.

² The Advocates uses “employer” to include employers, recruiters, contractors, and others who have control over the worker.

Labor exploitation occurs when employers profit from the illegal treatment of their workers, but do not exert the level of control that characterizes labor trafficking. Denying workers fair pay, frequently referred to as “wage theft,” was the most common form of labor exploitation reported to The Advocates. Wage theft is also a key component of labor trafficking, since traffickers frequently use their control over their victims to cut their wages or to stop paying wages altogether.

While some labor violations can result in criminal prosecution, most violations of federal and state labor laws are resolved through administrative procedures.³ Workers can also pursue their cases as private civil suits.

Trafficking victims are frequently victims of many different forms of labor exploitation and abuse, including unpaid wages. While not every victim of unpaid wages is a victim of trafficking, labor trafficking frequently involves the failure to fully pay wages owed.⁴ Victims of both labor trafficking and labor exploitation are also vulnerable to other kinds of abuses, such as sex trafficking, sexual harassment, discrimination, and physical assault.

Labor trafficking and exploitation occur most frequently when workers are isolated or itinerant, where the employer-employee relationship is fissured, or where the underlying work is itself illegal.

Physical isolation and high mobility deter workers from seeking help for both labor exploitation and trafficking. Traffickers purposefully exacerbate this isolation to control their victims. For instance, traffickers may control workers’ access to identity documents and money, making it difficult to leave.

Fissured industries – those with high rates of subcontracting and independent contracting – have high rates of both labor trafficking and exploitation. Workers have trouble identifying who is responsible for their illegal treatment, especially when the original contracting company does not know how workers are paid or treated on the job.

Trafficking also occurs in illicit activities, such as the drug trade, commercial sex industry, or panhandling operations.⁵ Individuals forced to participate in illegal industries often fear arrest for their involvement in the underlying criminal activity.⁶



> Chapter 2: Identifying Trafficked and Exploited Workers

Much of the system designed to prevent and respond to labor trafficking and exploitation relies on individuals coming forward with complaints of illegal working conditions, but workers face

³ See, e.g., Wage and Hour Division, “Major Laws Administered/Enforced,” U.S. Department of Labor, <https://www.dol.gov/whd/regs/statutes/summary.htm>.

⁴ Labor trafficking cases not involving unpaid wages typically involved illegal services or criminal enterprises, such as petty theft or drug dealing.

⁵ While labor trafficking is still not commonly recognized in these areas, cases in these industries can be understood as similar to the sex trafficking of individuals engaged in criminal activity through prostitution or solicitation. See U.S. Department of State, “Trafficking in Persons Report,” June 2014, 14, <http://www.state.gov/documents/organization/226844.pdf>.

⁶ Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 167, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

(“Relatively simple terms such as ‘work’ or ‘services’ can be challenging to apply, particularly when the police identify people ‘working’ in informal economies such as drug markets, hustling, or commercial sex industries.”)



many barriers to reporting workplace violations. Workers may not recognize themselves as crime victims or may not know where or how to report the crimes. They often lack knowledge of their rights or lack trust in the legal process. Traffickers and abusive employers take advantage of these barriers, targeting workers who are the least likely to complain about their treatment.

Knowing their rights is not enough. Workers must also feel safe enough to complain when those rights are violated. While legal protections against violence, intimidation, and retaliation exist, interviewees reported that fear nonetheless prevents many workers, especially trafficking victims, from making complaints.

Government agencies have an obligation to overcome these barriers in order to effectively address human rights abuses. They face their own challenges, however, in identifying trafficking and exploitation. Trafficking victims may interact with government agencies for a variety of reasons, not all of which may reveal that they are being trafficked. These agencies are in a position to identify victims and ensure that they receive the appropriate help, but they lack the screening tools and protocols to recognize potential signs of trafficking and connect victims to services.

Nongovernmental organizations report similar challenges. When potential victims do come forward, advocates, service providers, and enforcement agencies too often incorrectly classify victims' reports or do not know how to respond to the problem.



> Chapter 3: Protecting Victims of Labor Trafficking and Labor Exploitation

Labor trafficking victims often face an array of immediate and long-term needs relating both to the trauma they have experienced and the vulnerabilities that led to being trafficked. Effective protection and assistance measures are essential to ensuring respect for the human rights of victims and to preventing them from being trafficked again.

Despite this need, coordinated services and protection are not yet consistently available to the majority of labor trafficking and labor exploitation victims. Foreign national trafficking victims are eligible for a limited range of immigration benefits and social services; other trafficking victims receive much less assistance. In violation of international standards, victims generally must cooperate with law enforcement to receive the available benefits. Labor exploitation victims are not typically eligible for any immigration benefits or social services and find it difficult to access legal support to pursue their cases.

> Chapter 4: Enforcing Criminal Labor Trafficking Laws

Minnesota has an obligation to ensure a strong legal framework that criminalizes human trafficking and law enforcement agencies that consistently enforce human trafficking laws.⁷ This plays an essential role in the prevention of human trafficking. While federal and state laws make labor trafficking and related conduct a crime, few labor trafficking prosecutions have taken place in Minnesota. At the federal level, the requirement that victims cooperate with law enforcement to receive immigration and other benefits may damage their credibility as witnesses in prosecutions. At the state level, law enforcement identified a lack of training and resources as a barrier to effectively prosecuting labor trafficking cases.

Efforts to investigate and prosecute labor trafficking in Minnesota have been growing. These efforts have resulted in three recent federal prosecutions of labor traffickers, one for forced labor, one for harboring, and one for visa fraud.⁸ A recent state case may be the first prosecution under Minnesota's labor trafficking law.⁹

> Chapter 5: Enforcing Labor Exploitation Laws on Unpaid Wages

Effective enforcement of labor laws is one vital component of preventing the exploitation of workers and may serve to protect victims of labor trafficking as well. Some workers experience grave workplace abuses that do not fit the limited legal definition of labor trafficking but violate other labor laws. In addition, victims of trafficking may judge whether it is safe and worthwhile to complain based on how all workplace violations are addressed. Chronic, unpunished wage and hour abuses create an environment of impunity where workers may feel they are not protected.

Both federal and state law establish minimum standards for wages, overtime, and hours worked. Both laws, however, contain major exemptions that allow abusive employers, including traffickers, to exploit their workers. The rise in subcontracting and independent contracting is one example of how employers attempt to evade responsibility under wage and hour laws. In addition, limited



⁷ See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Preamble and Art. 5.

⁸ Interviews 21, 28, & 30; "Illegal kickbacks for foreign farm workers in Minnesota bring a federal fraud conviction," Star Tribune, August 9, 2016, <http://www.startribune.com/illegal-kickbacks-for-foreign-farm-workers-in-minnesota-bring-a-federal-fraud-conviction/389638341/>.

⁹ "Woodbury mom charged with enslaving, assaulting Chinese nanny," Star Tribune, July 15, 2016, <http://www.startribune.com/woodbury-resident-charged-with-five-felonies-accused-of-enslaving-chinese-nanny/387017921/>.



resources leave enforcement agencies without the ability to thoroughly and proactively investigate labor exploitation, allowing abusive employers to operate without fear of detection.

When workers attempt to bring a labor exploitation complaint, they must navigate a system with many points of entry that are not well coordinated with each other. A wage theft complaint could be pursued by the Minnesota Department of Labor and Industry (DLI), the federal Department of Labor (DOL), or anti-discrimination agencies such as the federal Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights (MDHR), or the Minneapolis Department of Civil Rights. There is no single point of entry or universal intake procedure; each agency maintains its own referral system.

Minnesota has an opportunity to ensure that all workers, both U.S. and foreign nationals, can freely choose employment and be fully compensated for their work. The anti-trafficking movement has made significant progress in the last ten years, while worker movements against labor exploitation are thriving at the state and local level. Minnesota can build on this momentum to address some of the lingering gaps in its protections for all workers.

RECOMMENDATIONS BY CHAPTER

> Chapter 2: Identifying Trafficked and Exploited Workers

PRIORITY RECOMMENDATIONS



Policy makers should fund a statewide public awareness campaign on labor trafficking and exploitation in Minnesota, including distribution of materials in multiple languages on rights in the workplace and on recognizing trafficking, with special materials targeted to low literacy populations.



Government agencies should provide training on labor trafficking and labor exploitation under federal and state law to staff and to community organizations, especially those that routinely deal with workers, workplace issues, or trafficking.



Government agencies and community partners should create a self-assessment tool (translated into key languages) for workers to identify whether they are victims of trafficking and develop a plan to distribute the tool to people at risk.



Policy makers should develop a simple, direct, language-accessible system to make it easier for workers to identify trafficking and exploitation and to bring a complaint.



Create and implement training and screening protocols for all federal immigration enforcement officers to effectively and consistently identify victims of human trafficking and labor exploitation prior to initiating removal proceedings, reinstating an order of removal, or ordering a person removed from the United States.

RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Follow federal immigration enforcement guidelines for exercising prosecutorial discretion related to victims of human trafficking and labor exploitation.
- ▶ Create and implement training and screening protocols for federal and state labor standards agencies to identify trafficking experienced by workers these agencies encounter.
- ▶ Partner with worker-led and other community-based organizations to educate workers about their rights in the workplace.
- ▶ Ensure adequate, culturally appropriate, and safe interpretation and translation for victims of trafficking or exploitation.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Ensure immigration enforcement agencies prioritize funding for effective screening and identification of victims of trafficking and exploitation.



- ▶ Ensure labor standards agencies receive adequate funding to conduct outreach to workers at risk for trafficking and exploitation without compromising enforcement.
- ▶ Make funding available for worker-led peer education campaigns so workers can learn their rights in the workplace.
- ▶ Increase penalties for retaliation against workers who report trafficking or exploitation in the workplace to deter retaliation and encourage reporting of violations.

RECOMMENDATIONS FOR COMMUNITY-BASED ORGANIZATIONS

- ▶ Create and implement training and screening protocols for service providers to identify trafficking experienced by workers these agencies encounter.
- ▶ Support efforts to educate workers at risk of trafficking or exploitation, especially peer education initiatives.
- ▶ Support collaboration between worker-led organizations, community-based organizations, and government agencies to improve identification of victims.
- ▶ Counter anti-immigrant sentiment in the public sphere and emphasize that workplace protections apply to all workers, regardless of immigration status.

> Chapter 3: Protecting Victims of Labor Trafficking and Labor Exploitation

PRIORITY RECOMMENDATIONS



Policy makers should develop a statewide network so all victims of human trafficking, regardless of gender, age, or nationality, have access to services, including both existing services and new funding.



Policy makers should amend federal law to remove the requirement that victims cooperate with law enforcement to receive services and protection from deportation.



Policy makers should create a state law to ensure all victims of human trafficking under Minnesota law receive access to services and assistance.



Policy makers should amend federal law to ensure that domestic trafficking victims who may be otherwise ineligible for public benefits can receive certification, case management, cash assistance, and other help currently available to foreign national victims.

RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Ensure full compliance with the Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites.
- ▶ Create publicly available training and materials on T and U nonimmigrant status certification, eligibility letters, and immigration relief so victims and service providers have clear guidance to access protection.
- ▶ Create a statewide victim-centered standard for T and U certifications that ensures timely and consistent response to certification requests.
- ▶ Establish a point of contact at the state level who can make T and U certification decisions and who can provide training and technical assistance to agencies statewide.
- ▶ Ensure that law enforcement officials, prosecutors, and judges receive effective training about the role of victim protection in combating human trafficking.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Create a Minnesota law that ensures all victims of human trafficking receive certification needed for recognition as a victim under federal law.
- ▶ Increase victim access to restitution as part of the criminal sanctions against traffickers by making restitution mandatory in federal and state criminal cases and by providing assistance to victims in compiling damages estimates.
- ▶ Expand the options for securing legal immigration status to victims of serious forms of labor exploitation.
- ▶ Provide help to victims of labor exploitation including emergency housing, medical care, food support, and cash assistance.

RECOMMENDATION FOR COMMUNITY-BASED ORGANIZATIONS

- ▶ Develop protocols to identify and assist with the multiple legal services needs of victims of trafficking and exploitation including family, immigration, employment, discrimination, housing, and other legal remedies.

> Chapter 4: Enforcing Criminal Labor Trafficking Laws

PRIORITY RECOMMENDATION



Policy makers should provide resources for training all local law enforcement and prosecutors on Minnesota's labor trafficking laws, including investigative techniques and available protections for victims.



RECOMMENDATION FOR ENFORCEMENT AGENCIES

- ▶ Ensure law enforcement officers, investigators, prosecutors, and judges receive training relevant to their profession on effectively holding traffickers accountable.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Amend federal law to decouple victim certification from willingness to cooperate in the investigation or prosecution of the trafficker so that victims can receive essential protection and assistance without undermining the credibility of their testimony.
- ▶ Prevent the criminalization of trafficking victims by providing an affirmative defense and options for vacation or expungement for persons charged with certain crimes committed as a result of being a trafficking victim.

> Chapter 5: Enforcing Labor Exploitation Laws on Unpaid Wages

PRIORITY RECOMMENDATION



Policy makers should examine how to provide a simple, accessible system that ensures workers can recover lost wages quickly and at minimal cost, especially for small claims.

RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Ensure that training of law enforcement and prosecutors on human trafficking includes information on identification of and referral for civil labor exploitation.
- ▶ Conduct independent investigations of industries with high numbers of vulnerable workers who have the greatest difficulty bringing complaints.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Remove exemptions in the FLSA and MFLSA so all workers of covered employers receive minimum wage and overtime protections, regardless of industry or type of worker, especially those in high risk industries such as construction, domestic service, and agriculture.
- ▶ Amend both federal and state wage and hour laws to allow workers and labor standards agencies to bring claims for all types of wage theft even when the employer has not violated minimum wage or overtime standards.
- ▶ Increase the penalties for employers to a level that deters routine wage theft, whether through increased monetary penalties or non-monetary consequences such as the loss of business licenses or criminal sanctions.

-
- ▶ Amend wage and hour laws to ensure that companies that employ subcontractors and independent contractors cannot shield themselves from responsibility for the treatment of their workers.
 - ▶ Create a mechanism to allow all workers to recover the full cost to them of employer misclassification or misuse of subcontractors.
 - ▶ Increase funding of federal and state labor standards agencies to increase the number of investigators and the capacity to hold non-compliant companies accountable through independent investigations and full, on-site audits.



TABLE OF ACRONYMS

Anti-Trafficking Coordination Team (ACTeam)
Department of Health and Human Services (HHS)
Department of Homeland Security (DHS)
Department of Justice Human Trafficking Prosecution Unit (HTPU)
Department of State (DOS)
Enforcement and Removal Office (ERO)
Equal Employment Opportunity Commission (EEOC)
Fair Labor Standards Act (FLSA)
Federal Bureau of Investigations (FBI)
Homeland Security Investigations (HSI)
Immigration and Customs Enforcement (ICE)
Immigration and Nationality Act (INA)
Internal Revenue Service (IRS)
International Labour Organization (ILO)
Minneapolis Department of Civil Rights (MDCR)
Minnesota Department of Human Services (DHS)
Minnesota Fair Labor Standards Act (MFLSA)
Minnesota Human Rights Act (MHRA)
Minnesota Human Trafficking Task Force (MNHTTF)
Minnesota Department of Health (MDH)
Minnesota Department of Human Rights (MDHR)
Minnesota Department of Labor and Industry (DLI)
National Labor Relations Act (NLRA)
Occupational Health and Safety Administration (OSHA)
Trafficking Victims Protection Act (TVPA)
U.S. Department of Labor (DOL)
United States Citizenship and Immigration Services (USCIS)
Volunteer Lawyer's Network (VLN)



TABLE OF CONTENTS

About The Advocates For Human Rights	1
Acknowledgments	2
Executive Summary	3
Table of Acronyms	13
Methodology and Approach	17
Introduction	19
Understanding Labor Trafficking and Labor Exploitation	23
1. Labor Traffickers Target Vulnerable Workers	23
2. Labor Exploitation: Wage Theft is Widespread in Minnesota	28
3. Labor Trafficking and Labor Exploitation Overlap	33
4. International Standards Prohibit Trafficking and Exploitation	35
Identifying Trafficked and Exploited Workers	39
1. Workers Face Significant Barriers to Seeking Help	40
2. Government Agencies Do Not Consistently Identify Trafficking Victims	45
3. Community Organizations Need Training and Resources to Identify Victims	48
4. Steps Forward for Improving Identification	49

Protecting Victims of Labor Trafficking and Labor Exploitation	53
1. Victim Protection Undermined by Cooperation Requirement	54
2. Victims of Civil Labor Violations Have Little Access to Protection and Assistance	63
3. Steps Forward in Victim Protection	64
Enforcing Criminal Labor Trafficking Laws	67
1. Victim Cooperation Requirements Undermine Prosecution	68
2. Minnesota’s Criminal Labor Trafficking Law is Underutilized	71
3. Steps Forward in Enforcement of Labor Trafficking Laws	72
Enforcing Labor Exploitation Laws on Unpaid Wages	75
1. Wage and Hours Laws Do Not Protect All Workers	76
2. Employers Use Legal Exclusions to Avoid Oversight	78
3. Lack of Coordination on Labor Exploitation Hampers Complaint Process	81
4. Wage and Hour Enforcement is Too Limited to Deter Abusive Employers	82
5. Steps Forward in Enforcement of Labor Exploitation Laws	84
Appendix: Trafficking statutes	87
1. 22 U.S. Code § 7105 - Protection and Assistance for Victims of Trafficking	87
2. 18 U.S. Code Chapter 77 - Peonage, Slavery, and Trafficking in Persons	94
3. Minnesota Labor Trafficking Statutes	101



METHODOLOGY AND APPROACH

This report follows directly from The Advocates for Human Rights 2014 report, *Moving from Exclusion to Belonging: Immigrant Rights in Minnesota Today*, which uncovered disturbing reports of workplace abuses.¹ It also builds on The Advocates 2008 *Sex Trafficking Needs Assessment for the State of Minnesota* on effective implementation of the state's sex trafficking statute.²

Exclusion to Belonging took a broad look at the many challenges facing refugees and immigrants throughout Minnesota and explored how respect (or lack of respect) for human rights impacts integration. This report expands on the findings of *Exclusion to Belonging* to analyze more closely the human rights conditions for workers in Minnesota. Supported by funding from The Minneapolis Foundation, The Advocates for Human Rights documented conditions for Minneapolis workers and for trafficking victims to create a road map to ending trafficking and exploitation in the workplace in Minnesota and throughout the United States.³

While *Exclusion to Belonging* guided this analysis towards issues facing refugee and immigrant workers, this by no means suggests that labor trafficking and exploitation only affect foreign national workers.⁴ U.S.-born workers also are subject to human rights abuses in the workplace; solutions should address their needs as well as those of immigrants.

The Advocates for Human Rights adapted its monitoring methodology to the problems of labor trafficking and labor exploitation. This methodology combines qualitative research methods, including interviews and participant observation, with legal research and analysis of the implementation of the laws designed to protect against these abuses. The methodology includes a comparison of the conditions in Minnesota to international human rights standards and recommendations to bring the state into closer compliance with these standards.

1 The Advocates for Human Rights 2014 report, *Moving From Exclusion to Belonging: Immigrant Rights in Minnesota Today*, evaluated how well Minnesota communities ensure the protection and promotion of immigrants' human rights.

2 The Advocates for Human Rights published its 2008 *Sex Trafficking Needs Assessment for the State of Minnesota* at the request of the Minnesota Human Trafficking Task Force to assist the newly-formed Task Force in better understanding its mandate. The Task Force bifurcated the inquiry, focusing on sex trafficking and setting aside analysis of the state's separate labor trafficking statute. The Advocates turned to the issue of labor trafficking in this report thanks to support from The Minneapolis Foundation.

3 This report does not explore the many challenges faced by workers in Minnesota's agricultural and related industries.

4 The Advocates for Human Rights uses the term foreign national to refer to non-citizens residing in the United States, including legal permanent residents, temporary visa holders, refugees, asylees, and undocumented immigrants.

The Advocates began by interviewing over 50 workers, organizers, advocates, attorneys, law enforcement officials, and academics. Data collected for *Exclusion to Belonging* contained additional information about specific workplace issues. *Centro de Trabajadores Unidos en Lucha* (CTUL)⁵ provided data on workplace abuses from surveys of nearly 200 of its members.⁶ Interviewees reported experiencing a wide range of work-related issues, including illegal discrimination. Unpaid wages was the most prevalent complaint, while trafficking revealed the most egregious violations. Further research identified a relationship between these two issues.

The Advocates next turned to the international human rights obligations that govern work and identified which of these obligations binds the United States.⁷ International human rights law prohibits slavery, servitude, and other forms of involuntary work, and the international anti-trafficking framework calls upon the United States to prevent human trafficking and protect and assist victims.⁸ International human rights standards also guarantee workers freely chosen work, just and fair compensation, safety in the workplace, and an adequate standard of living, among other workplace rights.⁹ In essence, these standards recognize work as an essential human endeavor and seek to ensure that everyone enjoys basic human dignity in the workplace.

The Advocates considered whether and how well the federal, state, and local governments meet these obligations. By analyzing the existing legal framework against the reported experiences of the interviewees, the report seeks to illuminate where and why the system works or falls short.

Finally, The Advocates considered the necessary elements of an effective government response. The recommendations set forth a framework for preventing trafficking and exploitation, protecting victims, and holding abusers accountable that prioritizes the needs of the victims.

Minnesota has an opportunity to ensure that all workers, both U.S. and foreign nationals, can freely choose employment and be fully compensated for their work. The anti-trafficking movement has made significant progress in the last ten years, while worker movements against labor exploitation are thriving at the state and local level. Minnesota can build on this momentum to address some of the lingering gaps in its protections for all workers.

5 *Centro de Trabajadores Unidos en Lucha* (CTUL) organizes low-wage workers from across the Twin Cities to develop leadership and educate one another to build power and lead the struggle for fair wages, better working conditions, basic respect, and a voice in our workplaces. CTUL is an organization of workers and for workers, committed to securing fair working conditions for present and future generations.

6 CTUL issued its own report based on the surveys, "Confronting Exploitation: The Face of Low Wage Work in the Twin Cities," available at <https://www.scribd.com/doc/289479974/FINAL-Confronting-Exploitation-CTUL-Report-on-Low-wage-Economy-English-Spanish-for-Print>.

7 The United States may be obligated to follow international human rights standards because it has signed and ratified a treaty. It must also follow standards recognized as customary international law, which is binding through consistent state practice followed out of a sense of obligation, or because the standard is recognized as *jus cogens*, a peremptory norm which must be followed by all countries without derogation. In addition, when the United States has signed but not ratified a treaty, it has an obligation to refrain from violating the spirit and purpose of the convention. When standards bind the United States, these obligations extend to state and local governments, meaning that laws at all levels – from federal law to local ordinances – must uphold these obligations. In the United States, most international human rights standards are non-self-executing, meaning that federal, state, or local laws must make the international standard operational. Implementing legislation may use civil or criminal laws to create a legal right for an individual and a mechanism that holds a violator of that right accountable to the victim directly or to society as a whole. Even where implementing legislation exists, it may be ineffective, under-resourced, or otherwise fail to meet the international standard. Human rights advocates have suggested that existing U.S. laws, such as 42 U.S.C. § 1983, could be used to bring court cases based on rights enumerated in ratified treaties where implementing legislation is inadequate or nonexistent.

8 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000.

9 Universal Declaration of Human Rights, December 10, 1948, Art. 23- 24.



INTRODUCTION



John was recruited by a man from his home town to come work on a farm in the United States. The man offered to arrange a seasonal farm worker visa and transportation to the farm and charged John a large fee for his services. Once John arrived in the United States, he discovered he would not be paid what he had been promised. Instead, the farm owner required him to pay back part of his paycheck every month. John was also still in debt to the recruiter. He wanted to report his stolen wages, but he was afraid of what might happen. When another worker on the farm complained about his pay, he was sent back to the home country and his visa was not renewed. The recruiter owned the loan on John's house in his home country and threatened that if John was sent back, the recruiter would seize his house. The recruiter also threatened to physically harm anyone who reported the scheme. Eventually, federal law enforcement discovered the trafficking and John, along with the other workers, received restitution including all the wages that had been stolen.

U.S. Department of Labor

Labor trafficking and exploitation violate basic human rights and governments violate victims' rights when they fail to prevent trafficking, prosecute perpetrators, or provide effective remedies to trafficked or exploited persons. In Minnesota, workers labor without pay, in fear and in silence, despite an array of federal and state laws designed to protect them. Law enforcement, labor standards agencies, anti-discrimination agencies, service providers, and advocates increasingly identify and assist labor trafficking victims. After more than a decade on the books, however, only a handful of charges have been brought under Minnesota's labor trafficking law.

At the same time, many workers in Minnesota face other forms of labor exploitation that, while falling short of violating the criminal laws against trafficking, harms their ability to enjoy an adequate standard of living. Federal, state, and to some extent, municipal labor standards and anti-discrimination agencies handle thousands of cases annually. Despite these enforcement efforts, exploitative employers fail to give workers their last paychecks, make employees work off the clock, or otherwise engage in practices known as "wage theft."

Labor trafficking and labor exploitation overlap in significant ways. Industries with high rates of prohibited labor practices have correspondingly elevated rates of trafficking. Perpetrators of labor trafficking crimes often also engage in other exploitative practices such as the failure to pay overtime rates or minimum wage. While workers may experience a range of abuses that include both wage and hour violations and trafficking crimes, enforcement and services remain bifurcated. The overlap between labor trafficking and labor exploitation, combined with the differing legal responses, contributes to systemic breakdowns that fail to fully protect workers from either violation.



The correct identification of labor trafficking and labor exploitation forms the foundation for an effective response and was the most serious challenge interviewees identified. Workers, government agencies, and service providers reported difficulties in distinguishing routine wage theft from labor trafficking. Workers reportedly do not know the laws. Even when they know something is wrong, they do not know where to report and are afraid of deportation or retaliation for coming forward. Traffickers purposely magnify that fear and the barriers to seeking help by isolating and threatening their victims. Government agencies do not have consistent protocols for screening workers for trafficking or for sharing information, especially between the labor standards agencies tasked with combating labor exploitation and the law enforcement agencies that prosecute trafficking. Community organizations likewise struggle with

identifying whether a worker was experiencing trafficking or exploitation. They also reported frustrations with not knowing where to refer the victim for help.

Once identified, victims need protection and assistance in rebuilding their lives. Trafficking victims are afforded some protection under federal law, but the protection is hampered by several factors. First, adult foreign nationals must cooperate with law enforcement to receive assistance and protection from deportation. This leaves them dependent on the decisions of law enforcement agencies, and in some cases, those agencies do not secure the necessary protection for the victim. Second, federal law focuses on giving foreign nationals access to benefits without similar attention on the needs of domestic victims. Finally, even when trafficking victims are eligible, they may not be able to find housing or services, especially if they are male or transgender. Labor exploitation victims do not enjoy even the limited protections available to trafficking victims. The risk of deportation and the costs of bringing a case both deter workers from bringing a case.

Prosecuting labor traffickers is both an opportunity to secure justice and restitution for the victim and a deterrent to future acts of trafficking. State and federal law enforcement have increased



investigation and prosecution of labor trafficking, but gaps remain. The link between access to federal benefits and cooperation with law enforcement undermines victim credibility and harms the ability of federal law enforcement to prosecute traffickers. At the state level, lack of training and resources leaves the Minnesota labor trafficking statute almost entirely unused, though a recent case in Washington County may signal a new approach.

Effective enforcement of wage and hour laws can create an environment hostile to labor exploitation and traffickers alike. Gaps in wage and hour laws, combined with limited resources for enforcement, however, have allowed abusive employers to exploit workers with impunity.

One of the biggest remaining gaps is the lack of a comprehensive approach that encompasses both labor trafficking and labor exploitation. Coordination currently involves referring victims to different agencies or community organizations with little capacity for follow up or for the identification of problem employers or industries. Workers themselves often do not have the power to make these connections and create sustained pressure for change without risking retaliation from their employers.

As a result, victims of labor trafficking do not always receive a remedy for the labor exploitation they have experienced, while victims of labor exploitation are not routinely screened to identify whether labor trafficking has occurred. Patterns and practices of exploitation or trafficking within industries are not systematically shared and analyzed between the agencies that address labor exploitation and those that address trafficking. Better detection of labor exploitation could assist in identifying labor trafficking and improved prosecution of labor trafficking could be a deterrent to labor exploitation, but those opportunities are being lost.



CHAPTER 1

UNDERSTANDING LABOR TRAFFICKING AND LABOR EXPLOITATION

Labor trafficking and exploitation violate human rights, including the right to be free from slavery, to be free from discrimination, and to work with dignity. Labor trafficking and labor exploitation share many commonalities, including the types of industries where they occur and the characteristics of victims that put them at risk of abuse. Labor exploitation frequently occurs as part of labor trafficking and the two experiences can be hard to distinguish from the perspective of the victim. Federal and state law, however, approach the two experiences through two different legal mechanisms.

1. Labor Traffickers Target Vulnerable Workers

Labor trafficking occurs when an employer¹⁰ compels or tricks a worker into providing involuntary labor. The employer often uses violence, threats, manipulation of debt, blackmail, or fraud to compel victims to work. Typically, such work takes place in abusive conditions, such as an unsafe work environment, long hours without breaks, or work without pay. The Advocates received reports of clear cases of labor trafficking in Minnesota. The Advocates also heard more ambiguous stories, where the employer exercised some control over the worker, but no one examined whether the case rose to the level of trafficking.

Federal law provides certain **protections to individuals** defined by the federal Trafficking Victims Protection Act (TVPA) as a “victim of a severe form of human trafficking.” A severe form of trafficking is when a worker is trapped in involuntary servitude, peonage, debt bondage, or slavery through the use of force, fraud, or coercion.¹¹

Federal and state law each impose **criminal sanctions against perpetrators** of human trafficking. Federal laws against labor trafficking derive from the Thirteenth Amendment to the U.S. Constitution prohibiting “slavery or involuntary servitude.”¹² Congress originally created

¹⁰ The Advocates uses “employer” to include employers, recruiters, contractors, and others who have control over the worker.

¹¹ Trafficking Victims Protection Act, U.S. Code 22 §7102(9)(B).

¹² U.S. Constitution, 13th Amendment.

criminal offenses like peonage, enticement into slavery, sale into involuntary servitude, and other crimes to give force to the Amendment.¹³ The TVPA, passed in 2000, created new criminal statutes¹⁴ to penalize forms of human trafficking, including forced labor;¹⁵ trafficking with respect to peonage, slavery, involuntary servitude, and forced labor;¹⁶ and sex trafficking.¹⁷ Congress intended these new statutes to supplement rather than replace the existing criminal prohibitions.¹⁸ Minnesota passed a trafficking law in 2005, creating separate offenses for labor trafficking¹⁹ and sex trafficking.²⁰

TRAFFICKING IN FEDERAL AND STATE LAW

► Federal Labor Trafficking Definition

A severe form of trafficking is “the recruitment, harboring, transportation, obtaining, or providing of another for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”²¹

► Minnesota Labor Trafficking Definition

(1) The recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, for the purpose of:

- (i) debt bondage or forced labor services;
- (ii) slavery or practices similar to slavery; or
- (iii) the removal of organs through the use of coercion or intimidation;²² or

(2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).²³

13 See, e.g. Peonage, U.S. Code 18 §1581; Sale into involuntary servitude U.S. Code 18 §1584.

14 Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, 106th Cong. (2000 and all subsequent reauthorizations) 114 §1464.

15 Forced labor, U.S. Code 18 §1589. Note that federal law does not have a criminal statute for "labor trafficking."

16 Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, U.S. Code 18 §1590.

17 U.S. Code 18 §1591 (Sex trafficking of adults and minors, amended in 2015 to include the activities of solicitation and patronizing).

18 Federal criminal statutes also penalize unlawfully using documents to further a human trafficking scheme (U.S. Code 18 §1592) and financially benefiting from any form of human trafficking (U.S. Code 18 §1593A).

19 Minnesota Revised Statutes, §609.281.

20 Minnesota Revised Statutes, §609.322.

21 Trafficking Victims Protection Act, U.S. Code 22 §7102(9)(B). See Appendix for a complete list of statutes.

22 Trafficking in organs is not part of federal trafficking law, but is part of the international standard. The Palermo Protocol states: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Art. 3(a).

23 Minnesota Revised Statutes, §609.281.



The nature of labor trafficking makes accurate information on the prevalence of trafficking in Minnesota difficult to find.²⁴ While this report does not seek to establish prevalence, in interviews with The Advocates, government officials and service providers detailed 17 incidents of labor trafficking in Minnesota involving 36 victims²⁵ over the past five years.²⁶ These incidents illustrate common ways in which traffickers operate:

- An adult woman worked without pay as a nanny while the employer held her immigration documents and threatened to report her to Immigration and Customs Enforcement (ICE).²⁷
- Seven adult carnival workers on seasonal work visas worked in deplorable conditions under constant threats and received less than minimum wage.²⁸
- Two boys were violently forced by gangs to carry drugs.²⁹
- An adult woman working in an ethnic restaurant lived with continual threats and tried to pay off a constantly-rising debt to her employer.³⁰
- Three adults performed in a cultural group after their employer brought them to the United States with false promises and then kept them isolated and refused to pay their wages.³¹

Trafficking in persons is a predatory crime where perpetrators look for vulnerabilities they can exploit. The federal Trafficking in Persons (TIP) Report identifies poverty, migration status, criminal history, history of abuse, lack of housing, youth, and disability as characteristics that traffickers exploit to compel people to work.³² Women in particular are at high risk of labor trafficking and often experience sexual assault along with other forms of violence and mistreatment. Of the 17 cases reported to The Advocates, over half were women in domestic servitude.³³

Women are also at risk for concurrent sex and labor trafficking. In cases involving strip clubs, a victim may be exploited for both her labor (serving drinks, waiting tables) and commercial sex services (stripping, sexual activity for hire).³⁴ The Advocates heard reports of several individuals who experienced both labor trafficking and sex trafficking.³⁵ Similar factors, such as poverty, isolation, or history of abuse, can make women vulnerable to either form of trafficking.³⁶

24 This report does not attempt to determine the prevalence of human trafficking, but rather focuses on the systemic issues that affect the prevalence of trafficking: identifying and protecting victims, prosecuting crimes, and eliminating the conditions that allow labor trafficking and exploitation to occur.

25 The Advocates uses the term "labor trafficking victim" throughout this report to reflect the reality that these individuals are the victims of a crime. The Advocates recognizes that individuals who have overcome abuse and regained control of their lives may consider themselves labor trafficking survivors.

26 Other sources confirm the existence of trafficking in the state and reinforce the difficulty of identifying the prevalence. The National Human Trafficking Hotline reported receiving calls on 37 labor trafficking cases in Minnesota from 2012 to 2015 ("State Call Statistics: Minnesota," National Human Trafficking Resource Center, www.traffickingresourcecenter.org/state/Minnesota). The state of Minnesota issues a biannual report using data from service providers, law enforcement agencies, and nurses. Service providers reported working with 73 labor trafficking victims in 2013 and 2014. (Office of Justice Programs, "Human Trafficking in Minnesota: A Report to the Minnesota Legislature," Minnesota Department of Public Safety, September 2014, <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/2014%20Human%20Trafficking%20Report.pdf>).

27 Interviews 9, 30, & 38.

28 Interview 9.

29 Interview 9.

30 Interviews 4 & 21.

31 Interview 16.

32 U.S. Department of State, "Trafficking in Persons (TIP) Report," June 2016, 387-388, <http://www.state.gov/documents/organization/258876.pdf>. The U.S. Department of State prepares the annual Trafficking in Persons Report to monitor countries' anti-trafficking efforts against minimum standards set forth in the Trafficking Victims Protection Act of 2000, as amended (Div. A Pub. L. 106-386).

33 Interviews 4 & 38; see *also* Interviews 1, 4, 8, 9, 16, 18, 21, 25, 26, 27, 28, 30, 34, 36, 38, 41.

34 Interview 28.

35 Interviews 4, 28, & 41.

36 U.S. Department of State, "Trafficking in Persons Report," June 2009, 36, <http://www.state.gov/documents/>

Interviewees reported that traffickers beat victims, threatened them with physical violence, and threatened to harm victims' families in their home countries. Traffickers also threatened to have workers deported, either because the worker was undocumented, because the trafficker was holding their passports,³⁷ or because the worker's immigration status was dependent upon the employer.³⁸ These methods are not unique to the cases reported to The Advocates, but are found in trafficking cases throughout the United States.³⁹

While most reported labor trafficking cases in Minnesota involved foreign national workers, U.S. citizens, lawful permanent residents, and refugees are not immune to trafficking. One worker advocate stated that he sees people with criminal records or those who owe child support in situations that could be labor trafficking because they fear interaction with law enforcement.⁴⁰

This is consistent with the 2014 *Human Trafficking in Minnesota* report, which cites eight respondents who served domestic labor trafficking victims, including people from Minneapolis, Saint Paul, Fargo, unspecified towns in Minnesota, and Missouri.⁴¹ The TIP Report also identifies non-immigrant populations at risk of human trafficking, including: children in the child welfare and juvenile justice systems; runaway and homeless youth; children working in agriculture; American Indians and Alaska Natives; persons with disabilities; rural populations; and lesbian, gay, bisexual, and transgender individuals.⁴²

“Workers might have a reason to be off the books – child support, failed drug tests. If they find someone who will keep giving them work, they will put up with abuse.”

Interview 29

Federal law provides certain types of assistance to trafficking victims, namely immigration protections, access to public benefits, and case management services. Because these benefits are most relevant to foreign national victims, foreign nationals are more likely to be identified as trafficking victims. This leads to the perception that trafficking affects only foreign national workers, which in turn keeps the law's benefits targeted at that population.

[organization/123360.pdf](#).

37 Interviews 9 & 28.

38 The H-2B program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs. To qualify for H-2B nonimmigrant classification, the petitioner must establish that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work; employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and its need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary either because it is a one-time need or a seasonal need. See “H-2B Temporary Non-Agricultural Workers,” U.S. Citizenship and Immigration Services, <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers#H2-B%20Program%20Process>.

39 Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 80, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>. (Forms of coercion in labor trafficking cases through blackmail and intimidation: threats or use of violence (82%), intimidation and control (80%), deception concerning consequences (71%), and use or threatened use of law (71%)).

40 Interview 29.

41 Office of Justice Programs, “Human Trafficking in Minnesota: A Report to the Minnesota Legislature,” Minnesota Department of Public Safety, September 2014, 6 <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/2014%20Human%20Trafficking%20Report.pdf>.

42 U.S. Department of State, Trafficking in Persons Report, June 2016, 387-388, <http://www.state.gov/documents/organization/258876.pdf>.



LABOR TRAFFICKING ENFORCEMENT PROCESS

Labor trafficking offenses in Minnesota violate both federal law and state law. The two sets of laws follow a different format and contain different elements. However, the overall enforcement system is similar under federal and state laws.

The federal Trafficking Victims Protection Act (TVPA) delegates human trafficking enforcement responsibilities to the United States Department of Justice including the Federal Bureau of Investigations (FBI), the Department of Homeland Security's Homeland Security Investigations (HSI), and the Department of State (DOS).⁴³ In addition, the Department of Health and Human Services bears certain duties to enforce laws related to child trafficking and access to benefits and case management for all trafficking victims.⁴⁴ Virtually all federal agencies are required to collaborate and coordinate their response to human trafficking.⁴⁵

In Minnesota and nationally, federal labor trafficking cases often begin when the FBI or HSI launches an investigation. The investigators typically interview the potential victim, often in collaboration with the United States Attorney's Office.⁴⁶ After law enforcement has opened the investigation, the prosecutor decides whether and under which charges to seek an indictment and, eventually, a plea or prosecution. As the investigation progresses, the U.S. Attorney's Office may collaborate with the Department of Justice Civil Rights Division Human Trafficking Prosecution Unit.

City and county law enforcement agencies and county attorneys are responsible for enforcing the Minnesota labor trafficking laws. In many cases, local law enforcement and prosecutors may collaborate on investigation and prosecution with their federal counterparts through the Gerald D. Vick Task Force⁴⁷ and other cooperative arrangements.

⁴³ Code of Federal Regulations 28 §1100.29(c).

⁴⁴ U.S. Code 22 §7105(b)(1).

⁴⁵ President's Interagency Task Force to Monitor and Combat Trafficking in Persons, "Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017," January 2014, <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

⁴⁶ Interviews 28 & 30.

⁴⁷ "Gerald D. Vick Human Trafficking Task Force," City of St. Paul, <https://www.stpaul.gov/departments/police/about-department/major-crimes-division/narcotics-vice/gerald-d-vick>.

2. Labor Exploitation: Wage Theft is Widespread in Minnesota

Labor exploitation occurs when employers profit from the illegal treatment of their workers, but do not exert the level of control that characterizes labor trafficking. In interviews with The Advocates, workers reported that their employers engaged in many forms of exploitation, including:

- paying less than minimum wage;
- failing to pay all hours worked;
- failing to pay overtime;
- denying meal and rest breaks;
- taking illegal deductions from paychecks;
- cutting safety provisions;
- refusing to pay workers' compensation; and
- misclassifying employees as contractors to avoid payroll taxes, unemployment insurance, and other costs.⁴⁸

These actions violate the law and have a negative economic impact on workers.⁴⁹ While some labor violations can result in criminal prosecution, most violations of federal and state labor laws are resolved through administrative procedures.⁵⁰ Workers can also pursue their cases as private civil suits.

Denying workers fair pay, frequently referred to as “wage theft,” was the most common form of labor exploitation reported to The Advocates. Wage theft is also a key component of labor trafficking, since traffickers frequently use their control over their victims to cut their wages or stop paying wages altogether. In a recent national study, at least 80% of labor trafficking victims studied had also been victims of labor exploitation in the form of unpaid wages.⁵¹

Federal, state, and municipal laws⁵² govern conditions in the workplace, including wage and hour laws. While the federal Fair Labor Standards Act (FLSA) was passed in 1938,⁵³ Minnesota did not create a state counterpart until 1973.⁵⁴

The federal FLSA regulates minimum wages, overtime pay, child labor, and lactation breaks for nursing mothers.⁵⁵ Immigration status is irrelevant when determining whether a worker is protected

48 Workers may be subject to other abuses on the job, including sexual harassment; discrimination based on protected classes including race, national origin, religion, or sex; and assault, sexual assault, and other crimes.

49 The Economic Policy Institute estimates that, nationwide, employment and labor law violations such as these cost workers over \$50 billion each year. See Brady Meixell and Ross Eisenbrey, “An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year” Issue Brief #385, Economic Policy Institute, September 11, 2014, 2, <http://www.epi.org/files/2014/wage-theft.pdf>.

50 See, e.g., Wage and Hour Division, “Major Laws Administered/Enforced,” U.S. Department of Labor, <https://www.dol.gov/whd/regs/statutes/summary.htm>.

51 Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 80, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

52 The Fair Labor Standards Act, U.S. Code 29 §201-262; Minnesota Revised Statutes, §177.21-177.44; Minneapolis City Ordinances, Title 2, Chapter 40.

53 Fair Labor Standards Act, Public Law 6761, 75th Congress, Statute 52, (June 25, 1938).

54 Minnesota Fair Labor Standards Act, Laws of Minnesota for 1973, Chapter 721.

55 The Fair Labor Standards Act, U.S. Code 29 §201-219.



by the FLSA. The Eighth Circuit found that “employers who unlawfully hire unauthorized aliens must otherwise comply” with the FLSA.⁵⁶ If people perform work as employees, they are entitled to wages.

The Minnesota Fair Labor Standards Act (MFLSA) is the state law counterpart to the federal FLSA.⁵⁷ Like the FLSA, the MFLSA covers minimum wage, overtime, prevailing wages, as well as meal and rest periods. Minnesota has a separate law that covers breaks for nursing mothers, the Women’s Economic Security Act.⁵⁸ As with the federal law, immigration status is irrelevant to protection under the state statute.⁵⁹

There is extensive overlap between the businesses covered by the FLSA and by the MFLSA, since the state law covers every business in the state, many of which also meet the FLSA requirements of engaging in interstate commerce and having a gross volume of business over \$500,000. Though a business may be covered by both the FLSA and the MFLSA, each law may impose different standards. For example, agriculture and domestic service typically qualify for both minimum wage and overtime protections under state law, but not federal law.

Workers in businesses covered under both laws can pursue their claim under whichever law is most favorable. Overtime claims are typically brought under federal law, which requires overtime after only 40 hours of work per week (as opposed to 48 under state law). Industries such as agriculture and domestic service, however, have better protections under state law and so are pursued by state agencies. Workers who pursue a private right of action can bring cases in either state or federal court. In federal court, they can bring claims under both state and federal law.

WAGE THEFT IN FEDERAL AND STATE LAW

▶ Federal Fair Labor Standards Act⁶⁰

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: \$7.25 an hour.

▶ Minnesota Fair Labor Standards Act⁶¹

Except as otherwise provided in sections 177.21 to 177.35:

- (1) every large employer must pay each employee wages at a rate of at least: ...
 - (iii) \$9.50 per hour beginning August 1, 2016; and
- (2) every small employer must pay each employee at a rate of at least: ...
 - (iii) \$7.75 per hour beginning August 1, 2016

⁵⁶ *Lucas et al. v. Jerusalem Café*, 721 F.3d 927, 933 (8th Cir. 2013); see also *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299 (11th Cir. 2013) (finding that undocumented immigrants may recover unpaid wages under the FLSA).

⁵⁷ Minnesota Revised Statutes, §177.21-177.35.

⁵⁸ “Frequently Asked Questions about the Women’s Economic Security Act,” Minnesota Department of Labor and Industry, <http://www.dli.mn.gov/LS/FaqWesa.asp>.

⁵⁹ Interview 3.

⁶⁰ The Fair Labor Standards Act, U.S. Code 29 §206.

⁶¹ Minnesota Revised Statutes, §177.24.

Employers may fail to pay wages deliberately or through negligence, on a large scale affecting many workers or in a single instance. In interviews, workers and advocates described common practices of such employers in Minnesota, including:

- Failing to give workers their last paycheck (“They didn’t give me my last paycheck, but I hadn’t recorded my hours so I didn’t do anything.”)⁶²
- Not crediting workers for all hours worked (“I write down when I work and I keep all my checkout slips and it doesn’t match my checks. I suspect they are clocking me out for breaks I don’t take.”)⁶³
- Not paying overtime rates when a worker exceeds 40 (or 48) hours a week⁶⁴ (“It is not unusual for my husband to work 70 hours a week without being paid any overtime.”)⁶⁵
- Not paying minimum wage (“People don’t get paid enough, only \$5 or \$6 an hour. They don’t complain because they feel they broke the law by getting paid in cash.”)⁶⁶
- Requiring workers to work off the clock, especially before or after their shift (“If we are understaffed, we have to do extra work and not get paid for the extra time.”)⁶⁷
- Taking deductions for breakages of equipment or inventory, work materials, or anything not authorized by the employee (“We have to buy supplies for the company but don’t get reimbursed.”)⁶⁸
- Paying the worker late (“She still hasn’t gotten paid for two paychecks. Her manager said he would look into it and didn’t.”)⁶⁹

Employers may try to mask wage theft in a variety of ways. In some cases, they try to keep workers ignorant of what they are paid by refusing to provide any records to workers of their hours worked or pay rate. Some employers pay with a stored-value debit card and no pay stub, so workers do not even know exactly what they have been paid until they make a purchase. In other cases, employers use a flat daily, weekly, or monthly rate that masks the hourly wage. Finally, employers may misclassify employees as contractors to avoid wage and hour laws entirely.⁷⁰

Low-wage immigrant workers are particularly vulnerable to wage theft. In “Confronting Exploitation: The Face of Low-Wage Work in the Twin Cities,” a recent report on employee abuse conducted by the group *Centro de Trabajadores Unidos en Lucha* (CTUL), nearly half of the respondents said they had experienced wage theft in the past year.⁷¹ This is consistent with national statistics. In a study of workers in three major cities, the National Employment Law Project (NELP) found that

62 Interview 13.

63 Interview 14.

64 Federal law requires overtime pay after a non-exempt worker exceeds 40 hours in a work week, while Minnesota requires overtime pay after 48 hours of work in a week. See The Fair Labor Standards Act, U.S. Code 29 §207, and MN Revised Statutes, §177.25.

65 Interview 44.

66 Interview 11. Being paid in cash is not itself illegal, as long as the recipient reports that payment as income for tax purposes. However, even in cases where the worker is evading taxes, they are still owed minimum wage.

67 Interview 12.

68 Interview 12.

69 Interview 14.

70 Interview 2.

71 *Centro de Trabajadores Unidos en Lucha*, “Confronting Exploitation: The Face of Low-Wage Work in the Twin Cities,” November 2016, 1, <https://www.scribd.com/doc/289479974/FINAL-Confronting-Exploitation-CTUL-Report-on-Low-wage-Economy-English-Spanish-for-Print>.



43.6% of workers were not paid on time for all hours worked in the last year.⁷² The same study calculated that, as a result of workplace violations, low-wage workers in those cities lose more than \$56.4 million per week.⁷³

In interviews, workers noted they were denied breaks to use the bathroom or drink water.⁷⁴ Similarly, medical professionals reported instances of nursing mothers who were not allowed breaks to pump breastmilk, as well as diabetics who were not given breaks to regulate their insulin levels.⁷⁵ CTUL estimates that as many as 15% of workers receive no breaks at all, in violation of state law.⁷⁶

“I tried to take breaks and drink water and I got pressure not to do this. The supervisors wouldn’t let me and said I was political.”

Interview 12

Refusing to allow rest or meal breaks, making breaks unreasonably short, or not paying for short rest breaks are closely related to the failure to pay fair wages. In the national survey conducted by NELP, almost the same percentage of workers experienced a break time violation in the past week (69%) as experienced an overtime wage violation (76%).⁷⁷



⁷² Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 20, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

⁷³ Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 6, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

⁷⁴ Interview 12.

⁷⁵ Interview 44.

⁷⁶ *Centro de Trabajadores Unidos en Lucha*, “Confronting Exploitation: The Face of Low-Wage Work in the Twin Cities,” November 2016, 13, <https://www.scribd.com/doc/289479974/FINAL-Confronting-Exploitation-CTUL-Report-on-Low-wage-Economy-English-Spanish-for-Print>.

⁷⁷ Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 2-3, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

ENFORCEMENT OF WAGE AND HOUR LAWS

The U.S. Department of Labor Wage and Hour Division (DOL) enforces the federal FLSA. Complaints usually begin with a phone call from an employee whose rights were violated or someone who witnessed a violation. Investigators try to resolve small cases immediately; “A last paycheck issue, for instance, we can usually take care of over the phone.”⁷⁸ If the case is more complicated, an investigator will begin an investigation, which takes around 90 days. They can also recommend penalties against the employer. The district manager reviews the recommendation and imposes the penalty. If a company protests the penalty, the DOL will try to negotiate an agreement without going to court. If the employer and the DOL are unable to reach an agreement, the DOL forwards the case to the Solicitor’s office for prosecution. The Solicitor considers various factors when deciding whether to pursue a case, and if they decide not to litigate, the worker is referred to a private attorney.⁷⁹

The Minnesota Department of Labor and Industry Labor Standards unit (DLI) enforces the MFLSA. DLI responds to cases with different levels of intervention depending on the complaint. Investigators try to resolve small claims like last paycheck disputes immediately with a phone call or letter. Otherwise, investigations follow three general patterns: education, self-audit, or DLI audit.

*We inform and educate the employer if the employee was not harmed financially (cases such as no breaks or no earning statement). We ask employers to self-audit if we haven’t heard from them before. Right after the minimum wage increase, we got calls about people who didn’t get a raise, and we would send a letter asking the company to audit their own books and issue checks. We can also do an audit ourselves. Our investigators do a desk audit of two years of records in a full investigation.*⁸⁰

After the investigation, DLI sends a notice of initial findings to the employer and schedules a conference to resolve the case. If the employer refuses to pay, DLI issues an order and if the employer still refuses to pay, the case will have a hearing. According to one investigator, “It is very rare to get to the point where there is a hearing, we have only had two in the last eight years, and one was a default because the employer didn’t show up.”⁸¹

The Minneapolis Department of Civil Rights will also play an enforcement role when the City’s Sick and Safe Leave ordinance takes effect on July 1, 2017. For the first year, the Department will order corrective action when employers violate the ordinance, with full enforcement beginning on July 1, 2018.⁸²

78 Interview 20.

79 Interview 20.

80 Interview 3.

81 Interview 3.

82 “Minneapolis Safe and Sick Time Ordinance - an overview,” City of Minneapolis, <http://www.minneapolismn.gov/www/groups/public/@civilrights/documents/webcontent/wcmsp-184135.pdf>.



3. Labor Trafficking and Labor Exploitation Overlap

Trafficking and exploitation happen in similar industries and affect similar kinds of workers. Trafficking victims are frequently victims of many different forms of labor exploitation and abuse, with unpaid wages as the most common violation. While not every victim of unpaid wages is a victim of trafficking, labor trafficking frequently involves the failure to fully pay wages owed.⁸³ Victims of both labor trafficking and labor exploitation are also vulnerable to other kinds of abuses, such as sexual harassment, discrimination, and physical abuse. Immigrant women working in low-wage industries, in particular, experience high rates of sexual assault.⁸⁴

The trafficking incidents reported to The Advocates illustrate how traffickers engage in wage theft and other forms of labor exploitation. Eight of the 17 reports shared with The Advocates contained detailed information on the victims' experiences; in each, the victims experienced some form of unpaid wages. They were either not paid at all, not paid what they were owed, or not paid what they were promised. (See Table 2.1).



Table 2.1: Known Labor Exploitation in Labor Trafficking Reports⁸⁵

Type of Work	Number of Victims	Type of Labor Exploitation
Performance group	3	Unpaid wages
Domestic work/caregiver	1	Unpaid wages; sexual assault
Seasonal farm work	7	Unpaid wages; unsafe conditions
Drug trade	2	Force/involuntary servitude
Restaurant	1	Unpaid wages
Domestic work	7	Unpaid wages; sexual assault
Strip clubs	1+	Unpaid wages
Dairy farms	2+	Unpaid wages; unsafe conditions

⁸³ Labor trafficking cases not involving unpaid wages typically involved illegal services or criminal enterprises, such as petty theft or drug dealing.

⁸⁴ National Sexual Violence Resource Center, "Sexual Violence and the Workplace," 2013, http://www.nsvrc.org/sites/default/files/publications_nsvrc_overview_sexual-violence-workplace.pdf. For examples of two low-wage industries with high rates of sexual assault, see "Injustice on Our Plates: Immigrant Women in the U.S. Food Industry," Southern Poverty Law Center, 2010, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf and "Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the U.S. to Sexual Violence and Sexual Harassment," Human Rights Watch, May 2012, <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>.

⁸⁵ Interviews 4, 9, 16, 21, 30 & 38. Sources lacked enough information about the other cases to determine whether the trafficking victim had also experienced labor exploitation.

National evidence supports the pattern observed in Minnesota cases. In a recent national study, the majority of labor trafficking victims had experienced multiple forms of labor exploitation.⁸⁶

Labor trafficking and exploitation occur most frequently when workers are isolated or itinerant, where the employer/employee relationship is fissured, or where the underlying work is itself illegal. An investigation into the trafficking of migrant workers observed:

*Trafficking into forced labor is on the extreme end of a continuum of abuse of migrant workers...When workers fear reporting exploitation, employers can exploit with impunity. Widespread migrant labor abuse – including trafficking – is the result of robust demand for low-wage workers, the absence of federal immigration reform, ineffective labor laws, and migrants' fears of detection, detention, and deportation.*⁸⁷

As the National Employment Law Project notes, “[s]ome industries and occupations are rife with multiple violations, suggesting that non-compliance with employment and labor laws may have become a standard business practice.”⁸⁸

Physical isolation and high mobility deter workers from seeking help for both labor exploitation and trafficking. Traffickers purposefully exacerbate this isolation to control their victims. Workers may live on site or in housing provided by the trafficker. They may depend on the trafficker for transportation to job sites. Traffickers may move workers from location to location to minimize opportunities for workers to form relationships with outsiders who may be able to help them. Traffickers may control workers’ access to identity documents and money, making it difficult to leave.

Fissured industries – those with high rates of subcontracting and independent contracting – have high rates of both labor trafficking and exploitation. Workers have trouble identifying who is responsible for their illegal treatment, especially when the original contracting company does not know about how workers are paid or treated on the job.

Trafficking also occurs in illicit activities, such as the drug trade, commercial sex industry, or panhandling operations.⁸⁹ Individuals forced to participate in illegal or semi-legal industries often fear arrest and prosecution for their involvement in the underlying criminal activity.⁹⁰

86 Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 80, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

87 Denise Brennan, *Life Interrupted: Trafficking into Forced Labor in the United States* (2014), 5, <https://www.scribd.com/document/201942352/Life-Interrupted-by-Denise-Brennan>.

88 Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 39, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

89 While labor trafficking is still not commonly recognized in these areas, cases in these industries can be understood as similar to the sex trafficking of individuals engaged in criminal activity through prostitution or solicitation. See U.S. Department of State, “Trafficking in Persons Report,” June 2014, 14, <http://www.state.gov/documents/organization/226844.pdf>.

90 Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 167, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

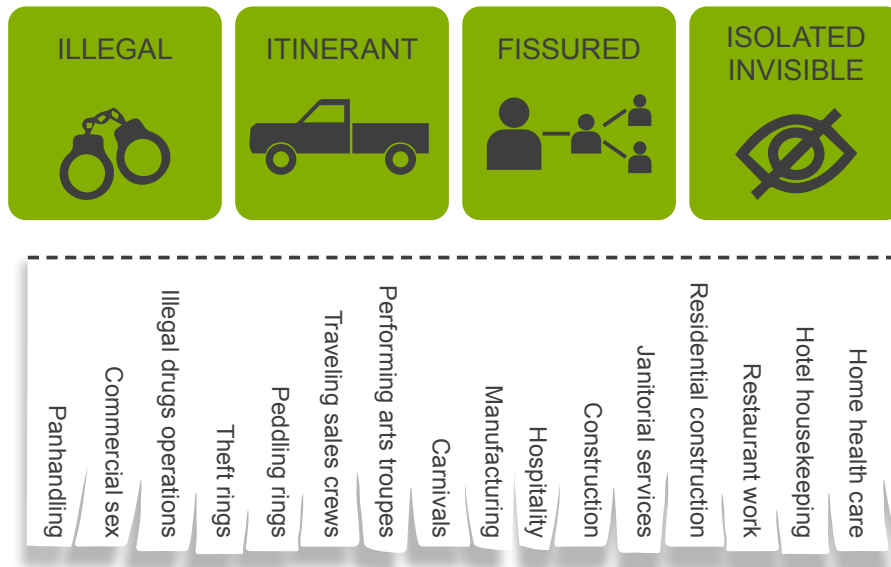
(“Relatively simple terms such as ‘work’ or ‘services’ can be challenging to apply, particularly when the police identify people ‘working’ in informal economies such as drug markets, hustling, or commercial sex industries.”)



NEED A JOB?



Help wanted in the following high-risk industries:



4. International Standards Prohibit Trafficking and Exploitation

International human rights treaties state that everyone has the right to be free from slavery, servitude, and other forms of involuntary work.⁹¹ Ending forced or compulsory labor is one of the four fundamental principles that the International Labour Organization (ILO) calls on all countries to uphold regardless of whether they have ratified other ILO conventions.⁹² This prohibition is widely incorporated into domestic law; both the U.S. and Minnesota constitutions prohibit slavery and involuntary servitude,⁹³ while federal and state law criminalize slavery, peonage, forced labor, and debt bondage.⁹⁴

⁹¹ The prohibition against slavery is recognized as a peremptory norm (*jus cogens*), which applies to every nation state at all times regardless of whether it has ratified a specific treaty. The 1926 Slavery Convention (September 25, 1926) and its amending 1953 Protocol, to which the United States is a party, specifically prohibit slavery. Article 8 of the International Covenant on Civil and Political Rights (ICCPR) (December 16, 1966) recognizes the right to be free from slavery, servitude, and other forms of involuntary work.

⁹² "Declaration of Fundamental Principles and Rights at Work," International Labour Organization, June 18, 1998,7, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf.

⁹³ U.S. Constitution, 13th Amendment; Minnesota Constitution, Art. 1, Sec. 2. (Both prohibit slavery and involuntary servitude other than as a punishment for a crime for which the person was convicted.)

⁹⁴ Trafficking Victims Protection Act, U.S. Code 22 §7102; Minnesota Revised Statutes, §609.281.

A multi-faceted framework to ending slavery and involuntary servitude worldwide emerged as part of international efforts to combat transnational crime. In 2000, the Palermo Protocol called for international action and cooperation to prevent and combat trafficking in persons and to protect victims.⁹⁵ Under the Protocol, governments must criminalize human trafficking and enact measures to protect victims.⁹⁶

The obligation to protect victims arises independently and exists regardless of whether criminal charges are or can be brought against the perpetrators.⁹⁷ According to the Protocol, “Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory ... [and] each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁹⁸

Human rights standards also prohibit labor exploitation, recognizing work as an essential human endeavor in which all persons deserve to be treated with dignity.⁹⁹ Human rights law guarantees the right to earn wages that ensure workers and their families an existence worthy of human dignity,¹⁰⁰ reasonable limits of working hours and periodic holidays with pay,¹⁰¹ and decent working conditions once employed.¹⁰² International standards speak to the right to fair wage,¹⁰³ the right to equal pay for equal work,¹⁰⁴ and the right to decent living.¹⁰⁵ Human rights law not only calls on

95 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Art. 2.

96 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Art. 3(a). (“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.)

97 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Art. 6.

98 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Art. 6. (States are encouraged to protect the privacy and identity of victims to the extent possible, keep victims informed about relevant proceedings against the perpetrators, and provide for the physical, psychological and social recovery of victims of trafficking in persons.)

99 The International Labor Organization gives guidance on how to implement the broad protections for workers found in international human rights law. Founded in 1919, the International Labour Organization (ILO) promulgates international labor standards in consultation with 187 member states, employer, and worker representatives. Since the mid-1990s, however, the ILO has shifted away from treaties toward the promotion of Core Labor Standards, and the increasing inclusion of human rights standards in multi- and bilateral trade agreements has shifted enforcement away from the ILO.

100 Universal Declaration of Human Rights, December 10, 1948, Art. 23(3); International Covenant on Economic, Social, and Cultural Rights, December 16, 1966, Art. 7(a).

101 UN Committee on Economic, Social, and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), April 27, 2016, II(d), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/GC/23&Lang=E>; Universal Declaration of Human Rights, December 10, 1948, Art. 24.

102 International Covenant on Economic, Social, and Cultural Rights, December 16, 1966, Art. 7(b).

UN Committee on Economic, Social, and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), April 27, 2016, II(a)(2), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/GC/23&Lang=E>. (All workers have the right to a fair wage. The notion of a fair wage comprises both a minimum wage and a living wage. Where workers have precarious arrangements, supplements to the wage may be necessary to mitigate the lack of job security. Workers should not have to pay back part of their wage for work already performed. Workers should receive all wages and benefits legally due upon termination. In the event of bankruptcy workers should be treated as privileged creditors. Prisoners who accept work should receive a fair wage.)

104 UN Committee on Economic, Social, and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), April 27, 2016, II(a)(3), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/GC/23&Lang=E>. (Workers should receive equal remuneration when they perform the same jobs and when the work they perform in different jobs is of equal value. This includes the particular problem of gender bias in wages, but extends to other forms of discrimination.)

105 UN Committee on Economic, Social, and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), April 27, 2016, II(a)(4), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/GC/23&Lang=E>.



governments to prohibit the exploitation of workers but also to take active measure to ensure their rights are fulfilled.¹⁰⁶

Violations of individuals' rights in the workplace in turn affect their ability to enjoy other fundamental human rights. Without an adequate wage, workers cannot fulfill their right to food or housing.¹⁰⁷ Without limitations on working hours, workers will not enjoy their right to rest and leisure or their right to health.¹⁰⁸



¹⁰⁶ UN Committee on Economic, Social, and Cultural Rights, General Comment 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), April 27, 2016, III(b)(60), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/GC/23&Lang=E>.

¹⁰⁷ Universal Declaration of Human Rights, Art. 25.

¹⁰⁸ Universal Declaration of Human Rights, Art. 24 & 25.



CHAPTER 2

IDENTIFYING TRAFFICKED AND EXPLOITED WORKERS



Miguel was part of a group of immigrants recruited in their home countries for jobs in the United States. The employer obtained temporary visas for them, and they left their families behind to come to Minnesota with the agreement that the employer would pay them well as they traveled around the United States. Instead, the employer did not pay the employees as promised. Miguel complained and the boss threatened to call police and immigration. When immigration officers investigated, they used the boss as an interpreter, leaving Miguel unable to explain what was really happening. Immigration and Customs Enforcement (ICE) started deportation proceedings against Miguel. When he tried to find a lawyer, he was referred from one place to another and no one could help him. Eventually, Miguel told a service provider that he felt “like a slave,” and people finally understood what had happened to him. A federal law enforcement agency interviewed him through an interpreter and he finally received the help he needed. The biggest challenge by far was “getting someone to listen.”

Interview 16

Much of the system designed to prevent and respond to labor trafficking and exploitation relies on individuals coming forward with complaints of illegal working conditions, but workers face many barriers to reporting workplace violations. Workers may not recognize themselves as crime victims or may not know where or how to report the crimes. They often lack knowledge of their rights or lack trust in the legal process. Traffickers and abusive employers take advantage of these barriers, targeting workers who are the least likely to complain about their treatment.

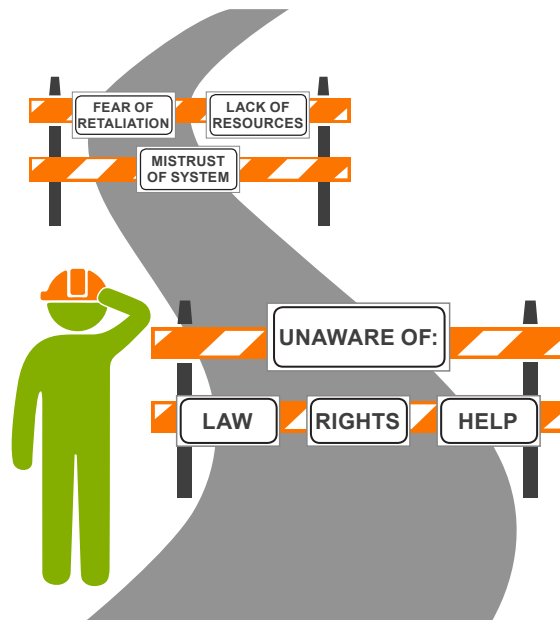
Government agencies have an obligation to overcome these barriers in order to effectively address human rights abuses. They face their own challenges, however, in identifying trafficking and exploitation. In part these challenges are due to a need for training, increased awareness, and tools. Nongovernmental organizations report similar challenges. When potential victims do come

forward, advocates, service providers, and enforcement agencies too often incorrectly classify their reports or do not know how to respond to the problem.

1. Workers Face Significant Barriers to Seeking Help

Trafficked and exploited workers cannot easily seek help for many reasons. Poverty, isolation, and dependent family members all may make it difficult for workers to leave an exploitative situation. Some have limited English proficiency, making it difficult for them to communicate what they are experiencing. Others have criminal records or uncertain immigration status and fear arrest or deportation if they complain. Finally, many believe that the system cannot or will not protect them from harm because they are poor, undocumented, or a racial or ethnic minority.

Service providers and government officials reported that these factors put workers at risk for both trafficking and exploitation. At least one of these factors was present in all of the labor trafficking cases reported to The Advocates.¹⁰⁹ These characteristics make it more challenging for the worker to seek help for both minor and serious workplace abuses by raising the potential costs of making a report while decreasing opportunities to connect with potential help.



Exploitative employers often seek out workers from their own cultural community and language group. They exploit those cultural ties by threatening consequences in the victims' home countries and providing misinformation about U.S. law under the guise of helping.¹¹⁰

Workers do not identify themselves as victims of labor trafficking and exploitation

Trafficked workers may not recognize themselves as victims of a crime despite the severity of their situations, even when they have an opportunity to report the abuses they suffer. Law enforcement officials and service providers reported that victims often feel they entered into the original employment agreement voluntarily and so they cannot be victims of trafficking.¹¹¹ Workers may also believe that they do not have the right to report misconduct, or would be in trouble for reporting, because of their immigration status, criminal record, or current conduct.¹¹²

¹⁰⁹ Interviews 4, 9, 16, 21, 30 & 38. See also U.S. Department of State, "Trafficking in Persons Report," June 2016, 388, <http://www.state.gov/documents/organization/258876.pdf>.

¹¹⁰ Interviews 26 & 28. See also U.S. Department of State, "Trafficking in Persons Report," July 2015, 352, <https://www.state.gov/documents/organization/245365.pdf>. (Identifying "employees of businesses in ethnic communities" as particularly vulnerable to trafficking.)

¹¹¹ Interview 48.

¹¹² Interviews 9 & 28.



When it comes to more routine workplace violations, workers, service providers, and government officials all reported that immigrants often do not know their rights.¹¹³ According to one leader, “People do not know what counts as harassment and what to do. People do not know what minimum wage is, if something illegal happened, and how to advocate for themselves.”¹¹⁴ Immigrant workers bring with them their experiences from their home countries, where a flat day rate might be the accepted practice. They do not recognize that they are owed a minimum hourly wage that the day rate does not cover.¹¹⁵ Language differences further impede immigrant workers. One service provider reported that its clients often “sign contracts without understanding what they sign.”¹¹⁶



Miguel knew something was wrong but because he did not describe it as trafficking, he had trouble getting the help he needed.

In other instances, workers may know that something is wrong with the way they are treated at work, but not recognize it as illegal treatment. For instance, workers may know they are not being paid, but not recognize this treatment as an element of a human trafficking violation. The inability to distinguish between trafficking, exploitation, and practices that are unfair but legal makes

it difficult for workers to know where to go for help.

Compounding this problem, immigrants may have preconceptions about how U.S. laws operate. Undocumented workers may assume that they are not protected by labor and employment laws.¹¹⁷ They may also believe that the government cannot be trusted to treat them fairly.¹¹⁸

Workers who do want to report misconduct do not always know where to go for help. Multiple agencies at the local, state, and federal level oversee different types of workplace protections for different industries and different types of workers. Many service providers reported frustration in having to make multiple phone calls to find assistance. Workers often did not have the time or resources to contact many different agencies in search of the correct one. As one provider noted, “Once you have found the right phone number, they are very supportive and responsive,”¹¹⁹ the barrier lies in figuring out where to go.

Fear keeps workers from complaining

Knowing their rights is not enough. Workers must also feel safe enough to complain when those rights are violated. While legal protections against violence, intimidation, and retaliation exist, interviewees reported that fear nonetheless prevents many workers, especially trafficking victims, from making complaints.

Traffickers were reported to use or threaten violence or to blackmail their victims.¹²⁰ Physical or sexual assault, deprivation of basic necessities, and isolation coerced workers into staying quiet. Trafficking victims may fear retaliation against family living abroad who remain liable for debts owed to the traffickers. In addition to fear, victims may feel ashamed that they allowed themselves to be trapped in a trafficking situation, especially if they experienced sexual assault.

¹¹³ Interviews 10, 11, 12, 13, 19, 22, 23, 31, 41, 42, & 43.

¹¹⁴ Interview 35.

¹¹⁵ Interview 5.

¹¹⁶ Interview 26.

¹¹⁷ Interview 10.

¹¹⁸ Interview 9.

¹¹⁹ Interview 32.

¹²⁰ Interviews 9, 28, & 30.



Miguel's trafficker threatened to report him to the police and immigration to keep him from complaining.

Traffickers reportedly lied to immigrant victims, claiming the government would not help them because they did not have passports or valid visas. Traffickers threatened to report foreign national workers to police or immigration authorities, claiming to have the ability to revoke the immigration status of workers on employer-sponsored immigration status or to have the workers arrested.¹²¹ Traffickers also compelled

victims to perform criminal acts, and then threatened to report the victims to the police.¹²²

Traffickers also work to foster a sense of dependency by requiring their victims to live in places they control, providing food and transportation, and serving as the only contacts the victims have in their communities. Victims fear leaving the trafficking situation and losing the ability to fill their basic needs.

In an exploitative situation that falls short of trafficking, retaliation can take many forms, including: cuts in hours, reassignment to less desirable shifts, job loss, or reports to immigration. Workers reported that they feared retaliation if they raised workplace issues with their supervisors, higher-level management, legal aid lawyers, or government agencies.¹²³ Some workers had experienced retaliation (“I was fired for a workplace safety complaint”¹²⁴), while others are too afraid to even initiate a complaint (“The patient was afraid to lose her job and she did not want to take any chances”¹²⁵).

Workers and organizers reported routinely being harassed when they spoke about workers’ rights.¹²⁶ One worker, after being approached by an organizer, recalled that his supervisor called him into his office, questioned him about the conversation, and tried to force him to sign papers about the incident.¹²⁷ According to another worker, “It’s good to know your rights, but then employers want to get rid of you.”¹²⁸ One organizer claimed that employers sometimes enlisted city government in their efforts, calling the police to have him removed from job sites.¹²⁹ This extends to exploiting language differences as well. One organizer reported, “I am bilingual, so employers thought if I was gone, workers wouldn’t be able to complain and they tried to push me out.”¹³⁰

In most cases, workers felt dependent on the income from their jobs and feared a complaint might lead to losing hours or

31% of low-wage workers would never complain about workplace conditions because they fear retaliation.

121 Interviews 9 & 16. See also Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, 80, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF> (forms of coercion in labor trafficking cases through blackmail and intimidation: threats or use of violence (82%), intimidation and control (80%), deception concerning consequences (71%), and use or threatened use of law (71%)).

122 Interview 9.

123 Interviews 6, 12, 13, 22, 32, 43, & 44.

124 Interview 12.

125 Interview 44.

126 Interview 14.

127 Interview 12.

128 Interview 13.

129 Interview 5.

130 Interview 29.



even their jobs. One worker explained, “We are afraid of who will take care of our families if we get fired.”¹³¹ Even in cases where employers do not pay any wages, workers may still not complain in hopes that the employer will resume payment in the future. The Advocates heard repeatedly that workers are unwilling to report violations, believing the saying, “don’t bite the hand that feeds you.”¹³²

The problem is widespread. In *Centro de Trabajadores Unidos en Lucha*’s survey of nearly 200 low-wage workers, 31% said they would never complain about workplace conditions because they fear retaliation.¹³³ A National Employment Law Project study of low-wage workers in three major cities found 42.8% of workers reported retaliation by an employer for a complaint.¹³⁴

Protecting victims from retaliation is difficult. While both federal and state laws prohibit retaliation against victims in criminal and civil proceedings, these protections may fall short when it comes to protecting victims from violence and intimidation. Defendants in criminal cases have a constitutional right to confront their accuser.¹³⁵ Because witnesses cannot remain anonymous, intimidation of witnesses is itself a crime. It is a felony offense to obstruct justice by tampering with a witness in a federal trafficking investigation¹³⁶ or to intimidate witnesses in relation to any federal prosecution.¹³⁷ In Minnesota, obstruction of justice¹³⁸ and witness tampering are crimes.¹³⁹ These laws, however, apply only in the context of criminal prosecutions; if a case is not prosecuted, a victim may not be protected.

State and federal wage and hour laws protect workers against retaliation in the workplace,¹⁴⁰ such as firing, demotion, and changes in pay, hours, or shifts. Protection from workplace retaliation has two elements: first, confidentiality for the complainant; and second, strong penalties against retaliation in wage and hour law with civil remedies for the worker.

Unlike criminal cases, when either the state or federal labor standards agencies start an investigation, all details of the investigation are confidential.¹⁴¹ The federal Department of Labor (DOL) will not reveal to an employer if a worker initiated a complaint, though the identity of the complainant may come out in interviews as they try to establish whether an individual was not paid for hours worked.¹⁴² The Minnesota Department of Labor and Industry (DLI) must go back to the workers for permission if they cannot establish a wage and hour violation without revealing which workers reported unpaid hours.¹⁴³

Despite precautions, workers’ identities may be revealed in the course of an agency investigation. In addition, workers who complain internally or sue their employers are identified in the process. While both state and federal labor standards law prohibit retaliation, it may be difficult for workers to receive an adequate remedy.

131 Interview 12.

132 Interview 29.

133 *Centro de Trabajadores Unidos en Lucha*, “Confronting Exploitation: The Face of Low-Wage Work in the Twin Cities,” November 2016, 14, <https://www.scribd.com/doc/289479974/FINAL-Confronting-Exploitation-CTUL-Report-on-Low-wage-Economy-English-Spanish-for-Print>.

134 Annette Bernhardt and others, “Broken Laws, Unprotected Workers,” National Employment Law Project, 2009, 20, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

135 U.S. Constitution, Amend. 7; *Crawford v. Washington*, 541 U.S. 36 (2004).

136 U.S. Code 18 §1590.

137 U.S. Code 18 §1512(a)(2).

138 Minnesota Revised Statutes, §609.50.

139 Minnesota Revised Statutes, §609.498.

140 U.S. Code 29 § 215(a)(3).

141 Interview 3 & 20.

142 Interview 20.

143 Interview 3.

Under federal law, an employer who retaliates is liable for “employment, reinstatement, lost wages, and liquidated damages equal to the wages.”¹⁴⁴ The worker must show that he “participated in a statutorily protected activity, that [defendants] took an adverse employment action against him, and that there was a causal connection between them.”¹⁴⁵ Oral and written complaints to internal management count as complaints that can trigger the retaliation provisions. The federal DOL has no additional penalties to apply in cases where the employer retaliates against the complaining worker. The DOL could seek an injunction to prevent an employee from being fired after an investigation begins, but does this very rarely.¹⁴⁶

Minnesota law is more expansive. Under the Minnesota Fair Labor Standards Act, “Any employer may be fined between \$700 and \$3000 for discharging or otherwise discriminating against an employee for bringing up a wage and hour concern, either to the employer or to the Department of Labor and Industry.”¹⁴⁷ In addition, the Minnesota Whistleblower Act also protects employees who report illegal conduct by their employer.¹⁴⁸ The DLI cannot pursue the whistleblower claim; the worker must pursue it as a private right of action.¹⁴⁹

APPLICATION OF CONCERTED ACTIVITY LAWS

Workers are legally allowed to discuss their conditions of work and learn their rights as workers. The National Labor Relations Act (NLRA) guarantees the right to engage in “concerted activity,” defined as two or more employees taking action to better the terms and conditions of their employment, such as increasing pay or improving workplace safety. The law protects workers when discussing working conditions among themselves and when voicing complaints to their employer or to a government agency.¹⁵⁰

However, NLRA protection does not extend to a large segment of the workforce. Agricultural workers, domestic workers, and independent contractors are excluded from coverage¹⁵¹— the very people who are most likely to experience workplace rights violations.

Traffickers use immigration status to silence workers

Protections against retaliation, however, fall short for many foreign national workers. Traffickers and exploitative employers exploit workers’ fear of deportation. While even documented immigrants worry that a labor complaint could hurt their immigration status,¹⁵² this fear primarily affects undocumented immigrants and their family members.¹⁵³ Abusive employers “explicitly threaten to

144 Fair Labor Standards Act, U.S. Code 29, §215(a)(3), 216(b)

145 *Pearson v. City of Big Lake, Minnesota*, 689 F.Supp.2d 1163 (D. Minn. 2010) (citing *Grey v. City of Oak Grove*, 396 F.3d 1031, 1034–35 (8th Cir.2005).

146 Interview 20.

147 Minnesota Revised Statutes, §177.32 (2).

148 Minnesota Revised Statutes, §181.932.

149 Interview 3.

150 “Employee Rights,” National Labor Relations Board, <https://www.nlr.gov/rights-we-protect/employee-rights>.

151 National Labor Relations Act, U.S. Code 29 §152.

152 Interview 35.

153 Interviews 10, 23, 29, 41, & 44.



What do they expect? They're illegal – they don't have rights.

Anti-immigrant rhetoric in the public sphere increases fear and makes it easier for traffickers to discourage workers from reporting abuses.

call immigration” about undocumented immigrants.¹⁵⁴ These threats are effective. One legal service provider reported a case where the worker was so afraid of having his status discovered that he abandoned his case and left Minnesota.¹⁵⁵

To come forward and report abusive behavior, undocumented immigrants and others with worries about their status need protections against discovery and deportation. While labor standards and

anti-discrimination agencies do not ask complainants about their immigration status unless it is relevant to the case,¹⁵⁶ employers may try to discover the employee's status in litigation. Judges do not always shield status from discovery despite the chilling effect this has on immigrants' willingness to bring labor complaints.¹⁵⁷

If an employer already knows or discovers during the labor investigation that the workers are undocumented, those workers face the possibility that the employer will report them to immigration enforcement for deportation. According to agency policy, ICE should exercise prosecutorial discretion and not deport immigrants engaged in “a legitimate effort to protect their civil rights or civil liberties.”¹⁵⁸ In practice, immigrants with legitimate complaints are deported so frequently that the federal DOL developed a policy of maintaining contact with them in their home countries so the workers can receive any wages owed.¹⁵⁹ The overall number of deportation cases that ICE does not pursue through prosecutorial discretion remains very low and only a tiny fraction of those cases are immigrants who have a civil liberties complaint such as a workplace violation.¹⁶⁰

2. Government Agencies Do Not Consistently Identify Trafficking Victims

Trafficking victims may interact with government agencies for a variety of reasons. The government has an obligation to ensure it can identify victims and provide the appropriate help. Labor standards agencies, anti-discrimination agencies, and law enforcement have jurisdiction over workplace issues or criminal trafficking prosecution and are most likely to encounter victims of labor trafficking.

Both the DOL and the DLI reported that investigators or specially trained staff with knowledge of

154 Interview 44; see also Interview 5.

155 Interview 39.

156 Interviews 20 & 24.

157 Interview 39.

158 John Morton, Director, ICE to All Field Office Directors, Special Agents in Charge, Chief Counsel, memorandum, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs,” U.S. Immigrations and Customs Enforcement, June 17, 2011, 2, <http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>; see also the Revised Memorandum of Understanding between the Department of Homeland Security and the U.S. Department of Labor and other labor rights agencies, which prohibits ICE from initiating worksite enforcement at any employer engaged in an active labor dispute. (“Immigration and Labor Enforcement in the Workplace,” National Employment Law Project and National Immigration Law Center, May 20, 2016, <https://www.nilc.org/wp-content/uploads/2015/11/ImmigrationLaborEnforcementWorkplace.pdf>.)

159 Interview 20.

160 “Case-by-Case Review Statistics,” American Immigration Council, April 24, 2012, <http://www.immigrationpolicy.org/sites/default/files/docs/DHS-PD-stats-4-24-2012.pdf>.

LABOR STANDARDS AGENCIES

U.S. Department of Labor
MN Department of Labor
and Industry

ANTI-DISCRIMINATION AGENCIES

Equal Employment
Opportunity Commission
MN Department of Human
Rights

Minneapolis Department of
Civil Rights

LAW ENFORCEMENT AGENCIES

Federal Bureau of
Investigations
Homeland Security
Investigations
Immigration and Customs
Enforcement
City police departments
County sheriffs
U.S. Attorney's Office
County/city attorneys

OTHER AGENCIES

Occupational Safety and
Health Administration
MN Department of Health
MN Department of Human
Services
County child protection
Public schools
Business licensing and code
enforcement

wage and hour laws conduct intake.¹⁶¹ According to one labor standards official, "Screening calls and identifying [labor exploitation] cases is not difficult."¹⁶² Nevertheless, neither agency reported any labor trafficking cases identified through their own screening processes.¹⁶³ They also did not report regular referrals for labor exploitation cases from the agencies that work on labor trafficking.¹⁶⁴

Increased resources, additional inter-agency coordination, and new enforcement and prosecution priorities promise to build a more cohesive identification system across agencies. The federal government recently created an Anti-Trafficking Coordination Team (ACTeam) in Minneapolis tasked in part with outreach and screening of new labor trafficking referrals, which brings together the DOL, FBI, Homeland Security Investigations (HSI), and the U.S. Attorney's Office.¹⁶⁵ This team joins local law enforcement colleagues at the Minneapolis Police Department, which has been an early leader in Minnesota's anti-trafficking efforts, and the state Gerald D. Vick Human Trafficking Task Force. In spite of these developments, interviewees consistently reported that they lacked the necessary protocols needed for the routine identification of labor trafficking.

Other agencies, such as child protection, public health, schools, and business licensing, can also play a crucial role in identifying labor trafficking. Expanded training and awareness can build on the approach taken to address sex trafficking, where the No Wrong Door model specifies that "any professional who encounters youth should be trained to recognize the signs of sexual exploitation."¹⁶⁶ No similar model yet exists for labor trafficking, though interviewees indicated

¹⁶¹ Interview 3.

¹⁶² Interview 20.

¹⁶³ Interview 20.

¹⁶⁴ Interview 3, 20 & 30.

¹⁶⁵ U.S. Attorneys' Office, "Departments of Justice, Homeland Security and Labor Announce Selection of Phase II Anti-Trafficking Coordination Teams," U.S. Department of Justice, December 17, 2015, <https://www.justice.gov/usao-or/pr/departments-justice-homeland-security-and-labor-announce-selection-phase-ii-anti->; Editorial Board, "Minnesota Leads on Anti-Trafficking Fight," Star Tribune, December 23, 2015, <http://www.startribune.com/minnesota-leads-on-anti-trafficking-fight/363426191/>.

¹⁶⁶ Office of Justice Programs, "No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota's Sexually Exploited Youth," Minnesota Department of Public Safety, January 2013, [https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20\(FINAL\).pdf](https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20(FINAL).pdf).



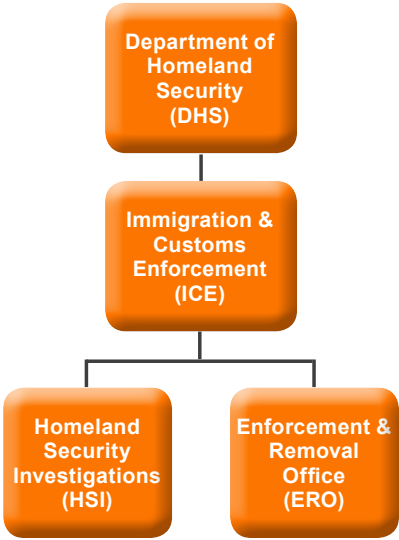
a growing interest in a statewide effort to increase identification of labor trafficking.

In addition to clear screening protocols, interviewees indicated a need for training on the vulnerabilities commonly exploited by traffickers, including language barriers and immigration status, and how those vulnerabilities may be exacerbated by agency practices.

Miguel’s story, in which the trafficker served as the interpreter during an immigration investigation, illustrates this problem. In that case, the failure to provide an independent interpreter not only impaired the ability to identify the acts of trafficking, it furthered the trafficker’s scheme of coercion by making it appear as though the trafficker controlled the legal process. Recognizing this problem, one law enforcement agency is prioritizing the use of interpreters in all contact with victims: “We need to have a linguist present for any victim interviews, even when the victim speaks some English ... that helps U.S. to get the cultural perspective on what happened.”¹⁶⁷

Similarly, lack of stable immigration status prevents victims from reporting trafficking and places them at risk of retaliation by traffickers. For foreign national labor trafficking victims, ICE, an agency within the Department of Homeland Security, is often the first - and only - governmental agency they encounter. Within ICE, the relatively new division known as HSI is tasked with investigating human trafficking and other serious transnational criminal activity.¹⁶⁸ HSI agents work closely with their counterparts at the FBI, U.S. Attorney’s Office, and local law enforcement. In addition, ICE’s worksite enforcement strategy targets employers who violate employment laws or engage in abuse or exploitation of workers. Investigative standards for worksite enforcement include looking for evidence of the mistreatment of workers.¹⁶⁹

The vast majority of ICE’s work, however, is handled by the Enforcement and Removal Office (ERO).¹⁷⁰ ERO’s priority is identifying, detaining, and deporting people who have violated U.S. immigration laws,¹⁷¹ dwarfing any efforts to identify and help trafficking victims. While the 2008 Trafficking Victims Protection Reauthorization Act requires ICE to screen some unaccompanied immigrant children for trafficking,¹⁷² there is no mandate or reported protocol for screening others for human trafficking before initiating removal proceedings, negotiating stipulations of removal, or reinstating removal orders.¹⁷³



167 Interview 28.
 168 U.S. Immigration and Customs Enforcement, “Homeland Security Investigations,” U.S. Department of Homeland Security, <https://www.ice.gov/hsi>.
 169 U.S. Immigration and Customs Enforcement, “Worksite Enforcement,” U.S. Department of Homeland Security, <https://www.ice.gov/worksite>.
 170 In 2014, the St. Paul office of ICE apprehended 3,834 individuals. ERO apprehended 95.31%, or 3,654 people, while HSI apprehensions accounted for 4.69%, or 180 people. See Office of Immigration Statistics, 2014 Yearbook of Immigration Statistics, U.S. Department of Homeland Security, August 2016, Table 35, https://www.dhs.gov/sites/default/files/publications/ois_yb_2014.pdf.
 171 U.S. Immigration and Customs Enforcement, “Removal,” U.S. Department of Homeland Security, <https://www.ice.gov/removal>.
 172 Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, (Jan. 1, 2008), §235(a)-(c). (these provisions make efforts to prevent trafficking and exploitation of unaccompanied immigrant children through custody, care, and immigration relief collaboratively through several federal agencies).
 173 Summary deportations represent approximately two-thirds of total removals from the United States. See American Immigration Council, “Removal Without Recourse: The Growth of Summary Deportations from the United States,” Apr. 28, 2014, available at <http://immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

ERO takes no public role in Minnesota’s anti-trafficking efforts. It relies on HSI to participate in collaborative law enforcement, training, and outreach initiatives related to human trafficking. Protocols for victim identification and protection appear to be developed and implemented largely without ERO participation, leaving victims vulnerable to deportation.

3. Community Organizations Need Training and Resources to Identify Victims

Workers most commonly turn for help to community-based organizations,¹⁷⁴ workers’ rights groups, and unions.¹⁷⁵ These organizations help workers overcome the lack of information and fear of retaliation that prevents them from seeking help for workplace abuses.

A staff member described how one such community organization effectively helps people with workplace rights violations:

What I hear is fear. If they put a complaint in to labor enforcement, they think it could lead to deportation. We explain that they can complain and it won’t affect their status. They trust U.S. and take our word they can file safely.¹⁷⁶

One organization provides brief presentations on labor rights and human trafficking in their lobby during busy times. It educates clients who are present for other reasons and offers help to anyone experiencing workplace violations.¹⁷⁷ These outreach efforts have led to a number of reports and subsequent cases of identified labor trafficking and labor exploitation. The agency has then been able to accompany the victims as they go through the legal process.

As a first stop for immigrant and other vulnerable low-wage workers who need assistance, community-based organizations could screen for labor trafficking and labor exploitation. Many reported, however, that they do not have the knowledge to be effective.¹⁷⁸ One community leader stated, “We don’t know what to do so we have to refer to other organizations,”¹⁷⁹ while another felt even more frustrated: “We don’t know where to refer, we only know a few topics.”¹⁸⁰ Organizations identified a need for training to help them recognize the problems they are seeing and a referral system so they can feel confident the worker will get the necessary assistance.¹⁸¹

Effective identification of trafficking in particular requires organizations to understand how it differs from labor exploitation. Many service providers discussed numerous situations in which they did not identify victims of labor exploitation as victims of labor trafficking, although evidence of threats or other coercion was present.¹⁸² In one situation, the case was labeled as a “quasi-trafficking situation,” in which the victim was working “in a bad situation” in a bakery, with housing linked to the employer.¹⁸³

174 Community-based organizations can be “culturally and linguistically aligned” with immigrant populations. Interview 23.

175 Most labor trafficking victims identified in this report were initially screened by non-governmental service providers.

176 Interview 26.

177 Interview 26.

178 Interview 35.

179 Interview 35.

180 Interview 11.

181 See Chapter 5 on referral and coordination to protect victims.

182 For example, in the janitorial industry a woman was sexually harassed by her employer and was threatened on the basis of her documentation status, but the service providers asked no further questions to determine if she had been a victim of labor trafficking under federal law. See Interview 36.

183 Interview 35.



Even organizations that specialize in assisting workers do not always have sufficient knowledge of trafficking to identify it correctly.¹⁸⁴ As one attorney explained, over eight years of practicing law and interviewing victims of labor exploitation, the attorneys and intake staff “never actually screened for force, fraud, or coercion to determine if clients were labor trafficking victims.”¹⁸⁵ In one union, organizers identified workers as victims of labor exploitation due to poor working conditions and wage violations, but despite their suspicions of “modern slavery,” they did not know enough about trafficking to ask additional questions.¹⁸⁶

Community leaders and service providers called for more intensive government outreach based on long-term relationships. One leader was particularly pointed in his criticism: “People are sick of information sessions with no follow-up. They want an ongoing process, something more.”¹⁸⁷ One government agency found that these deeper relationships were more effective. The agency used to rely on one-time outreach events that were poorly attended. Now it maintains formal ongoing relationships with organizations that serve as ambassadors to the community.¹⁸⁸ Such long-term relationships are difficult to maintain, however. “There is a lot of turnover at agencies and organizations,” said one service provider. “People come to trust one individual who may then leave. They don’t trust the institution, just the individual, so they lose the connection when the person leaves.”¹⁸⁹

WHO TO TRUST?

Francis Fukuyama divides countries into “high-trust” and “low-trust” countries. People in high-trust countries are comfortable with larger institutions where they may not have personal connections, while people in low-trust countries rely on kinship networks and close friends.¹⁹⁰ When immigrants come to Minnesota from low-trust countries, they may carry with them this reliance on family and friends rather than institutions. In high-trust Minnesota, however, there is an expectation that people in need of services will be comfortable seeking out an unknown institution, and so outreach efforts do not always prioritize building relationships and trust.

4. Steps Forward for Improving Identification

Governmental and nongovernmental agencies should work together to improve outreach, awareness, and training on identification of labor trafficking and labor exploitation. Government agencies and community organizations should also improve their own understanding of labor exploitation and trafficking to effectively screen and identify potential victims they encounter. They should also explore ways to make the agencies that enforce laws against labor exploitation and labor trafficking more accessible to workers.

184 Interview 5.

185 Interview 9.

186 Interview 29.

187 Interview 19.

188 Interview 22.

189 Interview 10.

190 Francis Fukuyama, *Trust*, New York: Free Press, 1995, 23-32.

PRIORITY RECOMMENDATIONS



Policy makers should fund a statewide public awareness campaign on labor trafficking and exploitation in Minnesota, including distribution of materials in multiple languages on rights in the workplace and on recognizing trafficking, with special materials targeted to low literacy populations.



Government agencies should provide training on labor trafficking and labor exploitation under federal and state law to staff and to community organizations, especially those that routinely deal with workers, workplace issues, or trafficking.



Government agencies and community partners should create a self-assessment tool (translated into key languages) for workers to identify whether they are victims of trafficking and develop a plan to distribute the tool to people at risk.



Policy makers should develop a simple, direct, language-accessible system to make it easier for workers to identify trafficking and exploitation and to bring a complaint.



Create and implement training and screening protocols for all federal immigration enforcement officers to effectively and consistently identify victims of human trafficking and labor exploitation prior to initiating removal proceedings, reinstating an order of removal, or ordering a person removed from the United States.

RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Follow federal immigration enforcement guidelines for exercising prosecutorial discretion related to victims of human trafficking and labor exploitation.
- ▶ Create and implement training and screening protocols for federal and state labor standards agencies to identify trafficking experienced by workers these agencies encounter.
- ▶ Partner with worker-led and other community-based organizations to educate workers about their rights in the workplace.
- ▶ Ensure adequate, culturally appropriate, and safe interpretation and translation for victims of trafficking or exploitation.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Ensure immigration enforcement agencies prioritize funding for effective screening and identification of victims of trafficking and exploitation.



- ▶ Ensure labor standards agencies receive adequate funding to conduct outreach to workers at risk for trafficking and exploitation without compromising enforcement.
- ▶ Make funding available for worker-led peer education campaigns so workers can learn their rights in the workplace.
- ▶ Increase penalties for retaliation against workers who report trafficking or exploitation in the workplace to deter retaliation and encourage reporting of violations.

RECOMMENDATIONS FOR COMMUNITY-BASED ORGANIZATIONS

- ▶ Create and implement training and screening protocols for service providers to identify trafficking experienced by workers these agencies encounter.
- ▶ Support efforts to educate workers at risk of trafficking or exploitation, especially peer education initiatives.
- ▶ Support collaboration between worker-led organizations, community-based organizations, and government agencies to improve identification of victims.
- ▶ Counter anti-immigrant sentiment in the public sphere and emphasize that workplace protections apply to all workers, regardless of immigration status.



CHAPTER 3

PROTECTING VICTIMS OF LABOR TRAFFICKING AND LABOR EXPLOITATION



Ruth was recruited from her home country with an offer to work fulltime as a housekeeper and caregiver in the home of a family moving to the United States. She was promised good pay, enough to send money home to her family. When she arrived in Minnesota and began working, she soon realized that the promises were not true. The family she worked for required her to work 24 hours a day, even sleeping in the same room as the family member under her care. They did not pay her for her work and used sexual assault and isolation to keep her from leaving. Eventually, after 11 years, she was able to discreetly make a request for help. At great personal risk, she left and reported the violations to a local organization. An immigration attorney and federal law enforcement officials were able to work together to help Ruth get lawful status as a victim of a severe form of trafficking, and she was reunited with her children.

Interviews 9, 30, & 38

The U.S. government has a responsibility to ensure that victims of labor trafficking and labor exploitation receive protection and support to successfully rebuild their lives. Despite this obligation, coordinated services and protection are not yet consistently available to the majority of labor trafficking and labor exploitation victims. Foreign national victims of a “severe form of trafficking” are eligible for a limited range of immigration benefits and social services; other trafficking victims receive much less assistance. To receive the available benefits, victims generally must cooperate with law enforcement, in violation of international standards. Labor exploitation victims are not typically eligible for any immigration benefits or social services and find it difficult to access legal support to pursue their cases.

1. Victim Protection Undermined by Cooperation Requirement

Labor trafficking victims often face an array of immediate and long-term needs relating both to the trauma they have experienced and the vulnerabilities that led to being trafficked. Effective protection and assistance measures are essential to ensuring respect for the human rights of victims and to preventing them from being trafficked again.

International anti-trafficking standards call for the protection and assistance of trafficking victims “with full respect for their human rights.”¹⁹¹ This assistance is a central purpose of the international anti-trafficking framework.¹⁹² Table 3.1 lays out the standards for victim protection found in the Palermo Protocol.

Table 3.1: Palermo Protocol Standards¹⁹³

ARTICLE	PALERMO STANDARD
6.1	Protect the privacy and identity of victims
6.2	Ensure that victims have information on relevant court proceedings and can participate as desired
6.3	Provide for the physical, psychological and social recovery of victims
6.3 (a)	Provide appropriate housing
6.3 (b)	Provide counselling and information, in particular as regards their legal rights
6.3 (c)	Provide medical, psychological and material assistance
6.3 (d)	Provide employment, educational and training opportunities
6.4	Take into account the special needs of victims, particularly children
6.5	Provide for the physical safety of victims
6.6	Offer victims the possibility of obtaining compensation for damage suffered through the legal system
7	Permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases

Victim protection and assistance in the United States, by contrast, remains tethered to the criminal investigation and prosecution of the trafficker. Federal law conditions assistance to foreign national victims on cooperation with law enforcement, undermining both protection and prosecution efforts.

While subsequent amendments to the Trafficking Victims Protection Act (TVPA) have included some provisions for assistance of U.S. citizen and lawful permanent resident victims of trafficking, the focus largely has been on foreign national victims.¹⁹⁴ Domestic victims who are homeless,

¹⁹¹ Palermo Protocol, Art. 2(b).

¹⁹² The stated purposes of the Palermo Protocol are: “(a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.” Palermo Protocol, Art. 2.

¹⁹³ Palermo Protocol, Art. 6 & 7.

¹⁹⁴ See Human Smuggling and Trafficking Center, “Domestic Human Trafficking: An Internal Issue,” (2008) at 2, (noting “the civil



barred from federal public assistance due to drug convictions¹⁹⁵ or are otherwise unable to qualify for public assistance might need special protections that enable them to access benefits, but there is no process for waiving such eligibility bars to public benefits.¹⁹⁶ New legislation passed in 2015 expanded the services offered to domestic victims of human trafficking. While it is not clear what that assistance entails,¹⁹⁷ the legislation does specifically include a new Domestic Trafficking Victims Fund to provide grants for increased investigation of domestic human trafficking and improved services for domestic victims.¹⁹⁸ Until this new law is fully implemented, however, there remain virtually no services available in Minnesota for domestic labor trafficking victims.¹⁹⁹

Cooperation with Law Enforcement Determines Help for Foreign National Victims

Access to federal protection from deportation, work authorization, federal public assistance, and case management services depends on certification as a victim of a “severe form of human trafficking.”²⁰⁰ Federal law defines a “severe form of human trafficking” as the recruitment, harboring, transport, provision, or obtaining “for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”²⁰¹ Victims of trafficking and related crimes that fall short of a “severe form of human trafficking” receive far less protection and assistance. Minnesota law defines “labor trafficking victim” and “sex trafficking victim” but does not make any benefits available as a result.

Victims who meet this federal administrative definition must follow a multi-stage process to receive full benefits and protection. Inconsistent with international standards, federal law requires that foreign national adult victims of trafficking are “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons” in order to be certified.²⁰² When victims can demonstrate that they are willing to cooperate with law enforcement, either a law enforcement agency or the victim can file for protection from deportation. Once victims have received or are in the process of receiving protection from deportation, they can be certified as

victim protection provisions were conceptualized to protect foreign nationals who are trafficked into the U.S. for commercial sex acts or forced labor and who, because of their immigration status, would otherwise be subject to deportation and ineligible for social service programs.”)

195 Federal law authorizes public housing authorities to screen out applicants based on criminal records. Human Rights Watch, “No Second Chance: People with Criminal Records Denied Access to Public Housing,” 2004, <https://www.hrw.org/reports/2004/usa1104/9.htm>. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 includes a lifetime ban on receiving federal public assistance (Supplemental Nutrition Assistance Program (food stamps) and Temporary Assistance for Needy Families (cash assistance)) for people with felony drug convictions (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H. Rept. 3734, 104 Cong. 2 sess. (Library of Congress THOMAS, 1996)). As of July 2015, Minnesota law included a modified drug felon ban for both programs. See CLASP, “No More Double Punishments,” Sept. 2014, <http://www.clasp.org/resources-and-publications/publication-1/Safety-Net-Felony-Ban-FINAL.pdf>.

196 The Advocates for Human Rights, *Sex Trafficking Needs Assessment For The State Of Minnesota*, October 2008, 73, http://www.theadvocatesforhumanrights.org/uploads/sex_trafficking_needs_assessment.pdf (“This policy ignores the fact that USCs and LPRs face many of the same barriers as foreign nationals: loss of personal identification documents, threats to personal safety, lack of services tailored to trafficked persons and an inability to find employment or housing.” (Citing Polaris Project, “Equal Benefits for All Survivors of Human Trafficking in the United States,” June 2007, 1-3.)

197 The Justice for Victims of Trafficking Act of 2015, Public Law 114-22 (May 29, 2015) §109 (5). (Section 109: (5) United States citizens or lawful permanent residents who are victims of severe forms of trafficking are not required to obtain an official certification from the Secretary of Health and Human Services in order to access any of the specialized services described in section 107 of the Trafficking Victims Protection Act of 2000 or any other Federal benefits and protections to which they are otherwise entitled; and (6) as matters stand on the date of enactment of this Act, there are insufficient services and programs for victims of severe forms of human trafficking in the United States, including United States citizens and lawful permanent residents.) See Administration for Children and Families, “Human Trafficking,” U.S. Department of Health and Human Services, <http://www.acf.hhs.gov/program-topics/human-trafficking-0>.

198 The Justice for Victims of Trafficking Act of 2015, Public Law 114-22 (May 29, 2015) §101.

199 Interview 41.

200 Trafficking Victims Protection Act, U.S. Code 22 §7105.

201 Trafficking Victims Protection Act, 22 U.S. Code §7102(9)(B).

202 Trafficking Victims Protection Act, U.S. Code 22 §7105(b)(1)(E).

trafficking victims through the Department of Health and Human Services (HHS).²⁰³ Victims certified through HHS receive federally funded case management services and direct financial assistance to meet their needs while their immigration status is pending. Upon certification, the victim will also be granted a Social Security number and employment authorization to access benefits and lawful work. Only victims who are “unable to cooperate due to physical or psychological trauma” do not need to provide evidence of their willingness to assist law enforcement.²⁰⁴

Children are exempt from the requirement to cooperate with law enforcement. Foreign national child trafficking victims can access benefits through an eligibility letter (in contrast to a certification) if HHS determines that they meet the federal definition of severe form of trafficking in persons, regardless of whether they have been granted immigration status based on the trafficking.²⁰⁵ This eligibility letter does not require the participation of a law enforcement agency.

The federal victim certification process is distinct from law enforcement’s decision to charge alleged perpetrators. Federal law provides both the administrative definition of a victim of a “severe form of human trafficking” and separate labor trafficking-related criminal statutes.²⁰⁶ An individual may meet the “victim” definition even if no perpetrator is charged with a crime, but they must still demonstrate a willingness to cooperate with law enforcement to receive benefits and immigration protection. Providing a victim definition distinct from the criminal charge could potentially protect more victims in cases where the trafficker cannot be prosecuted, but the law undermines this possibility by linking recognition as a victim with cooperation with law enforcement.

Victims Do Not Uniformly Receive Immigration Status

Because traffickers often manipulate and threaten the immigration status of their victims, immigration relief is of primary importance for foreign national trafficking victims.²⁰⁷ Recognizing this need, the TVPA provides three paths for these victims of trafficking and other severe crimes to avoid deportation: continued presence, T nonimmigrant status, and U nonimmigrant status (often referred to as the T and U visas). All three, however, depend on the victim’s willingness to cooperate with law enforcement against the traffickers.²⁰⁸

The TVPA authorizes federal law enforcement officials to permit an individual’s “continued presence” in the United States if it is determined that the individual is a victim of a severe form of trafficking and a potential witness to such trafficking.²⁰⁹ The statutory purpose of the continued presence authority is to enable the prosecution of those responsible for the crime.²¹⁰

The TVPA also provides that a victim of a severe form of trafficking may apply for T nonimmigrant status, leading to lawful permanent residence and options for family reunification.²¹¹ Applicants do not need a specific certification from law enforcement, but must provide evidence of a willingness to comply with any reasonable request for assistance from a law enforcement agency conducting

203 Trafficking Victims Protection Act, U.S. Code 22 §7105(b)(1)(E).

204 Trafficking Victims Protection Act, U.S. Code 22 §7105(b)(1)(E).

205 Trafficking Victims Protection Act, U.S. Code 22 §7105 (b)(1)(G). Child trafficking victims follow a separate process to obtain a Trafficking Eligibility letter, which does not require that the victim have secured immigration relief nor does it require the participation of federal law enforcement agencies.

206 Trafficking Victims Protection Act, U.S. Code 22 §7102 (9)(B); U.S. Code 18 (2015), §1581-1592.

207 Interviews 16 & 28.

208 Child labor exploitation victims may also be eligible for Special Immigrant Juvenile Status (Immigration and Nationalities Act, U.S. Code 8 §1101(a)(27)(J)) if they are unaccompanied immigrant children.

209 Trafficking Victims Protection Act, U.S. Code 22 §7105 (c)(3)(A).

210 Trafficking Victims Protection Act of 2000, Public Law 106-386 (Oct. 28, 2000), 114 Stat. 1464, §107(b)(3).

211 Immigration and Nationality Act, U.S. Code 8 §1101 (a)(15)(T)(i).



the investigation or prosecution.²¹² As a result, T status is chronically underused. U.S. Customs and Immigration Services (USCIS) typically receives fewer than 1,000 applications for the 5,000 visas available each year.²¹³



Ruth's trafficker threatened her children. She needed to receive a T nonimmigrant status first before she could be reunited with them.

Finally, the TVPA provides important protection against deportation and work authorization through U nonimmigrant status. This status is for victims of labor exploitation that falls short of “severe forms of human trafficking” and other serious crimes, such as:

- trafficking, peonage, and slavery which do not involve force, fraud, or coercion;²¹⁴
- blackmail;
- extortion;
- false imprisonment;
- felonious assault;
- sexual assault; and
- fraud in labor contracting.²¹⁵

The U nonimmigrant status requires that an authorized official of the certifying law enforcement agency confirm that the victim was helpful, currently is being helpful, or will likely be helpful in the investigation or prosecution of the case.²¹⁶ The U visa status is limited by a statutory cap that allows only 10,000 visas to be issued each year. In 2015, three times that number of victims applied for the status. Once the cap is reached, applicants are put on a waiting list to receive a visa the following year.²¹⁷

Serious problems with the U certification process have undermined victim protection in Minnesota. Wide variation exists among law enforcement agencies about what cases to certify, with some agencies creating internal guidelines about which cases to certify and others refusing to certify any cases at all. For instance, one agency would not provide certifications to anyone with a criminal record,²¹⁸ even though determining whether a criminal record makes an immigrant inadmissible is a complicated determination and one conducted by USCIS after receiving a U

212 See USCIS.gov, “Victims of Human Trafficking: T Nonimmigrant Status,” at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

213 Attorney General’s Trafficking in Persons Report FY 2015, <https://www.justice.gov/ag/file/870826/download>.

214 Victims of labor trafficking under Minnesota law could potentially qualify for U visas, but the lack of state prosecutions means victims are not receiving this protection.

215 Immigration and Nationalities Act, U.S. Code 8 §1101 (a) (15) (U)(iii) (“The criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.”).

216 8 U.S.C. §1101(a)(15)(U)(i)(III).

217 30,106 individuals applied for U status in 2015. Attorney General’s Trafficking in Persons Report FY 2015, <https://www.justice.gov/ag/file/870826/download>.

218 Interview 24.

status application.²¹⁹ In another case, the agency would not provide a certification because the perpetrators had fled and so would not be prosecuted, even though a successful prosecution is not a condition for certification.²²⁰ One agency required that the criminal case be closed prior to providing a certification, while another required that the case still be ongoing.²²¹ Lack of consistency has resulted in victims receiving very different access to protection depending on which law enforcement agency handles their case. Complicating the process further, most agencies reported that they did not provide information on U status to crime victims, leaving the victim dependent on whatever information they could get from outside sources.²²²

The difficulty in securing certification stems not just from a misunderstanding of the role that law enforcement plays in the process, but also from a perception by some law enforcement agencies that immigrants falsely report crimes in an attempt to gain immigration status. One law enforcement official described a sentiment among some law enforcement agencies that labor trafficking victims are not credible because of a belief that immigration attorneys coach people so they can get legal status to stay in the United States.²²³

As a further limit on the available protections, victims are eligible for U nonimmigrant status only when the crime results in serious physical or mental harm.²²⁴ Some government agencies can certify victims for U status but do not generally have cases that meet the criteria. The Minnesota Department of Human Rights (MDHR) has only received one request for U nonimmigrant status, which it certified.²²⁵ A federal DOL official said, “Statutorily, people need enormous trauma to get U status, so they are not usually our cases.”²²⁶

Table 3.2: U.S. Compliance with Palermo Protocol Standards

ART.	PALERMO STD.	FEDERAL	MINNESOTA
6.3	Provide for the physical, psychological and social recovery of victims	Partially meets standard. Law provides benefits to trafficking victims but primarily foreign nationals that cooperate with law enforcement.	Does not meet standard. Law has no benefits specifically directed at trafficking victims.
7	Permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases	Partially meets standard. Law provides status to trafficking victims but only those that cooperate with law enforcement. In practice, status is granted inconsistently.	Not applicable. Minnesota cannot grant immigration status.

²¹⁹ Department of Homeland Security, “U-Visa Law Enforcement Certification Resource Guide,” 4-5, https://www.dhs.gov/xlibrary/assets/dhs_u_vis_a_certification_guide.pdf.

²²⁰ Interview 41.

²²¹ Interview 17.

²²² Interviews 20 & 24.

²²³ Interview 30.

²²⁴ 8 U.S.C. §1101(a)(15)(U)(i)(I).

²²⁵ Interview 40.

²²⁶ Interview 20; see Immigration and Nationalities Act, U.S. Code 8 §1101 (a)(15)(U)(i)(I) which requires the applicant prove that the crime caused “substantial physical or mental abuse as a result of having been a victim of [certain specified] criminal activity.”



Coordination on Labor Trafficking Is Informal and Geographically Limited

While Minnesota's trafficking victim assistance capacity has expanded dramatically in the last decade, coordination among labor standards agencies, law enforcement, and service providers largely happens on a case-by-case basis.²²⁷ The current approach to referral and coordination in labor trafficking cases is improving, beginning with better collaborative identification, outreach, and creation of screening tools. A strong anti-trafficking network in Minnesota, including the Minnesota Human Trafficking Task Force, treats labor trafficking as a form of human trafficking and advocates for appropriate services and support for labor trafficking victims.²²⁸

Crime victim/witness coordinators at the FBI, Immigration and Customs Enforcement (ICE), U.S. Attorney's Office, and county attorney's offices all play an active and essential role in working with victims whose cases are subject to criminal investigations. A small collaborative network connects foreign national labor trafficking victims in the Twin Cities metro area with agencies that can assist them. This network includes federal law enforcement, USCIS, federal case management service providers, and pro bono immigration lawyers.²²⁹

One organization with a successful referral system described its process:

We have guides we follow and with each topic, we have people we can refer to. We track the case, we refer to a labor enforcement agency or attorneys and we keep in touch both with the victim and with the person taking care of the case. When we have a case of a group of workers who have been abused, we can assign them a law firm. We have a partnership where we pay for the services of the law firm when the case is a strong case or a complicated one. The more severe cases go to the lawyers.²³⁰

Unfortunately, such a systematic approach is not widespread among agencies and organizations working with victims.

Although federal law enforcement may make referrals to city or county law enforcement when the cases do not meet the criteria of the federal criminal statutes, "labor trafficking under the state law has not yet been tested."²³¹ Victims of trafficking rarely are referred to state or federal labor standards agencies or anti-discrimination agencies to make civil complaints.²³² Coordination between service providers and law enforcement is inconsistent. Some law enforcement agencies reported working closely with service providers.²³³ Other law enforcement agencies reported a belief that service providers have "competing and opposing interests,"²³⁴ and therefore do not cooperate in ensuring that victims have access to necessary services and support.²³⁵

Victims of trafficking generally can access immigration legal help, either through legal services organizations or immigration attorneys able to help clients on a pro bono basis.²³⁶ Federal law allows federally-funded legal service providers to serve victims of trafficking and other serious

²²⁷ Interview 38.

²²⁸ Minnesota Human Trafficking Task Force, "MNHTTF Principal Positions," 2014, 1, http://mnhttf.org/site/wp-content/uploads/2014/04/MNHTTF-Principal-Positions_April-2014.pdf.

²²⁹ Interview 16.

²³⁰ Interview 26.

²³¹ Interview 30.

²³² Interviews 9, 30, & 38.

²³³ Interview 28.

²³⁴ Interview 30.

²³⁵ Interview 48.

²³⁶ Interview 38.

crimes, providing access to help with immigration, family law, public benefits, and housing.²³⁷ While services exist, some providers struggle to identify trafficking victims or to assess the variety of legal and other needs victims have.²³⁸

Even when victims are certified or eligible, limitations on the capacity of service providers may leave some victims without the help they need. These providers often scramble to find help from existing services for sex trafficking victims, domestic violence victims, and other crime victims.²³⁹ Inadequate housing resources, in particular, pose a challenge.²⁴⁰ Throughout Minnesota, there are very limited housing options available for labor trafficking survivors, particularly emergency shelter for male victims immediately following identification.²⁴¹ While Minnesota's Safe Harbor for Sexually Exploited Youth Act has expanded emergency and transitional housing options for youth, and domestic violence shelters may be able to accommodate women who have been trafficked, emergency homeless shelters often are the only options for men and transgender adults.²⁴² In addition to the need for housing and legal services, there are significant gaps in case management services, mental health trauma treatment, foster care services, and victim advocacy.²⁴³

One worker advocate reported receiving a call from a male victim who had escaped his trafficker and was hiding in a restaurant, afraid to return to his home. The advocate called multiple organizations but could find nowhere the worker could go for emergency shelter in his area and no one who could take the case. Eventually, the victim left the restaurant without receiving any help, possibly to return to the unsafe situation with his trafficker.²⁴⁴

“When I couldn’t find him a place to stay, he left. I don’t know where he went.”

Interview 46

Several reported labor trafficking cases in Minnesota involved unaccompanied immigrant children.²⁴⁵ Congress created specialized services and a multi-agency screening process for unaccompanied children in 2008 because of the recognition that this population is at an increased risk of being trafficked.²⁴⁶ In some cases the HHS Division of Unaccompanied Children assisted child victims in obtaining a trafficking eligibility letter,²⁴⁷ which allows foreign national child trafficking victims to access certain federal and state public benefits.²⁴⁸

237 Federal law prevents legal aid organizations that receive Legal Services Corporation funding from serving undocumented individuals, with an exception for victims of trafficking and other crimes. See Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub. L. No. 104-134, 110 Stat. 1321, §504(a)(11). Federal law also provides an exception to this bar that makes certain aliens eligible for federally funded legal assistance under anti-abuse laws. See 45 C.F.R. §1626.4.

238 Interview 9 & 38.

239 Interview 4.

240 Interview 30 & 38.

241 Interviews 30 & 38.

242 Interview 30.

243 Interview 38.

244 Interview 46.

245 Interviews 8, 9, & 38.

246 Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, (Jan. 1, 2008), §235(a)-(c). ((b)(1)“The care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services”). All unaccompanied immigrant children are to be screened for trafficking. Specifically, before returning any such child, Homeland Security must first determine that: (a)(2)(A)(i)“such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child’s country of nationality or of last habitual residence.” Two key programs for child victims are housed with the U.S. Department of Health and Human Services: (1) the Division of Unaccompanied Children’s Services within the Office for Refugee Resettlement and (2) the Office on Trafficking in Persons, which recently consolidated the agency’s services related to human trafficking victims.

247 Child victims are not required to cooperate with law enforcement in order to receive protection or services.

248 Trafficking Victims Protection Act, U.S. Code 22 §7105 (b)(1)(G). Child trafficking victims follow a separate process to obtain a Trafficking Eligibility letter, which does not require that the victim have secured immigration relief nor does it require the participation of federal law enforcement agencies. See also Interview 9.

**Table 3.3: U.S. Compliance with Palermo Protocol Standards**

ART.	PALERMO STD.	FEDERAL	MINNESOTA
6.3 (a)	Provide appropriate housing	Partially meets standard. Certified victims are eligible for federal housing assistance, but housing availability is limited. Victims who are not yet certified rely on emergency housing; men and transgender individuals have less access.	Does not meet standard. There is no state assistance for trafficking victims beyond the federal benefits for certified victims.
6.3 (b)	Provide counselling and information, in particular as regards their legal rights	Partially meets standard. Trafficking victims are eligible for legal assistance, but there are not enough services available.	Partially meets standard. Trafficking victims are eligible for legal assistance, but there are not enough services available.
6.3 (c)	Provide medical, psychological and material assistance	Partially meets standard. Certified victims are eligible for federal medical assistance, but availability is limited. Victims who are not yet certified have access only to emergency medical assistance.	Does not meet standard. There is no state assistance for trafficking victims beyond the federal benefits for certified victims.
6.3 (d)	Provide employment, educational and training opportunities	Partially meets standard. Certified and some pre-certified victims are eligible for federally-funded case management services. Victims who are not certified do not have access.	Does not meet standard. There is no state assistance for trafficking victims beyond the federal benefits for certified victims.
6.4	Take into account the special needs of victims, particularly children	Meets standard. Children are exempt from cooperation requirements and eligible for specialized services.	Does not meet standard. There is no state assistance for trafficking victims beyond the federal benefits for certified victims.

Restitution and private right of action help trafficking victims

Both state and federal law provide for restitution for trafficking victims and private causes of action against traffickers. Federal law provides mandatory restitution for victims by all persons convicted of trafficking.²⁴⁹ Awards may be based on calculations related to treatment (physical, psychiatric, or psychological medical care), lost wages, transportation, housing and childcare expenses, attorney's fees or costs, and any other losses suffered.²⁵⁰ Because labor trafficking is often accomplished through the guise of legitimate business entities, federal law allows for the forfeiture and transfer of business assets used in the commission of labor trafficking crimes to satisfy orders of criminal restitution.²⁵¹ In practice, however, forfeiture and restitution depend on requests by prosecuting attorneys.²⁵²

Minnesota law also allows courts to award restitution to trafficking victims, although the award is not mandatory.²⁵³ Under state law, businesses engaged in human trafficking may be dissolved or reorganized as a result of a state trafficking prosecution, but there is no explicit transfer of assets to state trafficking victims, potentially making recovery of assets more challenging.²⁵⁴

If there is no prosecution, a victim must pursue a private civil case to receive monetary compensation for the harms suffered. Both federal and state law provide a civil remedy to human trafficking victims regardless of whether the government prosecuted or investigated their cases.²⁵⁵



Ruth's trafficker was never prosecuted and so Ruth did not receive restitution.

The federal civil suit limits the recovery to “damages and reasonable attorneys’ fees,”²⁵⁶ while the Minnesota civil suit provision also includes punitive damages.²⁵⁷ Very few trafficking victims have filed civil human trafficking suits in Minnesota under either law. One such case, brought by carnival workers on H2B visas who were trafficked by their employer, is among a very small number of civil lawsuits in Minnesota alleging human trafficking in addition to the more commonly claimed federal labor law violations.²⁵⁸

Minnesota provides trafficking victims with the same rights and remedies available to all crime victims in the state.²⁵⁹ Most notably, this includes crime victim reparations paid by the state and the right to notice of actions related to the perpetrator in the criminal case. Importantly, Minnesota law

249 U.S. Code 18 §1593(a), (b)(1). (The statutory language indicates that “the court shall order restitution for any offense (. . .) [in] the full amount of the victim’s losses.”)

250 U.S. Code 18 §1593(b)(3), §2259(b)(3).

251 U.S. Code 18 §1594. (This section allows for the forfeiture and transfer of assets to victims of labor trafficking in order to satisfy court orders of criminal restitution.)

252 Martina E. Vandenberg, “Justice for Trafficking Victims,” CLE Presentation from The Human Trafficking Pro Bono Legal Center, October 1, 2015. (Presentation materials and speaker comments indicated that only 36% of all federal trafficking cases where a defendant pled or was found guilty included court ordered restitution.)

253 Minnesota Revised Statutes, §611A.04.

254 Minnesota Revised Statutes, §609.284(3).

255 U.S. Code 18 §1595(a); Minnesota Revised Statutes, §609.284.

256 U.S. Code 18 §1595(a).

257 Minnesota Revised Statutes, §609.284(2). (Federal law allows compensatory damages (US Code 18 §1593(b)(3), 1595, and 2259(b)(3)) while Minnesota explicitly allows plaintiffs to pursue punitive damages.)

258 Ted Halle, “Traveling fair workers allege ‘horrific’ conditions,” Fox 9 News, January 9, 2016, <http://www.fox9.com/news/70762457-story>; *Campis Abarca v. Little, et al.*, 0:14-cv-00686-DSD-TNL, Order (Dist. Minn. Sept. 22, 2014). (The other case brought under the federal human trafficking cause of action, U.S. Code 18 §1595, granted defendants’ motion to dismiss all claims based on statute of limitations and declined to apply to equitable tolling of the claims).

259 Minnesota Revised Statutes, §611A.02. (These include crime victim reparations and the rights to notice and representation in court, among others.)



provides an affirmative defense for defendants charged with prostitution²⁶⁰ if the defendant can prove he or she meets the definition of labor trafficking victim²⁶¹ or sex trafficking victim.²⁶² This important protection is not available to those criminalized for other effects of their trafficking, such as forced participation in the drug trade.

Table 3.4: U.S. Compliance with Palermo Protocol Standards

ART.	PALERMO STD.	FEDERAL	MINNESOTA
6.2	Ensure that victims have information on relevant court proceedings and can participate as desired	Meets standard. Trafficking victims are eligible for crime victim benefits including notice of actions in the criminal case.	Meets standard. Trafficking victims are eligible for crime victim benefits including notice of actions in the criminal case.
6.6	Offer victims the possibility of obtaining compensation through the legal system for damage suffered	Partially meets standard. Federal law provides for restitution, but limited prosecutions mean not all victims receive it. The law also provides a private cause of action.	Partially meets standard. Minnesota law provides for restitution, but no victim has received it. The law also provides a private cause of action.

2. Victims of Civil Labor Violations Have Little Access to Protection and Assistance

Unlike crime victims, victims of civil labor violations enjoy little protection or assistance. While unions, worker rights organizations, and culturally-specific support organizations can provide some help, no coordinated referral network exists.²⁶³ One organizer said, “If only there was somewhere I could refer and I knew the worker could be helped.”²⁶⁴ Even when labor exploitation victims are in dangerous situations and need immediate safe shelter, the only option may be referral to a homeless shelter.

Labor exploitation victims often lack the financial resources that allow them to risk complaining about workplace violations. Workers “often have a family who is reliant on that worker’s income,”²⁶⁵ forcing them to ignore violations rather than risk a cut in hours or job loss. As a result, one immigrant leader explained, “The worker feels the best way to fight is to leave the job and go to another job, but this doesn’t address the underlying problem” and allows the abusive employer to continue operating.²⁶⁶ Very few organizations can offer any money to make up for income lost while a worker waits for a case to resolve. One that does offer cash assistance can do so

²⁶⁰ Minnesota Revised Statutes, §609.325(4).

²⁶¹ Minnesota Revised Statutes, §609.281.

²⁶² Minnesota Revised Statutes, §609.321.

²⁶³ Interview 35.

²⁶⁴ Interview 11.

²⁶⁵ Interview 44.

²⁶⁶ Interview 19.

only once a calendar year, but even that small assistance seems to increase the willingness of individuals to bring a case against an abusive employer.²⁶⁷

Workers and worker advocates report that the lack of financial resources prevents workers from bringing a civil case.²⁶⁸ Workers who pursue a private right of action have several options for legal representation, but those options do not cover all cases and navigating the options can be difficult for workers.

Private attorneys can take individual and class action cases, typically on a contingency basis, but litigation costs can outweigh recovery.²⁶⁹ Service providers also reported that some unscrupulous lawyers took payment up front and then did not act on the case, leaving the worker unwilling to risk being taken advantage of again.²⁷⁰

Free legal services provide assistance with some labor and employment cases. A medical-legal partnership between Mid-Minnesota Legal Aid and the Whittier Clinic provides free legal help in some cases,²⁷¹ and Volunteer Lawyer's Network (VLN) runs a help line and several walk-in clinics.²⁷² The limited services provided, such as demand letters or phone calls to employers, generate results for some workers.²⁷³ Workers can also represent themselves in conciliation court, designed to be accessible for people without legal representation. VLN staffs a free conciliation court clinic that helps individuals with their claims. Even with legal representation, however, recovering unpaid wages from unscrupulous employers can be difficult. The employer may obstruct efforts to force payment or may be without assets that can be seized by a creditor, leaving the worker without recourse.

Non-English speakers face additional challenges accessing community services and assistance. When services are available, they may offer Spanish language access only. Free legal clinics may not have anyone who can speak Spanish or any other language, requiring the attorneys to rely on a language line to interpret their discussion with the client, which "is not a great alternative," according to one attorney. "People will say they understand, but they haven't really grasped what to do for their case."²⁷⁴ Private firms that specialize in labor and employment law may not regularly use interpreters, and attorneys from immigrant communities may not have the specialized knowledge to bring an effective case.²⁷⁵

Community organizations seeking to provide assistance and support to labor exploitation victims could benefit from strong connections with government agencies that regulate workplace abuses. Both the state and federal departments of labor, as well as the United States Equal Employment Opportunity Commission (EEOC) and MDHR, maintain community outreach programs. However, they are small, often with only a single individual dedicated to the program.²⁷⁶

267 Interview 26.

268 Interviews 29, 41, & 44.

269 Interviews 2, 10, 22, 32, & 39.

270 Interview 44.

271 Interviews 11 & 32.

272 Interviews 6 & 10.

273 Interviews 6, 7, & 10.

274 Interview 10.

275 Interview 39.

276 Interview 43.



3. Steps Forward in Victim Protection

All identified victims of labor trafficking and labor exploitation need access to protections that help ensure their rights as victims of human rights abuses. This access should include a referral network, coordination between governmental and nongovernmental responses, as well as immigration relief, benefits, and civil remedies. Gaps in protection may be addressed in part by increasing dedicated training, collaboration, and resources within organizations.

PRIORITY RECOMMENDATIONS



Policy makers should develop a statewide network so all victims of human trafficking, regardless of gender, age, or nationality, have access to services, including both existing services and new funding.



Policy makers should amend federal law to remove the requirement that victims cooperate with law enforcement to receive services and protection from deportation.



Policy makers should create a state law to ensure all victims of human trafficking under Minnesota law receive access to services and assistance.



Policy makers should amend federal law to ensure that domestic trafficking victims who may be otherwise ineligible for public benefits can receive certification, case management, cash assistance, and other help currently available to foreign national victims.

RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Ensure full compliance with the Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites.
- ▶ Create publicly available training and materials on T and U nonimmigrant status certification, eligibility letters, and immigration relief so victims and service providers have clear guidance to access protection.
- ▶ Create a statewide victim-centered standard for T and U certifications that ensures timely and consistent response to certification requests.
- ▶ Establish a point of contact at the state level who can make T and U certification decisions and who can provide training and technical assistance to agencies statewide.
- ▶ Ensure that law enforcement officials, prosecutors, and judges receive effective training about the role of victim protection in combating human trafficking.

RECOMMENDATIONS FOR POLICY MAKERS

-
- ▶ Create a Minnesota law that ensures all victims of human trafficking receive certification needed for recognition as a victim under federal law.
 - ▶ Increase victim access to restitution as part of the criminal sanctions against traffickers by making restitution mandatory in federal and state criminal cases and by providing assistance to victims in compiling damages estimates.
 - ▶ Expand the options for securing legal immigration status to victims of serious forms of labor exploitation.
 - ▶ Provide help to victims of labor exploitation including emergency housing, medical care, food support, and cash assistance.

RECOMMENDATION FOR COMMUNITY-BASED ORGANIZATIONS

- ▶ Develop protocols to identify and assist with the multiple legal services needs of victims of trafficking and exploitation including family, immigration, employment, discrimination, housing, and other legal remedies.



CHAPTER 4

ENFORCING CRIMINAL LABOR TRAFFICKING LAWS



Hanh, a young woman from an impoverished community in Vietnam, was recruited with promises of a high-paying job in the United States. The trafficker charged her a large fee to travel from Vietnam to Minnesota, claiming that she had made all the necessary immigration arrangements. When she arrived, the worker was not paid by her employer and lived in constant fear that she or her family would be harmed. Day after day as she worked, the debt she owed the employer for her travel grew and she was compelled to continue working to pay it off. Without the ability to speak English and with no one to turn to, she was trapped. Eventually law enforcement learned of her plight, successfully convicted her trafficker of forced labor, and required the trafficker to cancel the debts of this young woman and seven others like her.

U.S. Department of Justice

Minnesota has an obligation to ensure a strong legal framework that criminalizes human trafficking and law enforcement agencies that consistently enforce human trafficking laws.²⁷⁷ This plays an essential role in the prevention of human trafficking. While federal and state laws make labor trafficking and related conduct a crime, few labor trafficking prosecutions have taken place in Minnesota. At the federal level, the requirement that victims cooperate with law enforcement to receive immigration and other benefits may damage their credibility as witnesses in prosecutions. At the state level, law enforcement identified a lack of training and resources as a barrier to effectively prosecuting labor trafficking cases.

²⁷⁷ See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), November 2000, Preamble and Art. 5.

Efforts to investigate and prosecute labor trafficking in Minnesota have been growing. Federal law enforcement agencies have focused more attention and resources on these crimes.²⁷⁸ The U.S. Attorney's Office in the District of Minnesota has made human trafficking a priority. This commitment has resulted in three recent federal prosecutions of labor traffickers. One of the prosecutions was for forced labor, a labor-trafficking related statute, while the other two were under other statutes, one for harboring, and one for visa fraud.²⁷⁹ A recent state case may be the first prosecution under Minnesota's labor trafficking law.²⁸⁰ A new federal Anti-Trafficking Coordination Team (ACTeam) designation prioritizes resources for investigation and prosecution of labor trafficking, adult sex trafficking, and all forms of trafficking committed against foreign national victims.²⁸¹

1. Victim Cooperation Requirements Undermine Prosecution

The Advocates heard reports of thirty-six labor trafficking victims in Minnesota, yet there have been only three criminal convictions under federal law and none under the Minnesota labor trafficking statute. This disparity suggests that some offenders may not be held accountable for their crimes.

As discussed in Chapter 3, access to benefits and immigration protection depend on a victim's willingness to cooperate with law enforcement. This link was intended to strengthen the ability to hold traffickers accountable by providing assistance, including protection from deportation, to victims who are willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking. Despite the statutory intent to strengthen prosecution efforts, linking eligibility for victim assistance to law enforcement cooperation has instead undermined efforts to hold traffickers accountable. By providing a benefit to a witness, the government risks undermining the witness's credibility.

As a result, one government agency in Minnesota changed its practice to only certifying at the completion of a case "to avoid having the defense attorney use the status request to damage the victim's credibility. We certified once or twice in advance and those cases settled. The certification may have been part of why the prosecutor did not seek a trial."²⁸² While certification of victim cooperation by law enforcement at the completion of the criminal case may mitigate the problem of victim credibility at trial, this practice leaves victims without access to stable immigration status, family reunification, work authorization, and public assistance throughout the duration of the legal proceedings. One lawyer reported that an employer tried to get information on a pending U status application for their defense, but the judge agreed to protect that information against disclosure. This shielding does not universally occur, however: "that is a judge by judge decision."²⁸³

The benefits available to trafficking victims to encourage cooperation with law enforcement also undermine victim credibility with investigators and prosecutors. Some interviewees suggested

²⁷⁸ Interviews 21 & 28.

²⁷⁹ Interviews 21, 28, & 30; "Illegal kickbacks for foreign farm workers in Minnesota bring a federal fraud conviction," Star Tribune, August 9, 2016, <http://www.startribune.com/illegal-kickbacks-for-foreign-farm-workers-in-minnesota-bring-a-federal-fraud-conviction/389638341/>.

²⁸⁰ "Woodbury mom charged with enslaving, assaulting Chinese nanny," Star Tribune, July 15, 2016, <http://www.startribune.com/woodbury-resident-charged-with-five-felonies-accused-of-enslaving-chinese-nanny/387017921/>.

²⁸¹ Interview 1. See U.S. Attorneys' Office, "Departments of Justice, Homeland Security and Labor Announce Selection of Phase II Anti-Trafficking Coordination Teams," U.S. Department of Justice, December 17, 2015, <https://www.justice.gov/usao-or/pr/departments-justice-homeland-security-and-labor-announce-selection-phase-ii-anti>; Editorial Board, "Minnesota Leads on Anti-Trafficking Fight," Star Tribune, December 23, 2015, <http://www.startribune.com/minnesota-leads-on-anti-trafficking-fight/363426191/>.

²⁸² Interview 24.

²⁸³ Interview 39.



concerns over victim credibility may contribute to both the low number of prosecutions and the difficulty some victims face in receiving certification, with its access to benefits and protections.²⁸⁴

Prosecutors may charge traffickers with other crimes, such as harboring or visa fraud, either in addition to or in lieu of labor trafficking violations.²⁸⁵ Alternate charges provide essential flexibility to prosecutors, but result in additional steps. Prosecutors must track and report the case as trafficking. They must ensure that restitution remains available and that foreign-born victims are not denied recognition as victims simply because the case went forward on alternate charges. Finally, prosecutors must consider whether the alternate charge criminalizes the victims' conduct, whether based on their immigration status or because they were forced to perform criminal acts as part of their victimization.

One recent case in Minnesota demonstrates how federal prosecutors use laws beyond the labor trafficking-related criminal statutes to hold offenders accountable and some of the challenges of that approach. A farm in Minnesota employed workers on temporary H2B agricultural visas, but required them to pay illegal kickbacks and fees to both the recruiter and the farm owner. Workers who did not comply were sent back to their country of origin or threatened with the loss of their homes. All three participants in the labor trafficking scheme were charged with work visa fraud, rather than a labor trafficking-related charge. As part of a plea deal, prosecutors required the farm owner to provide restitution to victims in addition to the back wages he owed.²⁸⁶

ANTI-DISCRIMINATION AGENCIES AND TRAFFICKING

Trafficking also violates laws prohibiting discrimination. The Equal Employment Opportunity Commission (EEOC) may pursue traffickers for illegal discrimination based on national origin, sex, language or other protected class. The agency's strategic priorities include "protecting immigrant, migrant, and other vulnerable workers," which would encompass many victims of trafficking.²⁸⁷ The EEOC has won several cases nationally against traffickers, but none in Minnesota. The Minnesota Department of Human Rights (MDHR) would also consider trafficking cases but has not identified or pursued one at this point.²⁸⁸

²⁸⁴ Interview 30.

²⁸⁵ Mark Kappelhoff, "Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery," University of St. Thomas Law Journal 6, Issue 1 (2008): 17-18, <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1173&context=ustlj>.

²⁸⁶ "Illegal kickbacks for foreign farm workers in Minnesota bring a federal fraud conviction," Star Tribune, August 9, 2016, <http://www.startribune.com/illegal-kickbacks-for-foreign-farm-workers-in-minnesota-bring-a-federal-fraud-conviction/389638341/>.

²⁸⁷ "U.S. Equal Employment Opportunity Commission Strategic enforcement plan FY 2013 – 2016," <https://www.eeoc.gov/eeoc/plan/sep.cfm>.

²⁸⁸ Interview 40.

To date, only one case in Minnesota has led to a labor trafficking-related conviction under federal law. Restaurant owner Tieu Tran in Mankato, Minnesota, was convicted of forced labor.²⁸⁹ Closely examining the case, which was presented at the beginning of the chapter, shows how the different federal and state definitions of labor trafficking can overlap in a single case.

LABOR TRAFFICKING CASE STUDY: TIEU TRAN

Hanh, a young woman from an impoverished community in Vietnam was recruited by Tieu Tran with promises of a high-paying job in the United States. The trafficker charged her a large fee to travel from Vietnam to Minnesota, falsely claiming that she had made all the necessary immigration arrangements.

When she arrived, the worker was not paid by her employer and lived in constant fear that she would be harmed. Day after day as she worked, the debt she owed the employer for her travel grew and she was compelled to continue working to pay it off. Without the ability to speak English and with no one to turn to, she was trapped.

Federal Administrative Definition

Labor trafficking is “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”



Minnesota Definition

Labor trafficking is “the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, for the purpose of: (i) debt bondage or forced labor or services; (ii) slavery or practices similar to slavery; or (iii) the removal of organs through the use of coercion or intimidation.”

Federal Forced Labor Statute

“Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) by means of serious harm or threats of serious harm to that person or another person; (3) by means of the abuse or threatened abuse of law or legal process; or (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).”

289 18 U.S.C. § 1589, Forced Labor. See “Mankato, Minnesota Woman Sentenced in Forced Labor Case,” United States Department of Justice, Dec. 16, 2014, published on The FBI, Minneapolis Division at <https://www.fbi.gov/minneapolis/press-releases/2014/mankato-minnesota-woman-sentenced-in-forced-labor-case>; see also “Minnesota Woman Pleads Guilty to Human Trafficking for Holding Victim in Forced Labor in Restaurant,” United States Department of Justice, Mar. 26, 2014, <http://www.justice.gov/opa/pr/minnesota-woman-pleads-guilty-human-trafficking-holding-victim-forced-labor-restaurant>; and see Tim Krohn, “Laborer Forced to Work Long Days in Restaurant,” The Mankato Free Press, Apr. 16, 2014, http://www.mankatofreepress.com/news/local_news/laborer-forced-to-work-long-days-in-restaurant/article_64cdfae-5fb2-5b73-b574-7d9869c39a62.html?mode=print.



2. Minnesota's Criminal Labor Trafficking Law is Underutilized

Minnesota's labor trafficking law was enacted in 2005 and expanded in 2009.²⁹⁰ State law criminalizes perpetrators who knowingly engage in the act of labor trafficking, defined as:

- (1) The recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, for the purpose of:
 - (i) debt bondage or forced labor services;
 - (ii) slavery or practices similar to slavery; or
 - (iii) the removal of organs through the use of coercion or intimidation; or
- (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).²⁹¹

Minnesota's criminal statute closely mirrors the federal administrative definition of labor trafficking.²⁹² The criminal definition of debt bondage is virtually identical to the administrative definition under federal law²⁹³ and the federal and state statutes on forced labor are similar.²⁹⁴

Minnesota law broadens the range of criminal conduct that could trigger a charge of labor trafficking in two significant ways. First, Minnesota law includes enticement and receipt of a person by any means, in addition to actions contained in federal law, which might allow for secondary participants in the trafficking process to be directly charged with the crime of labor trafficking rather than being charged as a co-conspirator.²⁹⁵ Second, Minnesota law criminalizes any purchasers or beneficiaries of services gained through labor trafficking,²⁹⁶ as opposed to the federal requirement of "participation in a venture" which engages in forced labor or services.²⁹⁷ The standard for charging individuals (other than the trafficker) who profit from the crime requires them "knowing or having reason to know" of the labor trafficking, a much lower threshold than 'knowing,' as in the federal statute.²⁹⁸ Minnesota's labor trafficking statute presents an opportunity to increase a victim's access to justice, especially against beneficiaries and purchasers who can be held accountable under Minnesota law.²⁹⁹

Minnesota's labor trafficking law is largely underutilized. Two charges for labor trafficking under §609.282 have been filed between 2007 and 2013, both in 2012; neither resulted in conviction.³⁰⁰

²⁹⁰ Minnesota Revised Statutes, §609.281. Labor trafficking and sex trafficking are separate under Minnesota's human trafficking legal definitions and criminal statutes.

²⁹¹ Minnesota Revised Statutes, §609.281 (5) General definition of labor trafficking. Minnesota also criminalizes the unlawful use of documents in furtherance of labor or sex trafficking. (Minnesota Revised Statutes, §609.283). Under Minnesota law, labor trafficking is punishable by a maximum of 20 years if the victim was a child and a maximum of 15 years if the victim was an adult. Minnesota Revised Statutes, §609.282.

²⁹² Trafficking Victims Protection Act, U.S. Code 22 §7102(9)(B). (It should also be noted that Minnesota adopts a portion of the Palermo Protocol by adding organ trafficking to the criminal statute. Minnesota Revised Statutes, §609.281(5)(1)(iii).)

²⁹³ Minnesota Revised Statutes, §609.281 (3). By comparison, see U.S. Code 22 §7102(5).

²⁹⁴ Compare Minnesota Revised Statutes, §609.281 (4) with U.S. Code 18 §1589.

²⁹⁵ Conspiracy or attempt to commit labor trafficking is absent in Minnesota statutes, and this omission is arguably due to the broad language of the definition of what constitutes labor trafficking. Federal statutes have specific language for conspiracy and attempt; however, the punishment for conspiracy or attempt are the same as the punishment for labor trafficking. See U.S. Code 18 §1594(a-c).

²⁹⁶ Minnesota Revised Statutes, §609.281 (5)(2). (States that "receiving profit or anything of value" also constitutes labor trafficking.)

²⁹⁷ 18 U.S.C. §1589(b).

²⁹⁸ Minnesota Revised Statutes, §609.281 (5)(2).

²⁹⁹ Interviews 30 & 38.

³⁰⁰ See Office of Justice Programs, "Human Trafficking in Minnesota: A Report to the Minnesota Legislature," Minnesota

Interviewees voiced a desire to see the state law enforced to protect greater numbers of victims, and to facilitate coordination when the federal government is unable to investigate and prosecute a labor trafficking offense.³⁰¹ Law enforcement identified the lack of investigations and prosecutions under Minnesota law as a function of several factors: awareness, resources, and priorities.³⁰² In addition, one official suggested that the statute was not easy to use, with the debt bondage provisions being especially confusing.³⁰³

Lack of awareness about labor trafficking may play a role in allocation of resources and prioritization of investigations. Notably, in the 2014 Minnesota human trafficking report, law enforcement survey results show that zero respondents attended specific training on labor trafficking and only 8% of their agencies had worked on labor trafficking investigations.³⁰⁴

A recent arrest in Washington County may provide the first example of a state labor trafficking prosecution.³⁰⁵ The county has a dedicated anti-trafficking coalition bringing together police and prosecutors, including at least one local police officer entirely assigned to trafficking cases. As a result of the coalition, patrol officers identified a potential trafficking violation in an assault case and passed it on to a team of investigators and prosecutors who gathered the evidence to support a labor trafficking charge. According to one government official, “The case wouldn’t exist without the strong partnership between the police and the county attorney’s office.”³⁰⁶

3. Steps Forward in Enforcement of Labor Trafficking Laws

New efforts to enforce criminal laws at the federal level may help to improve the criminal justice response to labor trafficking. Yet, critical gaps in the language of the statutes may still make prosecution challenging in certain situations, particularly those involving debt bondage or fraudulent means. Minnesota’s labor trafficking statute can help cover cases where there is no federal prosecution. As a result, more victims can be identified and protected, and more perpetrators can be prosecuted.

PRIORITY RECOMMENDATION



Policy makers should provide resources for training all local law enforcement and prosecutors on Minnesota’s labor trafficking laws, including investigative techniques and available protections for victims.

Department of Public Safety, September 2014, 4, <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/2014%20Human%20Trafficking%20Report.pdf>. (The charges did not proceed to prosecution and no further information is known about them.)

301 Interviews 30 & 38.

302 Interview 33.

303 Interview 47.

304 Compared to 54% who attended training just on sex trafficking and 21% who worked on a sex trafficking investigation. Office of Justice Programs, “Human Trafficking in Minnesota: A Report to the Minnesota Legislature,” Minnesota Department of Public Safety, September 2014, 7, <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/2014%20Human%20Trafficking%20Report.pdf>.

305 “Woodbury mom charged with enslaving, assaulting Chinese nanny,” Star Tribune, July 15, 2016, <http://www.startribune.com/woodbury-resident-charged-with-five-felonies-accused-of-enslaving-chinese-nanny/387017921/>.

306 Interview 47.



RECOMMENDATION FOR ENFORCEMENT AGENCIES

- ▶ Ensure law enforcement officers, investigators, prosecutors, and judges receive training relevant to their profession on effectively holding traffickers accountable.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Amend federal law to decouple victim certification from willingness to cooperate in the investigation or prosecution of the trafficker so that victims can receive essential protection and assistance without undermining the credibility of their testimony.
- ▶ Prevent the criminalization of trafficking victims by providing an affirmative defense and options for vacation or expungement for persons charged with certain crimes committed as a result of being a trafficking victim.



CHAPTER 5

ENFORCING LABOR EXPLOITATION LAWS ON UNPAID WAGES



Jorge was recruited to come to Minnesota to work in roofing, but lacked legal immigration status. His only contact was the man who recruited him, a subcontractor who supplies roofers for residential construction jobs. Since Jorge couldn't speak English, the recruiter found Jorge all his jobs and negotiated all his wages with the general contractors. He had Jorge sign over his paychecks, saying he was making things easier by cashing the checks for him. The recruiter gave Jorge cash back, but it was only a fraction of his full paycheck.

Interview 5

Effective enforcement of labor laws is one vital component of preventing the exploitation of workers and may serve to protect victims of labor trafficking as well. Some workers experience grave workplace abuses that do not fit the limited legal definition of labor trafficking but violate other labor laws. In addition, victims of trafficking may judge whether it is safe and worthwhile to complain based on how all workplace violations are addressed. Chronic, unpunished wage and hour abuses create an environment of impunity where workers may feel they are not protected.

Both federal and state law establish minimum standards for wages, overtime, and hours worked. Both laws, however, contain major exemptions that allow abusive employers, including traffickers, to exploit their workers. The rise in subcontracting and independent contracting is one example of how employers attempt to evade responsibility under wage and hour laws. A lack of coordination and limited resources leaves enforcement agencies without the ability to thoroughly and proactively investigate labor exploitation, allowing abusive employers to operate without fear of detection.

1. Wage and Hours Laws Do Not Protect All Workers

Workers who are not paid all their wages for all hours worked have recourse under administrative laws enforced by government labor standards agencies and have the option of bringing a private civil action for damages. While they differ in coverage, protection, and penalties, both federal and state law set standards around wages and hours worked. While generally consistent with international standards, the laws sometimes fall short by excluding certain types of industries or workers and by failing to hold abusive employers accountable for willfully and repeatedly violating the law.

The Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA) does not apply to all workers and does not adequately protect vulnerable workers in low wage industries. Some of the restrictions stem from the legal basis for the law as a regulation affecting interstate commerce. Large businesses that do not engage in interstate commerce are not covered by the law, as are businesses with less than \$500,000 gross volume of business.³⁰⁷ Employees of businesses may still be covered if they individually engage in interstate commerce.³⁰⁸ Although court interpretation of what constitutes interstate commerce is typically expansive, it is not universal and leaves some workers unprotected by the FLSA.

Other limitations in the FLSA, however, target types of workers and industries that meet the interstate commerce requirements but are otherwise excluded. Even when employers are covered by the FLSA, not all workers count as employees and not all employees are fully protected. Both independent contractors and trainees, for instance, may perform work for covered employers but are not covered by the FLSA at all.³⁰⁹ Salaried white-collar professionals are not subject to the FLSA's minimum wage and overtime requirements.

Exemptions to wage and hour laws remove a level of government oversight, creating the opportunity for traffickers to operate.

In addition to excluding certain types of employers and workers from coverage, the FLSA also exempts certain sectors from minimum wage, overtime requirements, or both. The largest minimum wage exemption is for tipped workers, but the FLSA also allows for paying less than minimum wage to workers under age 20, students, certain workers with disabilities, some seasonal

workers, farmworkers on small farms, and domestic companions, among others. Farmworkers and live-in domestic service workers are among those exempt from overtime pay. As a result of all the FLSA exemptions, while 1.2 million workers nationally earn the minimum wage, 1.7 million workers are paid less than the minimum wage.³¹⁰

These exemptions also remove a level of government oversight, creating the opportunity for traffickers to operate. Agriculture, domestic service, seasonal establishments, and commissioned sales – all exempted from provisions of the FLSA – are industries with some of the highest

307 U.S. Code 29 §203 (s)(1). (except that schools, hospitals, nursing homes, and all governmental entities are always covered regardless of size).

308 *Wirtz v. First State Abstract & Ins. Co.*, 362 F.2d 83, 87 (8th Cir. 1966)

309 Information on exemptions from "Basic Minimum Wage and Overtime Requirements – and the Exemptions From Those Requirements," *Wage and Hour Handbook: Federal and Minnesota*, Minnesota CLE, 2011, 35-60.

310 "Characteristics of Minimum Wage Workers, 2014," U.S. Bureau of Labor Statistics, Report 1054, April 2015, 1, <http://www.bls.gov/opub/reports/cps/characteristics-of-minimum-wage-workers-2014.pdf>.



rates of labor trafficking.³¹¹ Youth, students, people with disabilities, and seasonal workers on temporary visas, all groups that receive less protection under the FLSA, are also at high risk of labor trafficking.³¹²

Interviewees stated that the damages and penalties available under the law have proven ineffective at deterring abusive employers.³¹³ Employers that fail to make proper payments are liable to employees for their unpaid minimum wage and overtime compensation.³¹⁴ In addition to recovering unpaid wages, the FLSA specifies that employees may also receive “an additional equal amount as liquidated damages,” essentially doubling the amount that the employee can recover.³¹⁵ If employees are successful in their case for back wages, the employer may also have to pay the employees’ attorney fees.

The federal Department of Labor (DOL) can impose penalties for violations, up to \$1100 per worker, for each type of violation; a failure to pay both minimum wage and overtime to a worker would mean a maximum penalty of \$2200, no matter how many times the employer did not pay overtime or minimum wage to that worker.³¹⁶ Discretionary factors can reduce the penalty, but never increase it. For routinely non-compliant companies with repeat, willful violations, the DOL can seek court injunctions or permanent debarment of the employer, but it rarely does.³¹⁷ Even if the wage and hour violations are part of a trafficking scheme, the FLSA does not offer greater penalties.

As long as the minimum wage and overtime standards are not violated, the FLSA offers no remedy if an employer fails to pay for all hours worked or pays a lower wage than promised, both of which are common in labor trafficking cases.³¹⁸ Similarly, employer deductions from an employee’s wages for items such as uniforms and breakages, a common practice in trafficking cases, is illegal only if the resulting pay is below minimum wage or violates overtime rules.³¹⁹ The only remedy under wage and hour laws that a worker can pursue in these cases is a private lawsuit.³²⁰



Jorge’s trafficker stole most of his paycheck, but the cash he gave Jorge met the minimum wage, so wage and hour laws did not apply.

The Minnesota Fair Labor Standards Act

All Minnesota businesses are subject to the MFLSA. However, like the FLSA, certain kinds of workers, such as independent contractors, are entirely excluded from the MFLSA even when the business is covered. Others receive less protection. Salaried white-collar professionals are not subject to the minimum wage and overtime requirements, along with certain seasonal workers, salaried farmworkers, taxi drivers, and others. Importantly, Minnesota does not allow tipped employees to be paid less than minimum wage, addressing one of the largest exemptions under

311 See Chapter 2 for industries with high rates of trafficking.

312 See Chapter 2 for workers at high risk for trafficking.

313 Interviews 2 & 20.

314 U.S. Code 29 §216 (b).

315 U.S. Code 29 §216 (b). (Employers can avoid paying liquidated damages if they can prove that they acted in good faith and had reasonable grounds for believing that they were complying with the FLSA. (US Code 29 §260.)

316 Interview 20.

317 Interview 20.

318 Interview 43.

319 U.S. Wage and Hour Division, “Fact Sheet #16: Deductions from Wages for Uniforms and Other Facilities Under the FLSA,” U.S. Department of Labor, July 2009, <https://www.dol.gov/whd/regs/compliance/whdfs16.pdf>.

320 Interview 43.

the FLSA. The MFLSA also covers farmworkers and domestic workers, with few exceptions, again compensating for the lack of coverage under the FLSA. Minnesota is not uniformly more protective, however, and does create exemptions that are not present in the FLSA. For example, state law creates a discriminatory standard that leads to certain immigrant workers in seasonal hospitality businesses being paid less than the state minimum wage.³²¹

As with the FLSA, the penalties contained in the law are insufficient. A non-compliant employer may be required to pay back wages as well as “an additional equal amount as liquidated damages,”³²² doubling what the employee recovers, just as under the FLSA. The employer may also be liable for the employee’s attorney fees and costs. The Minnesota Department of Labor and Industry (DLI) can seek penalties of \$1,000 per violation for repeated willful violations, but there is no consensus on whether that applies to each type of violation or to each instance a worker was paid incorrectly.³²³ Those penalties can only be imposed if the employer refuses to cooperate with the state agency and an order is issued against them, which happens very infrequently. Also like the FLSA, the Minnesota statute does not cover instances of unpaid wages that do not violate minimum wage or overtime provisions.

WAGE THEFT CAN BE DISCRIMINATION

Where wage theft intersects with discrimination on the grounds of race, national origin, gender, or other protected categories, Title VII of the federal Civil Rights Act of 1964 or the Minnesota Human Rights Act may provide accountability. These laws offer greater remedies for the worker than wage and hour law, including emotional distress damages, punitive damages, and civil penalties, in addition to attorney’s fees and litigation cost reimbursement.³²⁴ Immigrants are often targeted for exploitation by abusive employers, who assume that language barriers and lack of knowledge of U.S. laws will keep the workers from complaining. Such targeted exploitation can provide grounds for a claim of national origin discrimination.

2. Employers Use Legal Exclusions to Avoid Oversight

Both federal and state wage and hour laws primarily govern the relationship between workers and their employers. Some businesses have created a system of subcontracting and independent contracting that attempts to take them out of an employer relationship with their workers. Workers are not able to pursue relief from the company directly receiving the benefit of their work unless the worker can prove that the contracting relationship is illegitimate.

In some cases, contracting serves a clear business purpose, allowing a company to employ specialists or fill temporary needs that might not be served by a full employment relationship.

³²¹ Minnesota Revised Statutes, §177.24(1)(2)(d) provides that migrant workers who are working under the authority of a summer work travel exchange visitor program (J) nonimmigrant visa may be paid less than other workers if the employer is a “hotel or motel,” “lodging establishment,” or “resort” and the contract includes a food or lodging benefit. Minnesota Administrative Rules 3300.2015, subp. 6 permit that workers in supported employment may be exempted from federal minimum wage requirements pursuant to Fair Labor Standards Act, U.S. Code 29 §214(c) and Code of Federal Regulations 29 part 525.

³²² Minnesota Revised Statutes, §177.27(7).

³²³ Interview 3.

³²⁴ Interview 45.



In other cases, employers purposefully designate workers as subcontractors or independent contractors to avoid responsibility for workplace abuses. Regardless of motive, the result is that companies employing subcontractors and independent contractors limit accountability for wage and hour violations, social security and unemployment taxes, and worker's compensation, as well as for abuses that go beyond financial concerns. According to one expert, "firms can greatly reduce the probability that they will be liable for violations [of workplace law] by shifting services or production to independent third-party suppliers."³²⁵

For subcontractors, who perform all their work for one company, but who are employed by another, the distinction makes it difficult to bring a claim. First, in some cases, the layers of contractors and subcontractors make it impossible for workers to identify who is actually responsible for a workplace violation: "Workers don't know who they work for...they just have an arrangement with a middleman."³²⁶ Second, while some subcontracting firms are large, established companies, others are small, poorly resourced organizations that do not have the money to pay workers what they are owed. In some instances, subcontractors regularly dissolve and reform in an attempt to avoid liability. The original contracting company is only liable if it was a "joint employer,"³²⁷ meaning that the original company exercised meaningful control over the workers. In cases where the subcontractor was truly operating independently, the workers have no legal recourse against the contracting company even when the abuses are egregious or the subcontractor goes bankrupt.



Jorge's subcontractor spent most of the money he stole right away, but Jorge could not make a claim against the larger, more established company that built the homes he worked on.

Workers classified as independent contractors are entirely exempt from wage and hour laws. In theory, independent contractors are individuals who are not tied to any particular firm, and set their own hours, business practices, and rates of payment. In practice, some employers simply force prospective employees to register as contractors³²⁸ and then offer them flat rates for their work that amount to less than minimum wage or do not cover overtime work. Under labor and employment laws, these "contractors" are responsible for their own payroll taxes, liability insurance, and unemployment coverage, thereby reducing their earnings further.

Legally, workers must prove that they have been misclassified and should be treated as direct employees of the contracting company. To address misclassification, federal and state agencies, including the labor standards agencies, the Internal Revenue Service (IRS), and the anti-discrimination agencies, have developed multi-factor "tests."³²⁹ The tests used, however, are not

³²⁵ Timothy Glynn, "Taking the Employer out of Employment Law?," *Employee Rights and Employment Policy Journal* 15 (2011): 2, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?filename=6&article=1002&context=bjell_symposia&type=additional.
³²⁶ Interview 6.

³²⁷ David Weil, "Administrator's Interpretation No.2014-2," Wage and Hour Division of U.S. Department of Labor, June 19, 2014, 3, http://www.dol.gov/whd/opinion/adminIntrprtn/FLSA/2014/FLSAAI2014_2.pdf. According to the DOL, "The factors to be considered include whether the alleged employer has the power to hire and fire the employees, supervises and controls the employees' work, determines the rate and method of payment, maintains employment records, and controls where the work is performed, as well as whether the work performed is an integral part of business or of a rote or repetitive nature."

³²⁸ "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," National Employment Law Project, July 2015, 1, <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>.

³²⁹ David Weil, "Administrator's Interpretation No.2015-1," Wage and Hour Division of U.S. Department of Labor, July 15, 2015, 1, https://www.dol.gov/whd/workers/Misclassification/AI-2015_1.pdf. The federal standard, laid out in the FLSA, depends on whether a person has control over the worker to "suffer or permit work," an intentionally broad standard designed to provide the most workers with the most protection. Additionally, federal courts have relied on whether a worker is economically dependent on an employer or in business for themselves to determine their status. The DOL also uses a six factor "totality of circumstances"

uniform across agencies or industries. Different federal agencies employ different standards, which in turn differ from state policies.³³⁰ Adding to the confusion, under Minnesota law, construction workers must meet a different, more expansive standard for misclassification than workers in other industries.³³¹

These confusing standards leave workers ill-equipped to determine misclassification. “The vast majority of wage and hour claims are misclassification,” said a local attorney who specializes in employment rights. “Intelligent people can disagree on what makes an employee versus a contractor. The test is not obvious. And employers make a calculated risk that they can get away with abuses.”³³²

Misclassification cases face the added difficulty that the test applies to each worker individually (as opposed to joint employment, where the entire business either meets or fails to meet the test). To prove misclassification, labor standards agencies must investigate each worker employed by the company to verify their employment status. In private litigation, workers must expressly opt-in to a misclassification lawsuit. One private attorney said, “In the best cases, maybe a third [of workers] will join.”³³³ Because of this high burden of proof, employers may assume that they will never be fully held to account for misclassifying employees.

Further undermining accountability, misclassification and denying joint employment do not trigger additional penalties under federal wage and hour laws beyond those owed for any minimum wage or overtime violations.³³⁴ Under Minnesota law, only construction workers are expressly allowed to bring a civil action for being misclassified as an independent contractor.³³⁵ There is currently no case law regarding the interpretation of this statute.³³⁶

Subcontracting and independent contracting are especially common in construction and janitorial services, which contributes to the high rates of both labor trafficking and other violations found in those industries. First, the original contracting companies do not have an incentive to monitor the treatment of some of their lowest paid and most vulnerable workers because they are not liable for their treatment, creating the opportunity for traffickers to operate as subcontractors. Second, workers may be more vulnerable to manipulation by a trafficker. They may assume that their work for a respectable company guarantees them some protection when in reality they only have employment with the intermediary. Third, traffickers may choose to classify their victims as contractors to avoid wage and hour laws. As a result, workers in highly fissured industries are both more vulnerable to trafficking and have limited avenues for redressing the violations they experience.

test that looks at elements such as a worker’s ability to affect their profit or loss and whether the work is integral to the employer’s business. The multiplicity of tests used under the FLSA demonstrates the difficulty of creating an ironclad distinction between employees and contractors.

330 David Weil, “Administrator’s Interpretation No.2015-1,” Wage and Hour Division of U.S. Department of Labor, July 15, 2015, 4, https://www.dol.gov/whd/workers/Misclassification/AI-2015_1.pdf.

331 Minnesota Revised Statutes,§181.723.

332 Interview 39.

333 Interview 39.

334 29 U.S. Code § 216

335 Minnesota Revised Statutes,§181.722 (4).

336 As of November 19, 2015, search completed to Sherpherdize Minnesota Revised Statutes,§181.722.



3. Lack of Coordination on Labor Exploitation Hampers Complaint Process

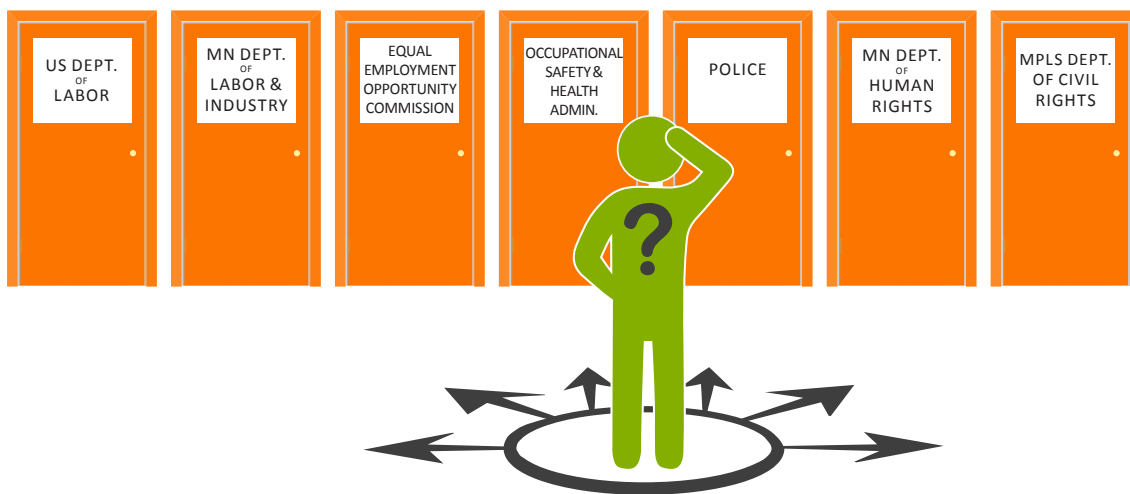
When workers and community-based organizations attempt to bring a labor exploitation complaint, they must navigate a system with many points of entry that are not well coordinated with each other. A wage theft complaint could be pursued by the Minnesota Department of Labor and Industry, the federal Department of Labor, or anti-discrimination agencies such as the federal Equal Employment Opportunity Commission (EEOC), Minnesota Department of Human Rights (MDHR), or Minneapolis Department of Civil Rights. Some labor exploitation may also violate criminal laws and could be pursued by the police. There is no single point of entry or universal intake procedure; instead, each agency maintains its own referral system. The greater the number of phone calls or appointments a worker must go through before receiving help, the greater the likelihood the worker will drop their complaint – “it can be hard for people to navigate referrals.”³³⁷

The federal and state labor standards agencies have a formal memorandum of understanding, which allows them to share case data. They report that this allows whichever agency receives a complaint to take the full details of the case, decide which set of laws is most protective, and transfer the information so that the complainant

does not have to give the same complaint twice.³³⁸ Both reported robust referral of cases to their partner agency depending on whether state or federal law was more favorable for the worker. The EEOC and MDHR also have a formal agreement to share case information.³³⁹



Jorge called one agency, but was referred to another agency. He decided it was too much trouble to pursue his case and decided just to switch jobs instead. The subcontractor never paid back the money he stole.



³³⁷ Interview 35.

³³⁸ Interviews 3 & 20.

³³⁹ Interview 40.

Referral between other agencies is less systematic, with informal arrangements between the federal and state labor standards agencies and anti-discrimination agencies, and even less coordination with law enforcement or city agencies. The multitude of choices for where to report, without active sharing of case information between agencies, increases the time and effort workers must spend to make a complaint.³⁴⁰ Though all of the agencies interviewed reported trying to give explanations on who handles what cases to the caller, in the end, they give a phone number and leave the worker to handle the rest of the process on their own.³⁴¹ Investigators also did not always know the full capabilities of each agency: “What we know about other agencies’ jurisdiction and powers is limited, so we make our best guess.”³⁴²

Lack of coordination between labor standards agencies affects identification, protection, and prosecution of labor trafficking. The reverse is also true: agencies that investigate and prosecute labor trafficking refer very few victims to the state or federal departments of labor for enforcement of wage and hour laws.³⁴³ Nationally, labor trafficking victims consistently fail to gain access to civil labor remedies or claims for back wages.³⁴⁴

4. Wage and Hour Enforcement is Too Limited to Deter Abusive Employers

Enforcement of wage and hour laws suffers from a lack of resources at the federal and state labor standards agencies. Reflecting the emphasis in the federal and state wage and hour laws, the focus of wage and hour enforcement is primarily pursuing a remedy for the worker and ensuring future compliance, rather than punishing the abusive employer for the violation. This allows workers to quickly recover their lost wages without a drawn-out court process, but reduces the consequences to employers for breaking the law. Interviewees stated that the lack of serious penalties for employers that repeatedly or egregiously violated the law has led to widespread non-compliance.³⁴⁵

To better protect workers, the labor standards agencies can initiate independent investigations. As discussed in Chapter 2, workers face substantial barriers to bringing complaints about workplace violations, including fear of retaliation and job loss. Relying exclusively on worker complaints leaves those workers who are most vulnerable to retaliation, including labor trafficking victims, unprotected. An independent investigation can reduce some of the barriers to complaints, though workers may still fear participating. Both the federal and state agencies have the authority to conduct directed or independent investigations, but only the federal DOL currently uses this power.³⁴⁶

The DOL prioritizes investigations based on an industry’s history, employer recidivism, or a pattern of complaints in a certain area.³⁴⁷ The Obama administration has focused investigations on vulnerable workers and private contractors in industries like agriculture, home health care,

340 Interviews 3 & 20.

341 Interview 3.

342 Interview 20.

343 See Chapter 4.

344 Colleen Owens and others, “Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States,” Urban Institute, October 2014, XVIII, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>. (In a national study of labor trafficking victims, one primary conclusion was that: “[c]ivil actions or back wage claims were also rarely pursued, further compounding victims’ debts and stolen wages.”)

345 Interview 2 & 46.

346 Interview 3 & 20.

347 Interview 20.



construction, car washes, day labor, security guards, restaurants, hotels, and janitorial services. The DOL has a mandate to conduct more directed investigations every year with the same resources, which it must balance against investigating individual complaints.³⁴⁸

The Minnesota DLI focuses on individual complaints from current employees and getting wages paid as quickly as possible – “we want to be there for people.”³⁴⁹ Though the law does not require a complaint from a worker, the DLI does not currently have strategic priorities for directed investigations, but will be developing them for next year.³⁵⁰

Both agencies face serious resource constraints that limit their ability to be proactive or more thoroughly investigate cases. The federal DOL has only nine wage and hour investigators for the entire state of Minnesota. The state agency is even more constrained, with only six investigators – a historically high level of staffing. As a result, according to one outside advocate, “the state agency can’t even get to all complaints, much less be proactive.”³⁵¹ Given the fact that the state is the enforcement agency with jurisdiction over high-risk industries for trafficking, the lack of resources that impedes independent investigations and responses to complaints alike is especially troubling.

With limited resources at both the state and federal level, cases involving few employees and low dollar amounts are often not investigated by the labor standards agencies at all. At the federal agency, if a case affects only a few employees, they will try to handle it over the phone but if that is unsuccessful, they refer the worker to conciliation court.³⁵² In small cases, the Minnesota DLI will call employers and notify them of their legal obligation; if the employer refuses to pay, the worker must file a claim in conciliation court.³⁵³

The DLI also does not pursue a full investigation in all cases it accepts.³⁵⁴ Capacity limits on-site investigations, which curtails DLI from identifying potential labor trafficking and exploitation. The state also prioritizes investigations from current employees, reflecting both that current employees face greater barriers to complaining and so might be experiencing a greater violation and a perception that “former employees call and try to get an ex-employer in trouble”³⁵⁵ for weak or nonexistent violations.

Both agencies struggle to enforce judgments on non-compliant companies. The DOL refers cases where the company refuses to pay to the Office of the Solicitor, which makes its own determination on whether to pursue the case. If it does not, the DOL issues a letter to the employee and the employee can go to court independently.³⁵⁶

Conciliation court and private civil suits do not provide a complete remedy, since workers may not be able to afford the costs of a case, and even if they are successful, they may not be able to force the employer to pay what they are owed.

³⁴⁸ Interview 20.

³⁴⁹ Interview 3.

³⁵⁰ Interview 3.

³⁵¹ Interview 15.

³⁵² Interviews 20 & 43.

³⁵³ Interview 3.

³⁵⁴ Interview 3.

³⁵⁵ Interview 3.

³⁵⁶ Interview 20.

The lack of investigation leaves workers and their advocates frustrated. One community leader reported, “The agencies ask you to write stuff up but my impression is they just shuffle it around and hope you drop it.”³⁵⁷ Workers often do not know the limitations of wage and hour laws, and so feel unprotected by the labor standards agencies. It is therefore very unlikely that workers and advocates would make complaints. Worker advocates report that many workers are also frustrated by a complaint process that can take significant time to resolve.³⁵⁸ Employers face no incentive to quickly resolve wage and hour complaints and instead benefit from dragging cases through a lengthy process that workers cannot afford.³⁵⁹

WORKER-DRIVEN ENFORCEMENT

San Francisco has developed one promising practice for maximizing the impact of limited resources at the federal, state, and city labor standards agencies. The city agency tasked with enforcing their city minimum wage law subcontracted with several community organizations to conduct outreach and education with workers, perform case intake and referral, and directly resolve a small number of cases.³⁶⁰ This enforcement model uses formal partnerships with workers’ rights and community organizations. Partner organizations educate workers about their rights, connect workers with labor standards agencies, and provide information the agencies can use to develop strategic enforcement priorities.

5. Steps Forward in Enforcement of Labor Exploitation Laws

Effective wage and hour enforcement both ensures workers receive all the wages they are due and creates an environment that makes trafficking more difficult. Wage and hour laws should be expansive in their coverage so that all workers are protected, while eliminating current loopholes that allow employers to evade liability through subcontracting. Workers need access to simple, direct enforcement of wage and hour laws, assisted by labor standards agencies that have sufficient resources and powers for the task.

PRIORITY RECOMMENDATION



Policy makers should examine how to provide a simple, accessible system that ensures workers can recover lost wages quickly and at minimal cost, especially for small claims.

³⁵⁷ Interview 23.

³⁵⁸ Interview 41.

³⁵⁹ Interview 2.

³⁶⁰ Minimum Wage Ordinance Annual Report FY 2012-2013, San Francisco Office of Labor Standards Enforcement, https://sfgov.org/olse/sites/default/files/FileCenter/Documents/11225-FINAL%2069_MinWageOrdinanceReport_1213.pdf.



RECOMMENDATIONS FOR ENFORCEMENT AGENCIES

- ▶ Ensure that training of law enforcement and prosecutors on human trafficking includes information on identification of and referral for civil labor exploitation.
- ▶ Conduct independent investigations of industries with high numbers of vulnerable workers who have the greatest difficulty bringing complaints.

RECOMMENDATIONS FOR POLICY MAKERS

- ▶ Remove exemptions in the FLSA and MFLSA so all workers of covered employers receive minimum wage and overtime protections, regardless of industry or type of worker, especially those in high risk industries such as construction, domestic service, and agriculture.
- ▶ Amend both federal and state wage and hour laws to allow workers and labor standards agencies to bring claims for all types of wage theft even when the employer has not violated minimum wage or overtime standards.
- ▶ Increase the penalties for employers to a level that deters routine wage theft, whether through increased monetary penalties or non-monetary consequences such as the loss of business licenses or criminal sanctions.
- ▶ Amend wage and hour laws to ensure that companies that employ subcontractors and independent contractors cannot shield themselves from responsibility for the treatment of their workers.
- ▶ Create a mechanism to allow all workers to recover the full cost to them of employer misclassification or misuse of subcontractors.
- ▶ Increase funding of federal and state labor standards agencies to increase the number of investigators and the capacity to hold non-compliant companies accountable through independent investigations and full, on-site audits.



APPENDIX: TRAFFICKING STATUTES

1. 22 U.S. Code § 7105 - Protection and Assistance for Victims of Trafficking

(b) VICTIMS IN THE UNITED STATES

(1) ASSISTANCE

(A) Eligibility for benefits and services

Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.], an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.

(B) Requirement to expand benefits and services

(i) In general

Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, without regard to the immigration status of such victims. In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

(ii) National human trafficking hotline

Beginning in fiscal year 2017, and in each fiscal year thereafter, of amounts made available for grants under paragraph (2), the Secretary of Health and Human Services

shall make grants for a national communication system to assist victims of severe forms of trafficking in persons in communicating with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to victims of severe forms of trafficking in persons.

(C) Definition of victim of a severe form of trafficking in persons

For the purposes of this paragraph, the term “victim of a severe form of trafficking in persons” means only a person—

(i) who has been subjected to an act or practice described in section 7102(8) of this title as in effect on October 28, 2000; and

(ii) (I) who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) Repealed. Pub. L. 108–193, § 6(a)(2), Dec. 19, 2003, 117 Stat. 2880

(E) Certification

(i) In general

Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Secretary of Homeland Security, that the person referred to in subparagraph (C)(ii)(II)—

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and

(II) (aa) has made a bona fide application for a visa under section 1101(a)(15) (T) of title 8, as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) Period of effectiveness

A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Secretary of Homeland Security determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) Investigation and prosecution defined

For the purpose of a certification under this subparagraph, the term “investigation and prosecution” includes—

(I) identification of a person or persons who have committed severe forms of trafficking in persons;

(II) location and apprehension of such persons;

(III) testimony at proceedings against such persons; or



(IV) responding to and cooperating with requests for evidence and information.

(iv) Assistance to investigations

In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.

(F) No requirement of official certification for United States citizens and lawful permanent residents

Nothing in this section may be construed to require United States citizens or lawful permanent residents who are victims of severe forms of trafficking to obtain an official certification from the Secretary of Health and Human Services in order to access any of the specialized services described in this subsection or any other Federal benefits and protections to which they are otherwise entitled.

(G) Eligibility for interim assistance of children

(i) Determination

Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph. The Secretary shall have exclusive authority to make interim eligibility determinations under this clause. A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.

(ii) Notification

The Secretary of Health and Human Services shall notify the Attorney General and the Secretary of Homeland Security not later than 24 hours after all interim eligibility determinations have been made under clause (i).

(iii) Duration

Assistance under this paragraph may be provided to individuals determined to be eligible under clause (i) for a period of up to 90 days and may be extended for an additional 30 days.

(iv) Long-term assistance for children

(I) Eligibility determination

Before the expiration of the period for interim assistance under clause (iii), the Secretary of Health and Human Services shall determine if the child referred to in clause (i) is eligible for assistance under this paragraph.

(II) Consultation

In making a determination under subclause (I), the Secretary shall consult with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form [1] of trafficking.

(III) Letter of eligibility

If the Secretary, after receiving information the Secretary believes, taken as a whole, indicates that the child is eligible for assistance under this paragraph, the Secretary shall issue a letter of eligibility. The Secretary may not require that the child cooperate with law enforcement as a condition for receiving such letter of eligibility.

(H) Notification of children for interim assistance

Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (G).

(c) TRAFFICKING VICTIM REGULATIONS

Not later than 180 days after October 28, 2000, the Attorney General, the Secretary of Homeland Security and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) PROTECTIONS WHILE IN CUSTODY

Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—

(A) not be detained in facilities inappropriate to their status as crime victims;

(B) receive necessary medical care and other assistance; and

(C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

(2) ACCESS TO INFORMATION

Victims of severe forms of trafficking shall have access to information about their rights and translation services. To the extent practicable, victims of severe forms of trafficking shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking.



(3) AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES

(A) Trafficking victims

(i) In general

If a Federal law enforcement official files an application stating that an alien is a victim of a severe form of trafficking and may be a potential witness to such trafficking, the Secretary of Homeland Security may permit the alien to remain in the United States to facilitate the investigation and prosecution of those responsible for such crime.

(ii) Safety

While investigating and prosecuting suspected traffickers, Federal law enforcement officials described in clause (i) shall endeavor to make reasonable efforts to protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

(iii) Continuation of presence

The Secretary shall permit an alien described in clause (i) who has filed a civil action under section 1595 of title 18 to remain in the United States until such action is concluded. If the Secretary, in consultation with the Attorney General, determines that the alien has failed to exercise due diligence in pursuing such action, the Secretary may revoke the order permitting the alien to remain in the United States.

(iv) Exception

Notwithstanding clause (iii), an alien described in such clause may be deported before the conclusion of the administrative and legal proceedings related to a complaint described in such clause if such alien is inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), or (3)(C) of section 1182(a) of title 8.

(B) Parole for relatives

Law enforcement officials may submit written requests to the Secretary of Homeland Security, in accordance with section 1229b(b)(6) of title 8, to permit the parole into the United States of certain relatives of an alien described in subparagraph (A)(i).

(C) State and local law enforcement

The Secretary of Homeland Security, in consultation with the Attorney General, shall—

(i) develop materials to assist State and local law enforcement officials in working with Federal law enforcement to obtain continued presence for victims of a severe form of trafficking in cases investigated or prosecuted at the State or local level; and

(ii) distribute the materials developed under clause (i) to State and local law enforcement officials.

(4) TRAINING OF GOVERNMENT PERSONNEL

(A) In general

Appropriate personnel of the Department of State, including members of the Service (as such term is defined in section 3903 of this title), the Department of Homeland Security, the Department of Health and Human Services, the Department of Labor, the Equal Employment Opportunity Commission, and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims, including juvenile victims. The Attorney General and the Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall provide training to State and local officials to improve the identification and protection of such victims.

(B) Training components

Training under this paragraph shall include—

- (i) a distance learning course on trafficking-in-persons issues and the Department of State's obligations under this Act, which shall be designed for embassy reporting officers, regional bureaus' trafficking-in-persons coordinators, and their superiors;
- (ii) specific trafficking-in-persons briefings for all ambassadors and deputy chiefs of mission before such individuals depart for their posts; and
- (iii) at least annual reminders to all personnel referred to in clauses (i) and (ii), including appropriate personnel from other Federal departments and agencies, at each diplomatic or consular post of the Department of State located outside the United States of—
 - (I) key problems, threats, methods, and warning signs of trafficking in persons specific to the country or jurisdiction in which each such post is located; and
 - (II) appropriate procedures to report information that any such personnel may acquire about possible cases of trafficking in persons.

(d) CONSTRUCTION

Nothing in subsection (c) shall be construed as creating any private cause of action against the United States or its officers or employees.

(e) PROTECTION FROM REMOVAL FOR CERTAIN CRIME VICTIMS

(1)–(4) OMITTED

(5) STATUTORY CONSTRUCTION

Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the Secretary of Homeland Security from instituting removal proceedings under section 1229a of title 8 against an alien admitted as a nonimmigrant under section 1101(a)(15)(T)(i) of title 8, as added by subsection (e), for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Secretary of Homeland Security prior to the alien's admission as a nonimmigrant under such section 1101(a)(15)(T)(i) of title 8.

(f) ASSISTANCE FOR UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS



(1) IN GENERAL

The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8) who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States.

(2) USE OF EXISTING PROGRAMS

In addition to specialized services required for victims described in paragraph (1), the program established pursuant to paragraph (1) shall—

- (A) facilitate communication and coordination between the providers of assistance to such victims;
- (B) provide a means to identify such providers; and
- (C) provide a means to make referrals to programs for which such victims are already eligible, including programs administered by the Department of Justice and the Department of Health and Human Services.

(3) GRANTS

(A) In general

The Secretary of Health and Human Services and the Attorney General may award grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victim service organizations to develop, expand, and strengthen victim service programs authorized under this subsection.

(B) Maximum Federal share

The Federal share of a grant awarded under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted by the grantee.

(g) ANNUAL REPORTS

On or before October 31 of each year, the Secretary of Homeland Security shall submit a report to the appropriate congressional committees setting forth, with respect to the preceding fiscal year, the number, if any, of otherwise eligible applicants who did not receive visas under section 1101(a)(15)(T) of title 8, as added by subsection (e), or who were unable to adjust their status under section 1255(l) of title 8, solely on account of the unavailability of visas due to a limitation imposed by section 1184(o)(2) or 1255(l)(4)(A) of title 8.

(Pub. L. 106–386, div. A, § 107, Oct. 28, 2000, 114 Stat. 1474; Pub. L. 107–228, div. A, title VI, § 682(a), Sept. 30, 2002, 116 Stat. 1409; Pub. L. 108–193, §§ 4(a)(1)–(3), 6(a)(2), 8(b)(2), Dec. 19, 2003, 117 Stat. 2877, 2880, 2887; Pub. L. 109–162, title VIII, § 804, Jan. 5, 2006, 119 Stat. 3055; Pub. L. 109–164, title I, § 102(a), Jan. 10, 2006, 119 Stat. 3560; Pub. L. 110–457, title I, § 104, title II, §§ 205(a)(1), 212, 213(a)(1), (3), Dec. 23, 2008, 122 Stat. 5046, 5060, 5063, 5064, 5066; Pub. L. 113–4, title XII, §§ 1203(b), 1234, Mar. 7, 2013, 127 Stat. 139, 146; Pub. L. 114–22, title I, § 102, title II, §§ 224, 231, title VI, § 603, May 29, 2015, 129 Stat. 230, 250, 259.)

2. 18 U.S. Code Chapter 77 - Peonage, Slavery, and Trafficking in Persons

18 U.S. Code § 1581 - Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

(June 25, 1948, ch. 645, 62 Stat. 772; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 218(a), Sept. 30, 1996, 110 Stat. 3009–573; Pub. L. 106–386, div. A, § 112(a)(1), Oct. 28, 2000, 114 Stat. 1486.)

18 U.S. Code § 1589 - Forced labor

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint,

shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

(c) In this section:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “serious harm” means any harm, whether physical or nonphysical, including



psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1486; amended Pub. L. 110–457, title II, § 222(b)(3), Dec. 23, 2008, 122 Stat. 5068.)

18 U.S. Code § 1590 - Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1487; amended Pub. L. 110–457, title II, § 222(b)(4), Dec. 23, 2008, 122 Stat. 5069.)

18 U.S. Code § 1591 - Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “coercion” means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

(4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1487; amended Pub. L. 108–21, title I, § 103(a)(3), Apr. 30, 2003, 117 Stat. 653; Pub. L. 108–193, § 5(a), Dec. 19, 2003,



117 Stat. 2879; Pub. L. 109–248, title II, § 208, July 27, 2006, 120 Stat. 615; Pub. L. 110–457, title II, § 222(b)(5), Dec. 23, 2008, 122 Stat. 5069; Pub. L. 114–22, title I, §§ 108(a), 118(b), May 29, 2015, 129 Stat. 238, 247.)

18 U.S. Code § 1592 - Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

(c) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a).

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1488; amended Pub. L. 110–457, title II, § 222(b)(6), Dec. 23, 2008, 122 Stat. 5070.)

18 U.S. Code § 1593 - Mandatory restitution

(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

(b)

(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as

guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853).

(c) As used in this section, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1488; amended Pub. L. 110–457, title II, § 221(1), Dec. 23, 2008, 122 Stat. 5067.)

18 U.S. Code § 1593A - Benefitting financially from peonage, slavery, and trafficking in persons

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.

(Added Pub. L. 110–457, title II, § 222(d)(1), Dec. 23, 2008, 122 Stat. 5070.)

18 U.S. Code § 1594 - General provisions

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.

(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person’s interest in any property, real or personal, that was involved in, used, or intended to be used to commit or to facilitate the commission of such violation, and any property traceable to such property; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation, or any property traceable to such property.



(e)

(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, involved in, used, or intended to be used to commit or to facilitate the commission of any violation of this chapter, and any property traceable to such property.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) TRANSFER OF FORFEITED ASSETS.—

(1) IN GENERAL.—

Notwithstanding any other provision of law, the Attorney General shall transfer assets forfeited pursuant to this section, or the proceeds derived from the sale thereof, to satisfy victim restitution orders arising from violations of this chapter.

(2) PRIORITY.—

Transfers pursuant to paragraph (1) shall have priority over any other claims to the assets or their proceeds.

(3) USE OF NONFORFEITED ASSETS.—

Transfers pursuant to paragraph (1) shall not reduce or otherwise mitigate the obligation of a person convicted of a violation of this chapter to satisfy the full amount of a restitution order through the use of non-forfeited assets or to reimburse the Attorney General for the value of assets or proceeds transferred under this subsection through the use of nonforfeited assets.

(g) WITNESS PROTECTION.—

Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).

(Added Pub. L. 106–386, div. A, § 112(a)(2), Oct. 28, 2000, 114 Stat. 1489; amended Pub. L. 110–457, title II, § 222(c), Dec. 23, 2008, 122 Stat. 5070; Pub. L. 114–22, title I, § 105(a), May 29, 2015, 129 Stat. 236.)

18 U.S. Code § 1595 - Civil remedy

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)

(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under this section unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(Added Pub. L. 108–193, § 4(a)(4)(A), Dec. 19, 2003, 117 Stat. 2878; amended Pub. L. 110–457, title II, § 221(2), Dec. 23, 2008, 122 Stat. 5067; Pub. L. 114–22, title I, § 120, May 29, 2015, 129 Stat. 247.)



3. Minnesota Labor Trafficking Statutes

609.281 DEFINITIONS.

Subdivision 1. Generally.

As used in sections 609.281 to 609.284, the following terms have the meanings given.

Subd. 2. Blackmail.

“Blackmail” means a threat to expose any fact or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule.

Subd. 3. Debt bondage.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Subd. 4. Forced labor or services.

“Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through an actor’s:

- (1) threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer bodily harm or physical restraint;
- (2) physically restraining or threatening to physically restrain a person;
- (3) abuse or threatened abuse of the legal process;
- (4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or
- (5) use of blackmail.

Subd. 5. Labor trafficking.

“Labor trafficking” means:

- (1) the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, for the purpose of:
 - (i) debt bondage or forced labor or services;
 - (ii) slavery or practices similar to slavery; or
 - (iii) the removal of organs through the use of coercion or intimidation; or
- (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

Subd. 6. Labor trafficking victim.

“Labor trafficking victim” means a person subjected to the practices in subdivision 5.

609.282 LABOR TRAFFICKING.

Subdivision 1. Individuals under age 18.

Whoever knowingly engages in the labor trafficking of an individual who is under the age of 18 is guilty of a crime and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$40,000, or both.

Subd. 2. Other offenses.

Whoever knowingly engages in the labor trafficking of another is guilty of a crime and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

Subd. 3. Consent or age of victim not a defense.

In a prosecution under this section the consent or age of the victim is not a defense.

609.283 UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS IN FURTHERANCE OF LABOR OR SEX TRAFFICKING.

Subdivision 1. Crime defined.

Unless the person’s conduct constitutes a violation of section 609.282, a person who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person:

- (1) in the course of a violation of section 609.282 or 609.322;
- (2) with intent to violate section 609.282 or 609.322; or
- (3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, a person’s liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a violation of section 609.282 or 609.322; is guilty of a crime and may be sentenced as provided in subdivision 2.

Subd. 2. Penalties.

A person who violates subdivision 1 may be sentenced as follows:

- (1) if the crime involves a victim under the age of 18, to imprisonment for not more than ten years or to payment of a fine of \$20,000, or both; or
- (2) in other cases, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 3. Consent or age of victim not a defense.

In a prosecution under this section the consent or age of the victim is not a defense.



609.284 LABOR OR SEX TRAFFICKING CRIMES; DEFENSES; CIVIL LIABILITY; CORPORATE LIABILITY.

Subdivision 1. Consent or age of victim not a defense.

In an action under this section the consent or age of the victim is not a defense.

Subd. 2. Civil liability.

A labor trafficking victim may bring a cause of action against a person who violates section 609.282 or 609.283. The court may award damages, including punitive damages, reasonable attorney fees, and other litigation costs reasonably incurred by the victim. This remedy is in addition to potential criminal liability.

Subd. 3. Corporate liability.

If a corporation or other business enterprise is convicted of violating section 609.282, 609.283, or 609.322, in addition to the criminal penalties described in those sections and other remedies provided elsewhere in law, the court may, when appropriate:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state agency; or
- (3) order the surrender of its charter if it is organized under Minnesota law or the revocation of its certificate to conduct business in Minnesota if it is not organized under Minnesota law.