

# 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.<sup>1</sup> 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 employer<sup>2</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Individuals forced to participate in illegal industries often fear arrest for their involvement in the underlying criminal activity.<sup>6</sup>



## > 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

<sup>3</sup> 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>.

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

<sup>5</sup> 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>.

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> A recent state case may be the first prosecution under Minnesota's labor trafficking law.<sup>9</sup>

## > 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



<sup>7</sup> 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.

<sup>8</sup> 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/>.

<sup>9</sup> "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.